

TAXATION: Corporation electing to file franchise tax return under Section 144, Laws of Missouri, 1943, page 410, is to be taxed upon total value of assets.

November 29, 1948



Honorable Clarence Evans
Chairman
State Tax Commission
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office reading as follows:

"The report of the above company was filed February 21, 1948 together with a balance sheet. However, they failed to fill in lines 12, 13 and 14 calling for the assets within and without the State of Missouri. They attached to the report Item 16, the following:

"Pursuant to the terms of Section 144 of the General and Business Corporation Act of Missouri 1943, this Company elects to report and pay the fees on all of its outstanding shares (1,268,657 shares of the par value of \$1.00 per share), whether employed in Missouri or not, and consequently the Company is not required to set out the value of its property within or without the State of Missouri.'

"This is a Delaware corporation using all of its capital in Missouri and showing assets of \$12,756,911.57. The assessment was set at this amount calling for a tax of \$6,378.46. * * * * *

Section 144 of an act found Laws of Missouri, 1943, page 410, reads as follows:

"All insurance companies, building and loan associations, and other corporations, the

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fees of which are fixed at lump sums by this Act, and all corporations which employ all their property and all their outstanding shares in this state, or which will report and pay the fees on all of its outstanding shares, whether employed in this state or not, shall not be required to set out in the report required by this Act the value of its property within this state or without the state."

(Underscoring ours.)

The corporation mentioned in your letter of inquiry has elected to file its franchise tax return under the emphasized portion of the statute quoted and now contends that only the par value of its shares should be used in computing the tax due. The determination of the question involves the construction of the emphasized portion of the statute.

At the outset may we point out that this statute does not in any manner impose the Missouri franchise tax. The tax itself is imposed under Section 135 of the act referred to supra, and it is noted therein that in each instance the tax is computed upon the total value of the property or assets of the corporation employed in business in the State of Missouri. This has long been the nature of the corporation franchise tax imposed by this state as was held in *State ex rel. vs. State Tax Commission*, 221 S.W. 721, where in the Supreme Court of Missouri, en banc, said, l.c. 726:

"A franchise tax is not one levied upon property, but one placed on the right to do business. It may be graduated according to the extent of the business done. The act before us contemplates a tax upon the right to do business in accordance with the property actually used in the business."

Reference to Section 136 of the act discloses that the report therein required of corporations liable to the Missouri franchise tax includes items reflecting the amount of the assets or property of such corporation employed within and without the State of Missouri. The purpose of this information is to permit the State Tax Commission in assessing the corporation franchise tax to have such information available in computing such tax, or in the case of corporations having no par value stock to permit the State Tax Commission to determine the total value of the assets and property of the corporation and thereby arrive at a basis upon which the franchise tax may be computed. Section 144, in our opinion, merely relieves certain types of corporations from

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making the allocation of property and assets between those employed within the State of Missouri and those employed without such state. It does not purport to change the basis upon which such tax is to be computed as has heretofore been pointed out has always been the amount of property and assets employed in business in this state.

Concededly, the wording of Section 144, and particularly the emphasized portion thereof, is somewhat ambiguous. However, considering the emphasized portion of the statute in relation to other statutes relating to the Missouri corporation franchise tax and in relation to other portions of itself, and keeping in mind the nature of such tax in this state, we believe a proper construction of such portion of Section 144 will require that the corporation franchise tax be computed upon the entire value of all of the property and assets of such corporation. To place any other construction upon this portion of the statute would produce a lack of uniformity in the taxation of corporations similarly situated and would amount to discrimination. The construction which we have placed upon the statute will impose corporation franchise tax liability upon all corporations in exactly the same relative amounts and computed upon the same basis.

We also wish to point out that the question herein involved will not arise in subsequent years as the 64th General Assembly, by an act found Laws of Missouri, 1947, Vol. II, page 221, has rewritten and reenacted Section 144 of the act found Laws of Missouri, 1943, page 410, quoted supra. The revised statute now appears as Section 4997.144, Mo. R. S. A.

CONCLUSION

In the premises, we are of the opinion that a corporation electing to file its corporation franchise tax under the second alternative found in Section 144 of an act found Laws of Missouri, 1943, page 410, is liable for Missouri franchise tax computed upon the total value of its assets and property.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General