



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable M. C. Flowers
Secretary of State
Austin, Texas

Dear Sir:

Attention: Mr. Ennis C. Favors

Opinion No. 0-72

Re: Calculation of revival fees
for corporation whose right
to do business has been
forfeited for failure to
pay franchise tax.

We are in receipt of your letter of November 14,
1939, in which you submit the following question to this De-
partment for an opinion:

"Should the Secretary of State,
where a corporation has been delinquent
for more than six months, in payment of
its franchise tax, figure and collect
the revival fee for only the six months
period of time, or should he figure and
collect the revival fee for the entire
period of delinquency?"

Revised Civil Statutes, 1925, Article 7089, pro-
vides that each corporation shall make its annual sworn re-
port to the Secretary of State between the 1st day of Jan-
uary and the 1st day of March of each year, and imposes a
penalty of 10% of the amount of the franchise tax for failure
to make such report. Thereafter, on the 1st day of May the
franchise tax is due and payable to the Secretary of State
(Art. 7084), and if the tax is not paid when due, the tax-
payer then becomes liable for an additional penalty of 25%
of the amount of the tax for late payment (Art. 7091). The
Secretary of State is required, during the month of May, to
notify each corporation which has failed to pay its franchise
tax on or before the 1st day of May, that unless such tax is
paid, together with penalties thereon, before the 1st day of

July next following, the right of such corporation to do business in this State will be forfeited without judicial ascertainment (Art. 7092), such forfeiture being accomplished by noting upon the records of the Office of the Secretary of State the words "right to do business forfeited." (Art. 7091).

The method of reviving the right of such corporation to do business is provided in Article 7092, which reads, in part, as follows:

"Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying to the Secretary of State any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and all penalties shall be fully paid to the Secretary of State, he shall revive the right of the corporation to do business within this State by cancelling the words, 'right to do business forfeited,' upon his records and endorsing thereon the word, 'revived,' and the date of such revival. If any domestic corporation whose right to do business within this State shall hereafter be forfeited under the provisions of this chapter shall fail to pay to the Secretary of State, on or before the first day of January next following the revival, (forfeiture) the amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation."

Article 7095, Revised Civil Statutes, 1925, provides, in part, as follows:

"The Attorney General shall bring suit therefor against any corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter;
* * *"

It was held in Federal Crude Oil Company vs. Yount-Lee Oil Company (Supreme Court, 1930), 52 S. W. (2d) 56, that the language contained in Article 7092 quoted above, providing that the franchise tax and penalties due might be paid at any time within six months after the forfeiture, is directory, and that the corporation may be relieved of the forfeiture by paying the franchise tax with accumulated penalties after the six months period if at the time payment is made the State has not availed itself of its right to bring suit against the corporation for the purpose of forfeiting its charter.

As we construe this statute, the six months provision does not refer to or fix a limit upon the time for calculating the five per cent per month revival fee, but is a limitation upon the right of the State to forfeit the charter. It was intended to allow the delinquent corporation six months from the date of the forfeiture within which to revive its right to do business and during such six months period, the Attorney General is without authority to institute a suit to forfeit the corporate charter and dissolve the corporation by reason of its failure to pay the franchise tax.

This construction is in accord with the construction and application of the statute made by the Secretary of State over a long period of time and we would not be justified in departing therefrom unless good reason existed for such action.

It is our opinion that the Secretary of State should collect a revival fee from a corporation whose right to do business has been forfeited for failure to pay its franchise tax, at the rate of 5% per month, or fractional part of a month for the entire period from the date of forfeiture until

Honorable M. O. Flowers, Page 4

the accrued tax and penalties are paid, although payment may be made more than six months after the date of forfeiture.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Cecil C. Cammack
Cecil C. Cammack
Assistant

CCC:RS

RECEIVED NOV 22, 1959

Gerard B. Mann

ATTORNEY GENERAL OF TEXAS

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