



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 21, 1951

Hon. John Ben Shepperd
Secretary of State
Austin, Texas

Opinion No. V-1248

Re: Effective dates of increases
in corporation franchise tax-
es under House Bill 285, Acts
52nd Legislature, 1951.

Dear Mr. Shepperd:

Your letter requesting our opinion in reference to the
above captioned matter reads as follows:

"In House Bill 285, of the 52nd Legislature, Article 7084, R.C.S., was amended by providing that ' . . . every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, or doing business in Texas, shall, on or before May first of each year, pay in advance to the Secretary of State a franchise tax for the year following . . . which tax shall be computed on the basis of One Dollar and Twenty-five Cents (\$1.25) per One Thousand Dollars (\$1000.00) or fractional part thereof; provided, that such tax shall not be less than Twenty-five Dollars (\$25.00) in the case of any corporation . . . ' The effective date of this Act is ~~September 1, 1951~~. The present effective rate of tax under Article 7084 is One Dollar (\$1.00) per One Thousand Dollars (\$1000.00) and a minimum of Twenty Dollars (\$20.00).

"Article 7086, chapter 3, title 122, provides in part that 'wherever a foreign corporation applying for a permit has theretofore done no business in Texas, such initial tax shall not be payable until the end of one (1) year from the date of such permit, at which time the tax shall be computed according to the first year's business as prescribed in Article 7084, Revised Civil Statutes of Texas, as amended; and, at the same time, such corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including May first following.' (Under-

scoring ours.)

"Article 7089, R.C.S., as amended, provides in part that 'where a foreign corporation has not heretofore done business in this State and is granted a permit to do business in Texas, it shall file its first report as of one (1) year from the date such permit was granted, within ninety (90) days of such date.'

"It has become necessary that we have printed the required forms for 'First Year Franchise Tax Reports.' The order for these forms must be placed immediately and the new rate will be shown for the applicable period or periods.

"We are uncertain as to the proper method of computing the franchise tax due by a foreign corporation that qualifies, for example, on June 30, 1950. Its first franchise tax payment would be due on or before ninety (90) days after June 30, 1951, making the final date of filing and payment before the accrual of penalties, September 30, 1951. This latter date is thirty (30) days past the effective date of House Bill 285. Actually, of course, the report could be filed and the tax paid immediately after June 30, 1951, and before September 1951. Bearing in mind the date of levy, as contemplated by statute, we respectfully ask that you answer the following questions:

"1. In the foregoing hypothetical case, is the tax to be paid at the \$1.00 rate for not only the first permit year ending June 30, 1951 but also for the period from June 30, 1951 to May 1, 1952?

"2. Or, is the tax to be computed at the \$1.00 rate for the period from June 30, 1951 to September 1, 1951 and then at the \$1.25 rate from September 1, 1951 to May 1, 1952?

"In another hypothetical case which will arise in the printing of these forms, we are confronted with another problem. A foreign corporation qualifies on November 1, 1950, thus making its first return and tax payment due on or before ninety (90) days after

November 1, 1951.

"1. Would the tax in this case be computed at \$1.00 only from the period November 1, 1950 to September 1, 1951 and at the rate of \$1.25 for the period from September 1, 1951 to May 1, 1952?

"2. Or, would the tax be computed at \$1.00 for the full first permit year ending November 1, 1951 and at \$1.25 for the following period to May 1, 1952?

"3. Or, would the tax be computed at the rate of \$1.00 for the entire period from November 1, 1950 to May 1, 1952?

"4. Or, would the tax be computed at the rate of \$1.25 for the entire period from November 1, 1950 to May 1, 1952?

"In still another situation a foreign corporation qualifies on July 15, 1951, thus making its first return and tax payment due on or before 90 days after July 15, 1952.

"1. Would the tax in this case be computed at \$1.00 from July 15, 1951 to September 1, 1951 and thereafter at \$1.25?

"2. Or would the tax be computed at \$1.00 for the entire period?

"3. Or would the tax be computed at \$1.25 for the entire period?

"4. Or would the tax be computed at \$1.00 to May 1, 1952 and at \$1.25 thereafter?"

The rate to be used in computing the franchise tax depends upon the rate in effect at the time the tax liability is determined. If the tax liability attaches prior to September 1, 1951, the effective date of House Bill 285, the rate in effect at that time should be used in computing the tax, which would be the rates prescribed by Article 7084, V.C.S., and Article 7084 $\frac{1}{2}$, V.C.S., or a total rate of \$1.10. If such tax liability attaches on

or after September 1, 1951, the \$1.25 rate should be used in computing the tax. The time the taxpayer makes his report and pays the tax is wholly immaterial in determining the tax rate to be applied. In other words, the law in force at the time the tax liability is determined should be looked to in order to determine the tax rate. Kansas City Life Ins. Co. v. Love, 101 Tex. 531, 109 S.W. 863.

In Opinion V-1246, dated August 21, 1951, addressed to Hon. Robert S. Calvert, Comptroller of Public Accounts, this office held that House Bill 285 became effective from and after September 1, 1951, and all taxes of whatever kind or nature included therein should be levied and collected at the rates therein prescribed without regard to whether such tax was levied on an annual, quarterly, or monthly basis. Hence, House Bill 285 imposes an additional franchise tax at the rate of 25¢ upon all corporations for the privilege of doing business in Texas in corporate form for the period commencing September 1, 1951, through May 1, 1952.

It is clear to us that the initial tax of a foreign corporation applying for a permit to do business in Texas accrues at the end of one year from the date the permit is issued; and it is likewise clear that the tax liability of the corporation for the period from the end of the first year to and including May 1 following, likewise attaches at the end of one year from the date the permit is issued. This is evident from that part of Article 7086, V.C.S., which reads as follows:

"Wherever a foreign corporation applying for a permit has theretofore done no business in Texas, such initial tax shall not be payable until the end of one (1) year from the date of such permit, at which time the tax shall be computed according to the first year's business as prescribed by Article 7084, Revised Civil Statutes of Texas, as amended; and, at the same time, such corporation shall also pay its tax in advance, based upon the first year's business, for the period from the end of the first year to and including May first following." (Emphasis added.)

Applying the above rule, we answer your questions as

follows:

Where a foreign corporation secures a permit to do business in Texas on June 30, 1950, you should use the \$1.10 rate in computing the tax due for the first permit year ending June 30, 1951; and for the period from June 30, 1951, through May 1, 1952, you should use the \$1.10 tax rate through August 31, 1951, and the \$1.25 rate from September 1, 1951, through May 1, 1952, in computing the tax due for such period. Mann v. Gulf States Utilities Co., 167 S.W.2d 557 (Tex. Civ. App. 1942, error ref.).

Where a foreign corporation secures a permit on November 1, 1950, you should use the \$1.25 rate in computing the tax due for the first permit year ending November 1, 1951; and for the period November 1, 1951, through May 1, 1952, you should use the \$1.25 rate in computing the franchise tax due for such period.

Where a foreign corporation secures a permit on July 15, 1951, you should use the \$1.25 rate in computing the tax due for the first permit year ending July 15, 1952.

SUMMARY

In computing the franchise tax liability of a foreign corporation which secured its initial permit before September 1, 1950, the \$1.10 rate prescribed by Article 7084, V.C.S., prior to its amendment by House Bill 285, and by Article 7084 $\frac{1}{2}$, V.C.S., should be used in calculating the tax for the initial year. In computing the franchise tax liability of a foreign corporation which secured its initial permit on or after September 1, 1950, the \$1.25 rate prescribed by Article 7084, V.C.S., as amended by House Bill 285, should be used in calculating the tax

Hon. John Ben Shepperd, Page 6 (V-1248)

for the initial year and for the period from the end
of the initial year up to and including May 1st fol-
lowing.

APPROVED:

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CKR:mf

Yours very truly,

PRICE DANIEL
Attorney General

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