



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-1775  
Re: Franchise tax to be paid  
by corporations doing no  
business within the State  
under Article 7084, V.A.C.S.

We acknowledge receipt of your request for an opinion from this Department upon the following question:

"Should a corporation in Texas not doing any business and without any gross receipts pay the minimum franchise tax, or should such corporation pay a franchise tax based upon its capital stock, surplus, etc.?"

Article 7084, supra, provides that every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business shall pay to the Secretary of State a franchise tax based upon that proportion of the outstanding capital stock, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures, other than those maturing in less than a year from the date of issue, as the gross receipts from its business done in Texas bears to the total gross receipts of the corporation from its entire business.

The franchise tax is a tax on the corporate right to do business in this State and is not a tax upon the gross receipts or assets of the corporation. Therefore, a corporation cannot escape or avoid the franchise tax by inactivity. It must pay the tax whether it is actually doing business or not. *Kansas City M. & B. R. Co. vs. Stiles*, 26 A. L. R. 425.

So the question involved is just one of measuring

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the amount of franchise tax. The Legislature of Texas has said that the amount shall be measured as provided in Article 7084, supra. The formula provided by the Legislature is very simple and the amount of taxes to be paid by such corporation is only a matter of mathematical calculation. If a corporation has done no business and has no receipts, then it certainly cannot be taxed by the formula laid down by Article 7084, supra. The Secretary of State can no more single out the corporations capital stock, surplus, etc. and levy the tax on that than can he levy the tax directly on its property. To permit the Secretary of State to deviate from the method prescribed by the Legislature would be an invasion of the legislative field and, in effect, repeal the simple and express provisions of Article 7084, supra. This the Secretary of State cannot do.

Since the franchise tax is a tax on the right to do business in this State and Article 7084, supra, provides that all corporations shall pay the tax, it is our opinion that a corporation which does not business in this State should be required to pay the \$10.00 minimum provided by Article 7084, supra.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

*Richard H. Cocke*  
Richard H. Cocke  
Assistant

RHC:N

APPROVED JAN 6, 1940

*Ernest B. Mann*

ATTORNEY GENERAL OF TEXAS

