OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Wm. J. Lawson
Secretary of State
Austin, Texas

Dear Sir:

Opinion No. 0-4098
Re: May a corporation in liquidation prior to May 1st comply and receive the benefits of Article 7097, R.C.S., 1925?

We acknowledge receipt of your request for an opinion of this Department on whether a corporation must go into liquidation prior to January 1st to take advantage of Article 7097, Revised Civil Statutes of 1925, or may it have the benefits of said Article if it goes into liquidation prior to May 1st.

Article 7084, Revised Civil Statutes, 1925, provides in part as follows:

> "Except as herein provided, every . . . corporation . . ., shall, on or before May 1st of each year, pay in advance to the Secretary of State a franchise tax for the following year. . ."

The franchise tax is a tax paid by corporations for the privilege of doing business, and the Legislature provided that the tax shall be paid on or before May 1st for the following year in advance. This means that the tax year in so far as franchise taxes are concerned begins on May 1st and ends on April 30th. While we know of no appellate court decisions on this question, the above holding is borne out by the fact that Article 7086, Revised Civil Statutes, 1925, provides that new corporations and those obtaining permits to do business in this State shall pay a tax from the date of the charter or permit to and including April 30th. Our decision is also substantiated by the fact that corporations

are required to pay the taxes in advance, and the paying date is May 1st. If the taxable period begins January 1st and the tax is not paid until May 1st, then there could not be a payment of the tax in advance.

Said Article 7097, supra, provides as follows:

> "If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation."

In view of the fact that the tax is paid for the period beginning May 1st and ending April 30th, you are advised that corporations in liquidation prior to May 1st are entitled to the benefits of Article 7097, 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

APPROVED OCT 20, 1941
Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

RHC:N

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN