

Opinion No. [30-54]

March 22, 1930

TO: Office of the Attorney General of New Mexico

MUTUAL BUILDING & LOAN -- To pay franchise tax annually.

OPINION

Reference is made to yours of the 20th inst. with which you enclose a copy of a letter from the State Corporation Commission bearing on the question of the franchise tax to be paid by purely mutual building and loan associations. You ask to be advised what action, if any, the Treasury Department should take in this matter and the letter from the State Corporation Commission contains the statement that the assessing machinery formerly in the hands of the State Tax Commission has been destroyed.

The franchise tax, to which reference is made, is that imposed by section 18-122 of the 1929 Codification, being chapter 106, section 2, Laws of 1925. This is in part a reference statute and contains the following language:

"Said franchise tax to be in lieu of the state franchise tax provided for by chapter 100 of the 1929 Session Laws of the State of New Mexico, approved March 17, 1919, the report therefor to be made and the tax to be assessed upon such total assets in the manner provided in said chapter 100"

Chapter 100 of the Laws of 1919, to which reference is made in the quotation just closed requires such associations to make an annual report to the State Tax Commission and provides that,

"from such report or from such other information as it may procure the commission shall at its regular September meeting of each year determine the amount of the authorized capital stock of each such corporation and shall assess and certify to the State Auditor the amount of the annual state franchise tax to be paid by each such corporation"

This was amended by chapter 62, Laws of 1925, to the extend of requiring that the amount of tax assessed should be certified to the State Treasurer. This then was the condition until the enactment of chapter 140, Laws of 1927, section 1 (18-123) which requires that every building and loan association doing business in this state shall make and file with the State Bank Examiner reports not to exceed two in number during the calendar year together with call reports such as the State Bank Examiner may require and provides "the reports required by and filed pursuant to this act shall be in lieu of all others required by law from building and loan associations."

Chapter 100 of the Laws of 1919 and chapter 62 of the Laws of 1925 were both repealed by chapter 198 of the Laws of 1929 but chapter 106 of the Laws of 1925 which

is now section 18-122 and to which reference is hereinbefore made was not repealed and it is the opinion of this office that reference may yet be made to chapter 100 of the Laws of 1919 for the requirements as to the manner of assessing the franchise tax not because of the authority conferred in and by chapter 100 but because of the enactment of chapter 106, section 2, and the bringing into that act, by reference, the requirements as to the manner of assessment.

As no reference is made to the procedure to be followed in collecting a tax which has been assessed and no penalty provided, we do not consider that the procedure for collecting outlined and provided for in chapter 100, Laws of 1919 can be asid to be included in the Laws of 1925, chapter 106, section 2.

We deem it then the duty of the State Tax Commission to assess a franchise tax annually against mutual building and loan associations basing such assessment upon such information as the commission may obtain. We conceive it to be the duty of the Treasurer to accept such taxes when tendered but we do not find any provision by which the Treasurer is authorized specially to enforce payment nor do we find any provision of statute now existing for the imposition of penalties.