

Opinion No. 32-518

September 10, 1932

BY: E. K. Neumann, Attorney General

TO: Mr. Hugh H. Williams, Chairman, State Corporation Commission, Santa Fe, New Mexico.

{*180} Your letter of September the 9th inquires if it is necessary for corporations, which have been dissolved under the provisions of Chapter 100 Laws of 1919, to pay up back due franchise tax before reinstatement or whether, by reason of repeal of the Franchise Tax Act, such back taxes can now be imposed.

The above cited 1919 law was amended by Chapter 62 of the 1925 Laws.

In Section 3 of said Chapter 62 it is provided in part: "No corporation which shall fail to pay said tax on or before November 30th, as herein provided, shall thereafter be authorized to continue doing business in this state until such tax, penalty and interest shall be paid." Other provisions in the same section provide for dissolution of the corporation upon failure to pay within the time specified.

It is our belief that this law should have contained a clause of some kind providing for a renewal of corporate existence but such is not the case.

Assuming that the Act was still in force, we think the State Corporation Commission would have the right to compel payment of past due taxes before any reinstatement. However, this law was repealed by Chapter 198 of the Laws of 1929, and the question arises whether, upon application for reinstatement, such tax should be paid up to date of repeal.

We believe the repeal would not affect the obligation arising before such repeal. This obligation, in our belief, should be paid before reinstatement is permitted. The tax due, however, should be computed to the date of dissolution rather than to the date of repeal.

Our position is strengthened by Section 32, Article 4 of the State Constitution, which is as follows:

"No obligation or liability of any person, association or corporation, held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court."

We do not believe, in view of the foregoing, that the repeal of the franchise tax laws discharged any obligation already incurred.

By Frank H. Patton,

Asst. Attorney General