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June 10, 1948

To Ernest H. Johnson, State Assessor
Re: Corporate Franchise Tax, R.S. Chapter 14, Sections 102-108

My understanding is that when we are notified by the Clerk of Courts of the filing of a bill in equity for dissolution, notice of which must be given to the Attorney General in accordance with statute, we notify the Secretary of State, and that office in turn notifies the State Tax Assessor. Whether or not the State Tax Assessor should discontinue assessing the corporate franchise tax should depend on the nature of the bill and the appointment of receivers.

In the case under consideration, the business was an active and profitable one. The bill w s brought because of a fight amongst the stockholders for the control of the corporation. That, however, is a rare case. By far the majority of the cases are those where the corporation has either ceased to do business or is so hopelessly insolvent that liquidation and dissolution are sure to result.

Our Court has held that a franchise tax may not be assessed against a corporation in receivership, where dissolution and liquidation of the assets are the main purpose. On the other hand, courts have generally held that where a receiver continues and operates the business, the corporation is subject to the franchise tax. It is otherwise where the receiver is merely in possession to liquidate.

In answer therefore to Question 1, I would advise you not to discontinue corporate franchise tax assessments, unless receivers have been appointed by the court, as, when receivers are appointed, the corporation "thereafter (has) no right to exercise for itself any of the privileges conferred upon it by the State." Johnson vs. Johnsom Bros., 108 Maine 272, at page 275. This tax, it is there said, is "in the nature of an annual license fee for the right to continue to exercise the privileges conferred upon it by the State."

Question 2 I leave you to handle in accordance with our telephone conversation.

Abraham Breitbard
Deputy Attorney General

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