

FILE

Subject

*Corporations  
Fees & Taxes*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

May 14, 1974

Opinion No. 74- 144

Sherman A. Parks  
Attorney  
Office of Secretary of State  
2nd Floor -- The Statehouse  
Topeka, Kansas 66612

Dear Mr. Parks:

K.S.A. 17-7503 requires that each domestic corporation organized for profit file an annual report showing the financial condition of the corporation at the close of business on the last day of its tax period next preceding the date of filing. It further provides:

"At the time of filing such annual report it shall be the duty of each domestic corporation organized for profit to pay to the secretary of state an annual franchise tax in an amount equal to one dollar (\$1) for each one thousand dollars (\$1,000) of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than twenty dollars (\$20) nor more than two thousand five hundred dollars (\$2,500)."

The corporation in question has in the past been on a September 30 fiscal year, its report under this provision being due January 15. It has changed its fiscal year with the result that it will have two short periods for income tax purposes, for each of which a report is required. Its report for the first of these periods, October 1, 1972, to April 30, 1973, has been filed. When it files its report for the next period ending December 1, 1973, the corporation will have filed two reports for a fifteen month period.

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The franchise tax which the corporation is required to pay with the filing of its annual report under K.S.A. 17-7503(c) is the statutory maximum, \$2,500. You inquire whether the Secretary of State "can require and accept the payment of franchise taxes in excess of \$2,500 for the two reports which covered a fifteen month period." K.S.A. 17-7507 states thus:

"No corporation shall be required to file its first annual report under this act, or pay its annual franchise tax required to accompany such report, unless such corporation has filed its articles of incorporation or certificate of good standing at least six (6) months prior to the last day of its tax period. If any corporation shall file with the secretary of state a notice of change in its tax period, and the next annual report filed by such corporation subsequent to such notice is based on a tax period of less than twelve (12) months, there shall be no reduction or proration of the annual tax required to accompany such report." [Emphasis supplied.]

The corporation urges that the annual franchise tax fixed by K.S.A. 17-7503(c) is to be computed on a twelve-month basis, and that when, as here, two reports are filed and two fees paid, totalling \$5,000, over a fifteen-month period, that the amount in excess of the annualized rate of \$2,500 per twelve month period should be deemed a penalty, any part or all of which may be waived under K.S.A. 17-7509(a).

Although the report is described in K.S.A. 17-7503(a) as an "annual report," and the tax in (c) as an "annual" franchise tax, the argument relies overmuch on the mechanical application of this term. K.S.A. 17-7507 makes clear that the so-called "annual report" may be required to be filed to cover a period of less than twelve months, and that when such a report is filed, "there shall be no reduction or proration of the annual tax required to accompany such report. The tax is not literally an annual tax, but is a tax known and called the "annual franchise tax." Any question of proration is settled by K.S.A. 17-7507.

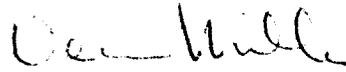
Moreover, the penalties which under K.S.A. 17-7509 the Secretary of State is empowered to waive are those fixed by that section for failing to file the report prescribed by the act, at the rate of \$100 and an additional \$5 per day for each day's delay or omission. No portion of the so-called annual franchise tax can be deemed to be a "penalty" subject to waiver.

Thus, it is our opinion that the Secretary of State may and indeed, is required to accept the total payments of \$5,000 in

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annual franchise tax payments for the reports in question,  
notwithstanding the period covered by these reports is only  
fifteen months.

Yours very truly,



VERN MILLER  
Attorney General

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