



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

June 10, 1955

Hon. A. M. Muldrow
Secretary of State
Capitol Station
Austin, Texas

Opinion No. S-159

Re: Deadline for payment of
franchise taxes when May
1st falls on Sunday.

Dear Mr. Muldrow:

You submit for the opinion of this office two questions based upon the facts disclosed by your letter which is, in part, as follows:

"Article 7084, V.C.S. of Texas, provides, in part, as follows:

'Except as herein provided, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, or doing business in Texas, shall, on or before May first of each year, pay in advance to the Secretary of State a franchise tax for the year following, . . .'

"Article 7091, V.C.S. of Texas, provides, in part, as follows:

'Any corporation, either domestic or foreign which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, shall thereupon become liable to a penalty of twenty-five per cent (25%) of the amount of such franchise tax due by such corporation. . . .'

"May 1, 1955 fell on Sunday. . . . In all cases, we have assessed the 25% penalty where the envelope in which remittances were received bore a postmark after May 1. . . .

"Since money is involved, and in some cases a considerable amount, we are asking for an official ruling on the following questions:

"1. In a year when May 1 falls on Sunday, can the Secretary of State accept payment without penalty in those cases where the envelope in which remittances are mailed bear a postmark of May 2?

"2. If a taxpayer brings his payment to the office on Monday, May 2, can the Secretary of State accept the payment without penalty upon the theory that the office was closed on Sunday?"

Our answer to both your questions is in the negative.

In the absence of some exception to the general language of Article 7084, Vernon's Civil Statutes, - and there is none - a franchise tax payment made on Monday, May 2nd, following a Sunday which is May 1st is not timely paid so as to relieve the taxpayer of the penalty imposed for a delinquent payment. The statute provides that the payment is to be made "on or before May 1st of each year", and a payment made on May 2nd, regardless of the fact that May 1st was a Sunday, would be a delinquent payment and subject to the penalties imposed by the statute as it would not be on or before May 1st. A payment made to the Secretary of State on May 1st, even though it be Sunday, would be a timely payment.

The case of Nunn et al v. New et al, 148 Tex. 443, 226 S.W. 2d 116 (1950), is in point. The Supreme Court in this case states the law as follows:

"The rule has long been firmly established in this State that where a statute requires that an act be done within a specified time, such as that specified here, the last day will not be excluded and the length of time thereby extended when that day falls on a legal holiday or Sunday, unless the statute so provides. Burr v. Lewis, 6 Tex. 76; Hanover Fire Insurance Co. v. Shrader and Rogers, 89 Tex. 35, 33 S. W. 112, 32 S. W. 872, 30 L.R.A. 498, 59 Am. St. Rep. 25; Fidelity & Casualty Co. of New York v. Millican, Tex. Civ. App., 115 S.W. 2d 464, error refused. . . ."

Article 7084 contains no provision for extending the time for the payment of franchise taxes when the last day for such payment is a legal holiday or Sunday.

The penalty provisions of the franchise tax statute appear to be rather harsh, however the matter has been called to the attention of the legislature by several secretaries of state, and the legislature has not seen fit to change these requirements.

SUMMARY

In cases where May 1st falls on Sunday and the envelope in which remittances are mailed to the Secretary of State bears a postmark of May 2nd or in cases where the taxpayer brings his payment to the office of the Secretary of State on Monday, May 2nd, following Sunday, May 1st, the penalty for delinquent payments as provided in Article 7084, V. C. S., would apply.

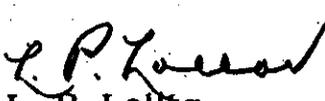
Yours very truly,

APPROVED:

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