

SECOND REGULAR SESSION

SENATE BILL NO. 908

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Read 1st time January 9, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3759S.011

AN ACT

To repeal sections 147.010, 147.020, 147.030, 147.040, 147.050, 147.090, 147.100 and 147.120, RSMo, relating to corporation franchise tax, and to enact in lieu thereof eight new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 147.010, 147.020, 147.030, 147.040, 147.050, 147.090, 147.100 and 147.120, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 147.010, 147.020, 147.030, 147.040, 147.050, 147.090, 147.100 and 147.120, to read as follows:

147.010. 1. For the transitional year defined in subsection 4 of this section and each taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or if the outstanding shares of such corporation or any part thereof consist of shares without par value, then, in that event, for the purpose contained in this section, such shares shall be considered as having a value of five dollars per share unless the actual value of such shares exceeds five dollars per share, in which case the tax shall be levied and collected on the actual value and the surplus if the actual value and the surplus exceed two hundred thousand dollars. If such corporation employs a part of its outstanding shares in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one percent of its outstanding shares and surplus employed in this state if its

outstanding shares and surplus employed in this state two hundred thousand dollars, and for the purposes of sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in this state bears to all its property and assets wherever located. A foreign corporation engaged in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall state that fact on the annual report form prescribed by the secretary of state. For all taxable years beginning on or after January 1, 2000, **but before January 1, 2002**, the annual franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed one million dollars. Any corporation whose outstanding shares and surplus do not exceed one million dollars shall state that fact on the annual report form prescribed by the director of revenue.

2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit, nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express companies, which now pay an annual tax on their gross receipts in this state, nor to insurance companies, which pay an annual tax on their premium receipts in this state, nor to state, district, county, town and farmers' mutual companies now organized or that may be hereafter organized pursuant to any of the laws of this state, organized for the sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the purpose of paying any loss incurred by any member by assessment, nor to any mutual insurance corporation not having shares, nor to a company or association organized to transact business of life or accident insurance on the assessment plan for the purpose of mutual protection and benefit to its members and the payment of stipulated sums of moneys to the family, heirs, executors, administrators or assigns of the deceased member, nor to foreign life, fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature coming within the provisions of section 147.050 and doing business in this state, nor to savings and loan associations and domestic and foreign regulated investment companies as defined by Section 170 of the Act of Congress commonly known as the "Revenue Act of 1942", nor to electric and telephone corporations organized pursuant to chapter 351, RSMo, and chapter 392, RSMo, prior to January 1, 1980, which have been declared tax exempt organizations pursuant to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after December 31, 1986, to banking institutions subject to the annual franchise tax imposed by sections 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the individual depositor left for safekeeping and shall not be considered in computing the amount of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

3. A corporation's "taxable year" for purposes of sections 147.010 to 147.120 shall be its

taxable year as provided in section 143.271, RSMo.

4. A corporation's "transitional year" for the purposes of sections 147.010 to 147.120 shall be its taxable year which includes parts of each of the years 1979 and 1980.

5. The franchise tax payable for a corporation's transitional year shall be computed by multiplying the amount otherwise due for that year by a fraction, the numerator of which is the number of months between January 1, 1980, and the end of the taxable year and the denominator of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as provided in section 143.271, RSMo, shall be similarly computed pursuant to regulations prescribed by the director of revenue.

6. All franchise reports and franchise taxes shall be returned to the director of revenue. All checks and drafts remitted for payment of franchise taxes shall be made payable to the director of revenue.

7. Pursuant to section 32.057, RSMo, the director of revenue shall maintain the confidentiality of all franchise tax reports returned to the director.

8. The director of the department of revenue shall honor all existing agreements between taxpayers and the director of the department of revenue.

147.020. 1. For each taxable year beginning on or after January 1, 1980, **but before January 1, 2002**, every corporation liable for the tax prescribed in section 147.010 shall make a report in writing showing the financial condition of the corporation at the beginning of business on the first day of its taxable year to the director of revenue annually on or before the due date of the corporation's state income tax return pursuant to chapter 143, RSMo, in such form as the director of revenue may prescribe. The report shall be signed by an officer of the corporation.

2. For each taxable year beginning on or after January 1, 1980, **but before January 1, 2002**, if a corporation obtains an extension of time for filing its annual Missouri income tax return pursuant to section 143.551, RSMo, such corporation shall also be granted a corresponding extension of time for filing the report required pursuant to sections 147.010 to 147.120 for its taxable year immediately succeeding the taxable year for which the income tax extension is granted.

3. Every corporation having a transitional year liable for the tax prescribed in section 147.010 shall make a report in writing, showing the financial condition of the corporation at the beginning of business on the first day of its transitional year, on or before April 15, 1980, in such form as the director may prescribe. The report shall be signed by an officer of the corporation.

147.030. 1. For each taxable year beginning on or after January 1, 1980, **but before January 1, 2002**, the franchise tax provided for in this chapter shall be paid on or before the due date of the corporation's state income tax return pursuant to chapter 143, RSMo.

2. For each taxable year beginning on or after January 1, 1980, **but before January**

1, 2002, if a corporation shall obtain an extension of time for paying its annual Missouri income tax pursuant to section 143.551, RSMo, such corporation will also be granted a corresponding extension of time for paying the franchise tax due pursuant to this chapter for its taxable year immediately succeeding the taxable year for which the income tax extension is granted.

3. If the time for filing the franchise tax report is extended pursuant to section 147.020, but the time for payment of the franchise tax is not extended pursuant to this section, the corporation shall pay, on or before the due date of such corporation's state income tax return pursuant to chapter 143, RSMo, the amount properly estimated as its franchise tax for the taxable year.

4. Every corporation having a transitional year shall pay the franchise tax provided for in this chapter on or before the fifteenth day of April, 1980.

147.040. 1. As soon as practical after a corporation's franchise tax report is filed, the director of revenue shall examine it to determine the correct amount of tax based upon the facts contained in the report or upon any information within the director's possession or that may come into the director's possession.

2. In the event that the amount of tax is understated on a corporation's franchise tax report, the director of revenue shall notify the corporation that an amount of tax in excess of that shown on the return is due and has been assessed. Such assessment shall be final unless the corporation files a protest with the director of revenue, setting forth the grounds on which the protest is based, within sixty days from the date the notice of assessment was mailed to the corporation.

3. If a protest is filed, the director of revenue shall reconsider the assessment, and, if the corporation has so requested, shall grant the corporation a hearing within ninety days after the protest is filed unless extended by agreement between the corporation and the director of revenue.

4. Notice of the director of revenue's determination shall be mailed to the corporation by certified or registered mail and such notice shall set forth briefly the director of revenue's findings of fact and the basis of decision in each case decided in whole or in part adversely to the corporation.

5. The action of the director of revenue on the corporation's protest is final upon the expiration of thirty days from the date when the director mails notice of the director's action to the corporation unless within this period the corporation seeks review of the director of revenue's determination by the administrative hearing commission.

6. In the event that the amount of tax is overstated on a corporation's franchise tax report, the director of revenue shall notify the corporation that the tax paid is more than the correct amount and credit such overpayment against any tax, interest, additions to tax or penalties due from such corporation and refund the difference.

7. No assessment or refund shall be made unless the amount exceeds ten dollars.

8. If any corporation subject to the provisions of sections 147.010 to 147.120 fails or neglects to make the report required by sections 147.010 to 147.120 or pay its franchise taxes within ninety days after the time required by sections 147.010 to 147.120 (determined with regard to any extension of time for filing its franchise tax report or for the payment of its franchise tax), such corporation, if organized pursuant to the laws of this state, shall be administratively dissolved pursuant to the provisions of sections 351.484 and 351.486, RSMo, or if a foreign corporation, shall have its certificate of authority revoked pursuant to the provisions of sections 351.598 and 351.602, RSMo.

9. The provisions of this section shall only apply to tax years beginning before January 1, 2002.

147.050. 1. For each taxable year beginning on or after January 1, 1980, **but before January 1, 2002**, every corporation organized pursuant to any laws of this state and every foreign corporation engaged in business in this state and having no shares shall make a report in writing to the director of revenue, annually, on or before the fifteenth day of the fourth month of the corporation's taxable year, in the form as the director of revenue may prescribe.

2. The report shall be signed by an officer of the corporation, and forwarded to the director of revenue.

3. Every corporation having a transitional year and coming under the provisions of this section shall make the report required in this section on or before the fifteenth day of April, 1980.

147.090. The taxes and penalties to be paid by the provisions of this chapter **for tax years beginning before January 1, 2002**, shall be a first lien on all property and assets of the corporation within this state.

147.100. **For tax years beginning before January 1, 2002**, if any corporation fails or refuses to make full and complete answers to the questions contained in the report required to be filed by it, or if the director of revenue finds that any answer contained in such report is untrue, or if the director has reason to believe that any corporation has made a false statement or concealed any facts which are material in determining the amount of tax for which such corporation is liable pursuant to the provisions of sections 147.010 to 147.120, then the director may require the delinquent corporation, its officers, agents, or employees to furnish information concerning its shares which is necessary in determining the tax to be paid by it. Any corporation may seek a review of the determination of the tax due by the administrative hearing commission.

147.120. 1. If any corporation fails or refuses to pay the taxes (including interest and penalties) assessed against it after such assessment becomes final, the director of revenue shall certify a list of the corporations so delinquent to the attorney general who shall proceed forthwith to collect the taxes. Suits for the collection of the taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered in such court in favor of the

state shall be a first lien on all properties and assets of the corporation within this state.

2. The director of revenue shall notify the secretary of state of any corporation that fails or refuses to pay the taxes, including interest and penalties, assessed against it after such assessment becomes final and the secretary of state shall then administratively dissolve any domestic corporation that is delinquent pursuant to section 351.486, RSMo, and shall revoke the certificate of authority of any foreign corporation that is delinquent pursuant to section 351.602, RSMo.

3. Any tax provided for pursuant to sections 147.010 to 147.120 not paid on or before the last day prescribed for payment pursuant to sections 147.010 to 147.120 (determined with regard to any extension of time for payment) shall be collected with a penalty of five percent per month or fractional part thereof until paid, not exceeding twenty-five percent in the aggregate. Interest at the rate determined by section 32.065, RSMo, shall be added to any tax not paid on or before the date due pursuant to sections 147.010 to 147.120 (determined without regard to any extension of time for payment). Nothing in sections 147.010 to 147.120 shall be construed so as to permit any officer of this state to remit or abate such interest.

4. If any corporation fails to pay any tax due within the time prescribed pursuant to sections 147.010 to 147.120 or if any corporation makes errors and omissions in reports or payments, and the director of revenue determines that such action is the result of mistake or is due to circumstances beyond reasonable control and that such delinquency or inaccuracy was unavoidable or devoid of any intent to evade the tax, the director of revenue may, at the director's discretion, waive any penalty that would otherwise be imposed.

5. The director of revenue shall set the interest rate as determined in section 32.065, RSMo. Such interest rate shall be paid on all overpayments for the ensuing calendar year. The interest shall accrue from the due date or the date of overpayment, whichever is later. No interest shall be allowed or paid if overpayment is refunded within four months after the franchise tax report is filed.

6. Any notice of assessment of franchise tax due shall be mailed to the corporation within three years after the report was filed. The provisions of this subsection shall apply to all reports filed after December 31, 1981.

7. If no report is filed or if a false and fraudulent report is filed, a notice of assessment of franchise tax due may be mailed to the corporation at any time.

8. If fraud or evasion on the part of a corporation or anyone on behalf of a corporation is discovered, the director of revenue shall determine the amount of which the state has been defrauded, shall add to the amount so determined a penalty equal to fifty percent thereof, and shall assess the same against the corporation. The amount so assessed shall be immediately due and payable; except that, the director of revenue shall promptly thereafter give to such corporation written notice of such assessment and penalty, which notice shall be served by

registered mail. Such corporation shall have the right to petition for hearing of such assessment, as is provided in sections 147.010 to 147.120.

9. Any person who willfully makes a false corporation franchise tax report, or who willfully makes a false statement in any report under oath or otherwise filed with or transmitted to the director of revenue relating to the amount of any franchise tax due pursuant to sections 147.010 to 147.120 shall, in addition to other penalties provided by law and upon conviction thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not more than one year or by not less than two nor more than five years in the state penitentiary or by both fine and imprisonment together with the cost of prosecution.

10. The director of revenue shall administer and enforce the tax imposed by sections 147.010 to 147.120, and the director is authorized to make such rules and regulations and to require such facts and information to be reported as the director may deem necessary to enforce the provisions of sections 147.010 to 147.120.

11. No rule or portion of a rule promulgated pursuant to the authority of sections 147.010 to 147.120 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

12. Except as otherwise specifically provided in sections 147.010 to 147.120 the franchise tax shall be administered as prescribed in the following provisions of chapter 143, RSMo: subsections 1 and 4 of section 143.551, RSMo, sections 143.561, 143.571, 143.621, 143.631, 143.641, 143.651, 143.661, 143.681, 143.691, 143.721 and 143.731, RSMo, subsection 1 of section 143.741, RSMo, subsections 1, 2 and 5 of section 143.751, RSMo, sections 143.771 and 143.791, RSMo, subsections 1, 2 and 4 of section 143.811, RSMo, sections 143.831, 143.841 and 143.851, RSMo, subsections 2 and 3 of section 143.861, RSMo, and sections 143.901, 143.902, 143.971 and 143.986, RSMo.

13. The provisions of this section shall only apply to tax years beginning before January 1, 2002.

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