STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1392 By: Seikel

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1207, 1210 and 1212, which relate to the Franchise Tax Code; deleting reference and procedures relating to franchise tax; modifying certain reporting requirements; repealing 68 O.S. 1991, Sections 1203, 1204, 1205, 1208 and 1209, which relate to the Franchise Tax Code; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1991, Section 1207, is amended to read as follows:

Section 1207. ~~The tax herein levied shall not be exacted for~~ For the fiscal year during which a domestic or foreign corporation, association or organization has paid an incorporating, filing or qualifying fee or tax to the Secretary of State~~. However~~, such corporations or organizations shall file a "no tax" report to comply with such regulations as shall be adopted by the Oklahoma Tax Commission, who shall, upon ~~such~~ the filing, issue a "no tax" license expiring on the next ensuing June 30th. ~~Provided, that in the computation of the tax imposed by this article no credit shall be allowed against such tax by reason of any money paid to the~~

~~Secretary of State as additional incorporation, qualifying or filing fee covering an increase of authorized capital or capital apportioned to this state.~~

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1210, is amended to read as follows:

Section 1210. ~~(a)~~ In addition to any other statement required by law, each and every corporation, association or organization, as enumerated in ~~Sections~~ Section 1201~~, 1203, and 1204~~ of this ~~Code~~ title, subject to the provisions of this article, shall~~, during the period of July 1st to August 31st, inclusive, of each year,~~ file with the Tax Commission a statement under oath of its president, secretary or managing officer, or managing agent in this state, in such form, including balance sheets as at the close of its last preceding taxable year for which an income tax return was required to be filed, as the Tax Commission may prescribe, showing~~: The amount of its authorized capital stock, interests, certificates, or other evidence of interest or ownership; the amount thereof then paid up; the number of units into which the same is divided; the par value of each unit and the number of such units issued and outstanding; the location of the office or offices; the value of all property owned or used in its business and wherever located; the value of all property owned or used in its business within this state as it existed on the last day of said year; the total amount of all business wherever transacted during said year; the total amount of business transacted within the State of Oklahoma during such year;~~ the names of its officers and the residence and post office address of each as the same appear of record on June 30th.

~~(b) If any corporation, association or organization making a return under the provisions of this article has no authorized capital, or if any of its shares of stock or other evidences of interest or ownership have no par value, then such corporation, association or organization shall so state in its return, and shall,~~

~~in addition thereto, state the book value of its shares of stock or other evidences of interest or ownership. And it shall also, in making its return, make the showing required of all other corporations, associations and organizations; and each~~ Each foreign corporation shall state the name of its registered agent residing at the capitol of the state.

~~(c) A corporation or organization subject to the tax levied by Section 1203 or Section 1204 of this title for which the computation of capital employed in the state equals or exceeds Sixteen Million Dollars ($16,000,000.00), shall file a maximum franchise tax return on such form as may be prescribed by the Oklahoma Tax Commission.~~

~~(d) A corporation or organization subject to the tax levied by Section 1203 or Section 1204 of this title for which the computation of capital employed in this state is Eight Thousand Dollars ($8,000.00) or less shall file a minimum franchise tax return on such form as may be prescribed by the Oklahoma Tax Commission.~~

~~(e) The Oklahoma Tax Commission shall prescribe a form for use by corporations or organizations subject to the minimum tax and maximum tax imposed by Section 1205 of this title in order for such corporations or organizations to determine if the value of capital employed in this state requires filing either a minimum franchise tax return or maximum franchise tax return. If a corporation or organization is required to file either the minimum or maximum franchise tax return, such return shall not be subject to the requirements of subsection (a) of this section and the return shall only contain such information as may be prescribed by the Commission.~~

The statement shall be filed as part of the income tax return as provided in the Income Tax Code.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1212, is amended to read as follows:

Section 1212. ~~(a)~~ A. If the report ~~herein~~ required by Section 1210 of this title ~~and the tax levied~~ is not filed ~~and paid within the time provided under subsection (c) of Section 1208 of this title~~, the Oklahoma Tax Commission ~~shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and the Tax Commission~~ may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder. However, no such order of the Tax Commission shall be issued nor effective as to any corporation, association or organization the charter or certificate of authority of which is issued by the State Banking Board or State Banking Commissioner rather than the Secretary of State and the Tax Commission shall only notify the registered agents or managing officer of the corporation, association, or organization and shall notify the State Banking Board or State Banking Commissioner of the ~~amount of unpaid tax~~ unfiled report. The Banking Commissioner shall require the ~~payment of such tax, plus interest and penalty, if any,~~ filing of the report within a reasonable time.

~~(b)~~ B. Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation, association or organization, or who does or attempts to do any business in the state in behalf of any such foreign corporation, association or organization, without having first obtained a license therefor, as provided herein, or after any such license so obtained shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

~~(c)~~ C. Each trustee, director or officer of any such corporation, association or organization, whose right to do business within this state shall be so forfeited, shall, as to any and all

debts of such corporation, association or organization, which may be created or incurred with ~~his~~ the knowledge, approval and consent of the trustee, director or officer, within this state after ~~such~~ the forfeiture and before the reinstatement of the right of ~~such~~ the corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if ~~such~~ the trustees, directors, and officers of ~~such~~ the corporation, association or organization were partners. Any corporation, association or organization whose right to do business shall be ~~thus~~ forfeited, shall be denied the right to sue or defend in any court of this state, except in a suit to forfeit the charter of ~~such~~ the corporation, association or organization. In any suit against such corporation, association or organization on a cause of action arising before ~~such~~ the forfeiture, no affirmative relief shall be granted to ~~such~~ the corporation, association or organization unless its right to do business in this state shall be reinstated as provided herein. Every contract entered into by or in behalf of ~~such~~ the corporation, association or organization, after ~~such~~ the forfeiture as provided herein, is hereby declared to be voidable.

~~(d)~~ D. Notice of ~~such~~ the suspension and forfeiture shall be forwarded by certified mail, return receipt requested, to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Tax Commission may cause notice of ~~such~~ the suspension and forfeiture to be published in a newspaper of general circulation in the county in which the general business office of each ~~such~~ corporation, association or organization is located in this state.

~~(e)~~ E. The Tax Commission, shall immediately upon entering an order suspending and forfeiting any ~~such~~ charter or other instrument of organization, transmit the name of each ~~such~~ corporation, association or organization named therein to the Secretary of State or the county clerk of the county in which the instrument under

which it may be organized is filed, and the Secretary of State or county clerk, as the case may be, shall immediately record the same and such record shall constitute notice to the public. The suspension and forfeiture herein provided for shall become effective immediately upon ~~such~~ the record being made and the certificate of the Secretary of State or the county clerk shall be prima facie evidence of ~~such~~ the suspension and forfeiture.

~~(f)~~ F. After the issuance of ~~such~~ the order of suspension and forfeiture by the Tax Commission, the charter or other instrument of organization may only be revived and reinstated upon the payment of the accrued fees and penalties and a reinstatement fee in the amount of Fifteen Dollars ($15.00), and a showing by the corporation, association or organization of a full compliance with the laws of this state. Such payment of accrued fees and penalties must be made prior to the expiration of the time provided in ~~such~~ the charter or other instrument of organization for the life of ~~such~~ the corporation, association or organization.

SECTION 4. REPEALER 68 O.S. 1991, Sections 1203, 1204, 1205, 1208 and 1209, are hereby repealed.

SECTION 5. This act shall become effective July 1, 1997.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-5165 JAF