

SHORT TITLE: Revenue and taxation; repealing franchise tax;
modifying related provisions; noncodification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 34

By: Snyder

AS INTRODUCED

An Act relating to repeal of the franchise tax;
amending 12 O.S. 1991, Section 2004, as amended by
Section 4, Chapter 339, O.S.L. 1996 (12 O.S. Supp.
1996, Section 2004), which relates to process;
modifying address at which certain service of
process must have been attempted prior to resorting
to service on Secretary of State; amending 18 O.S.
1991, Section 1142, as last amended by Section 1,
Chapter 267, O.S.L. 1994 (18 O.S. Supp. 1996,
Section 1142), which relates to filing and other
service fees; modifying procedures for collection
and audit of registered agent fee; amending 68 O.S.
1991, Sections 205, as last amended by Section 12,
Chapter 3, O.S.L. 1996 and 2370 (68 O.S. Supp.
1996, Section 205), which relate to records and
files of Oklahoma Tax Commission and taxes on
certain financial institutions; modifying
information which may be disclosed; deleting
provision that tax on certain financial
institutions is in addition to franchise tax;
amending 74 O.S. 1991, Section 2106, as amended by
Section 4, Chapter 313, O.S.L. 1992 (74 O.S. Supp.
1996, Section 2106), which relates to tax
exemptions for export trading companies; deleting
provision that certain export trading company is
exempt from franchise tax for certain period;

repealing 68 O.S. 1991, Sections 1201, as amended by Section 38, Chapter 366, O.S.L. 1993, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212 and 1213 (68 O.S. Supp. 1996, Section 1201), which relate to franchise taxes; providing that certain repealed provisions will continue to be effective as long as deemed necessary by Oklahoma Tax Commission; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 2004, as amended by Section 4, Chapter 339, O.S.L. 1996 (12 O.S. Supp. 1996, Section 2004), is amended to read as follows:

Section 2004.

PROCESS

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM. 1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in ~~his~~ the party's pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY. a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.

b. A summons to be served by the sheriff or deputy sheriff shall be delivered to the sheriff by the court clerk or an attorney of record for the plaintiff. When a summons, subpoena, or other process is to be served by the sheriff or deputy sheriff of another county, the court clerk shall mail it, together with ~~his~~ a voucher for the fees collected for the service, to the sheriff of that county. The sheriff shall deposit the voucher in the Sheriff's Service Fee Account created pursuant to Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or deputy sheriff shall serve the process in the manner that other process issued out of the court of the sheriff's own county is served. A summons to be served by a person licensed to make service of process in civil cases or by a person specially appointed for that

purpose shall be delivered by an attorney of record for the plaintiff to such person.

c. Service shall be made as follows:

- (1) Upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;
- (2) Upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian;
- (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so

requires, by also mailing a copy to the defendant;

- (4) Upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4;
- (5) Upon a state, county, school district, public trust or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief executive officer or a clerk, secretary, or other official whose duty it is to maintain the official records of the organization; and
- (6) Upon an inmate incarcerated in an institution under the jurisdiction and control of the Department of Corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or ~~his~~ designee shall reject service of process for any inmate who is not actually present in ~~said~~ the institution.

2. SERVICE BY MAIL. a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court

clerk upon a defendant of any class referred to in division (1), (3), or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested, and at the election of the judgment creditor by restricted delivery, to the addressee.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen

(15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against ~~him~~ the defendant unless ~~he~~ the defendant appears to defend the suit. Any such default or judgment by default shall be set aside upon

motion of the defendant if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

3. SERVICE BY PUBLICATION. a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or ~~his~~ the plaintiff's attorney, or in a separate affidavit by the plaintiff or ~~his~~ the plaintiff's attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affiant does not know and with due diligence cannot ascertain the following:

- (1) whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of ~~his~~ the defendant's successors, if any,
- (2) the names or whereabouts of the unknown successors, if any, of a named decedent,
- (3) whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,

(4) whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or

(5) the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to

be attached or garnished must be described in the notice.

- (1) When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.
- (2) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.
- (3) In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.
- (4) In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title,

interest, estate, property and equity of redemption in or to ~~said~~ the property or any part thereof is requested or will be entered if the defendant does not answer.

- d. Service by publication is complete when made in the manner and for the time prescribed in subparagraph c of this paragraph. Service by publication shall be proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the court.
- e. Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to determine whether the plaintiff, or someone acting in ~~his~~ the plaintiff's behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.
- f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the date of the judgment or order, have the judgment or order opened and be let in to defend. Before the judgment or order is opened,

the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make ~~his~~ the applicant's defense.

- g. The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.
- h. Service outside of the state does not give the court in personam jurisdiction over a defendant who is not subject to the jurisdiction of the courts of this state or who has not, either in person or through an agent, submitted himself or herself to the jurisdiction of the courts of this state.

4. SERVICE ON THE SECRETARY OF STATE. a. Service of process on a domestic or foreign corporation may be made by serving the Secretary of State as the corporation's agent, if:

- (1) there is no registered agent for the corporation listed in the records of the Secretary of State; or
- (2) neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation, when service of process was attempted.

b. Before resorting to service on the Secretary of State the plaintiff must have attempted service either in person or by mail on the corporation at:

- (1) the corporation's last-known address shown on the franchise tax or other records ~~of the Franchise Tax Division~~ of the Oklahoma Tax Commission, if any is listed there; and
- (2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there; and
- (3) the corporation's last address known to the plaintiff.

If any of these addresses are the same, the plaintiff is not required to attempt service more than once at any address. The plaintiff shall furnish the Secretary of State with a certified copy of the return or returns showing the attempted service.

c. Service on the Secretary of State shall be made by filing two ~~(2)~~ copies of the summons and petition with the Secretary of State, notifying the Secretary of State that service is being made pursuant to the provisions of this paragraph, and paying the Secretary

of State the fee prescribed in paragraph 7 of subsection A of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs of the action, suit or proceeding if the plaintiff shall prevail therein. If a registered agent for the corporation is listed in the records of the Secretary of State, the plaintiff must also furnish a certified copy of the return showing that service on the registered agent has been attempted either in person or by mail, and that neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation.

- d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.
- e. Before entry of a default judgment or order against a corporation that has been served by serving the Secretary of State as its agent under this paragraph, the court shall determine whether the requirements of this paragraph have been satisfied. A default judgment or order against a corporation that has been

served only by service on the Secretary of State may be set aside upon motion of the corporation, if the corporation demonstrates to the court that it had no actual notice of the action in time to appear and make its defense. The motion shall be filed within one (1) year after the corporation has notice of the default judgment or order but in no event more than two (2) years after the default judgment or order.

- f. The Secretary of State shall maintain an alphabetical record of such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which the process has been served upon ~~him~~ the Secretary of State, the fact that service has been effected pursuant to the provisions of this paragraph, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five (5) years from ~~his~~ receipt of the service of process.
- g. The provisions of this paragraph shall not apply to a foreign insurance company doing business in this state.

5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

6. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in any manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

D. SUMMONS AND PETITION. The summons and petition shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. The failure to serve a copy of the petition with the summons is not a ground for dismissal for insufficiency of service of process, but on motion of the party served, the court may extend the time to answer or otherwise plead. If a summons and petition are served by personal delivery, the person serving the summons shall state on the copy that is left with the person served the date that service is made. This provision is not jurisdictional, but if the failure to comply with it prejudices the party served, the court, on motion of the party served, may extend the time to answer or otherwise plead.

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

1. Service of the summons and petition may be made anywhere within this state in the manner provided by subsection C of this section.

2. When the exercise of jurisdiction is authorized by subsection F of this section, service of the summons and petition may be made outside this state:

- a. by personal delivery in the manner prescribed for service within this state,
- b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,
- c. in the manner prescribed by paragraph 2 of subsection C of this section,
- d. as directed by the foreign authority in response to a letter rogatory,
- e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs

a and b of paragraph 3 of subsection C of this section, or

f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside this state may be made by an individual permitted to make service of process under the law of this state or under the law of the place in which the service is made or who is designated to make service by a court of this state.

5. When subsection C of this section requires that in order to effect service one or more designated individuals be served, service outside this state under this section must be made upon the designated individual or individuals.

6. a. A court of this state may order service upon any person who is domiciled or can be found within this state of any document issued in connection with a proceeding in a tribunal outside this state. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside this state and shall direct the manner of service.
- b. Service in connection with a proceeding in a tribunal outside this state may be made within this state without an order of court.
- c. Service under this paragraph does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside this state.

F. ASSERTION OF JURISDICTION. A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.

G. RETURN. 1. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process, but the failure to make proof of service does not affect the validity of the service.

2. When process has been served by a sheriff or deputy sheriff and return thereof is filed in the office of the court clerk, a copy of the return shall be sent by the court clerk to the plaintiff's attorney within three (3) days after the return is filed. If service is made by a person other than a sheriff, deputy sheriff, or licensed process server, such person shall make affidavit thereof. The return shall set forth the name of the person served and the date, place, and method of service.

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and ~~he~~ shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received ~~by him~~, showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the returned card or envelope showing that the card or envelope has been received.

H. AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of

service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action may be dismissed as to that defendant without prejudice upon the court's own initiative with notice to the plaintiff or upon motion. The action shall not be dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been outside of this state for one hundred eighty (180) days following the filing of the petition.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 1142, as last amended by Section 1, Chapter 267, O.S.L. 1994 (18 O.S. Supp. 1996, Section 1142), is amended to read as follows:

Section 1142.

FILING AND OTHER SERVICE FEES

A. The Secretary of State, for services performed in the office of the Secretary of State and for expense of mailing, shall charge and collect the following fees:

1. For any report, document, or other paper required to be filed in the Office of the Secretary of State, a fee of Twenty-five Dollars (\$25.00);

2. For reservation of corporate name, a fee of Ten Dollars (\$10.00);

3. For issuing extra copies of any certificate not requiring any extra filing of papers or documents of any kind, a fee of Ten Dollars (\$10.00);

4. For issuing any other certificate, a fee of Ten Dollars (\$10.00);

5. For receiving a filing or indexing the annual certificate of a foreign corporation doing business in this state, or both when filed together, a fee of Ten Dollars (\$10.00);

6. For preclearance of any document for filing, a fee of Fifty Dollars (\$50.00);

7. For each service of process made upon and accepted by the Secretary of State, a fee of Twenty-five Dollars (\$25.00);

8. For preparing and providing a written report of a record search, a fee of Five Dollars (\$5.00);

9. For filing and issuing certificates of incorporation, the fee shall be one-tenth of one percent (1/10 of 1%) of the authorized capital stock of such corporation; provided, that the minimum fee for any such service shall be Fifty Dollars (\$50.00); provided further, that not for profit corporations shall only be required to pay a fee of Twenty-five Dollars (\$25.00);

10. For filing and issuing amended certificates of incorporation or certificates of consolidation, if the resulting corporation is a domestic corporation, merger, if the surviving corporation is a domestic corporation, restatement, reorganization, revival, extension or dissolution, the fee shall be Fifty Dollars (\$50.00); provided, however, not for profit corporations shall only be required to pay a fee of Twenty-five Dollars (\$25.00). If an amendment shall provide for an increase in authorized capital in excess of Fifty Thousand Dollars (\$50,000.00), the filing fee shall be an amount equal to one-tenth of one percent (1/10 of 1%) of such increase;

11. For issuing a certificate to a foreign corporation to do business in this state, and filing a certificate and statement of such corporation required pursuant to the provisions of Section 1130 of this title, the fee shall be one-tenth of one percent (1/10 of 1%) of the maximum amount of capital invested by such corporation in the state at any time during the fiscal year such certificate is issued to any such foreign corporation; provided, that the minimum fee for any such service shall be Three Hundred Dollars (\$300.00); provided further, that no such corporation shall be required to pay a fee on an amount in excess of its authorized capital;

12. For amended certificate of qualification of a foreign corporation, or certificate of consolidation, if the resulting corporation is a foreign corporation, merger, if the surviving corporation is a foreign corporation, or withdrawal to a foreign corporation doing business in this state, a fee of Two Hundred Dollars (\$200.00); provided, however, for a certificate solely reflecting a change of mailing address, a fee of Ten Dollars (\$10.00);

13. Every foreign corporation on the anniversary of its qualification in this state each year, shall cause to be filed with the Secretary of State a certificate of its president, vice-president or other managing officers, in which shall be stated and shown the maximum amount of capital the corporation had invested in the state at any time subsequent to the issuance to it of a certificate to do business in this state and the amount of capital previously paid upon. If the amount of capital so invested as shown by ~~said~~ the certificate exceeds the amount formerly paid upon, the corporation, at the time of filing ~~said~~ the certificate, shall pay to the Secretary of State an additional fee equal to one-tenth of one percent (1/10 of 1%) of the amount of such excess capital so invested by the corporation in the state; provided, that no such corporation shall be required to pay a filing fee on an amount in

excess of its authorized capital, or to file the certificate provided for in this paragraph after it shall have paid a filing fee on its total authorized capitalization;

14. For acting as the registered agent, a fee of One Hundred Dollars (\$100.00) payable on the first day of July each year, and if not paid before the next ensuing September 1st, the Oklahoma Tax Commission shall suspend and forfeit the charter of the delinquent corporation ~~pursuant to the procedures prescribed in Section 1212 of Title 68 of the Oklahoma Statutes.~~ The Oklahoma Tax Commission shall ~~collect~~ prescribe procedures for collection and audit of the registered agent fee authorized pursuant to this paragraph ~~in conjunction with the collection and audit of franchise taxes as provided for in Sections 1201 through 1214 of Title 68 of the Oklahoma Statutes.~~ All monies received by the Oklahoma Tax Commission pursuant to the provisions of this paragraph shall be paid to the State Treasurer for deposit in the General Revenue Fund; and

15. For any response by means of telecommunications to inquiries regarding information required to be maintained by the Secretary of State, a fee of Five Dollars (\$5.00), unless otherwise provided. Fees collected pursuant to this paragraph shall be deposited in the Revolving Fund for the Office of the Secretary of State.

B. Except as otherwise provided by law, fees paid to the Secretary of State in accordance with the provisions of the Oklahoma General Corporation Act shall be properly accounted for and shall be paid monthly to the State Treasurer for deposit in the General Revenue Fund.

C. For any certificate supplied by the county clerk, such clerk shall receive a fee of One Dollar (\$1.00). Such fees shall be properly accounted for and shall be paid into the county treasury in

the same manner as other fees collected by the county clerk for the filing and recording of mortgages and deeds.

D. In any court proceeding pursuant to the provisions of the Oklahoma General Corporation Act requiring the filing of any decree, order, report or other document in the Office of the Secretary of State or in the office of any county clerk, in addition to the usual court costs and the costs for filing in the office of the clerk of the court, fees equal to the amounts provided for in this section for such required filing shall be collected as costs in such proceedings and such amount shall be forwarded to the Secretary of State and the county clerk with the papers to be filed.

~~E. The provisions contained in this section relating to the payment of incorporation fees by foreign corporations are not intended and shall not be construed to relieve such corporations, where applicable, of the payment of the annual corporate franchise tax to the Oklahoma Tax Commission.~~

~~F.~~ For the purposes of computing the fees to be collected by the Secretary of State pursuant to the provisions of this section, each share without par value shall be treated the same as a share with a par value of Fifty Dollars (\$50.00), and the fees thereon shall be collected accordingly.

~~G.~~ F. Payments for any required fees except as otherwise provided by law may be made as follows:

1. By the applicant's personal or company check, cash, or money order;

2. By a nationally recognized credit card issued to the applicant. The Secretary of State may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by

any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value on credit which is accepted by over one thousand merchants in this state. The Secretary of State shall determine which nationally recognized credit cards will be accepted; provided, however, the Secretary of State must ensure that no loss of state revenue will occur by the use of such card.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 205, as last amended by Section 12, Chapter 3, O.S.L. 1996 (68 O.S. Supp. 1996, Section 205), is amended to read as follows:

Section 205. A. The records and files of the Tax Commission concerning the administration of the Uniform Tax Procedure Code, Section 201 et seq. of this title, or of any state tax law shall be considered confidential and privileged, except as otherwise provided for by law, and neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files nor any person who may have secured information from the Tax Commission shall disclose any information obtained from ~~said~~ the records or files or from any examination or inspection of the premises or property of any person.

B. Neither the Tax Commission nor any employee engaged in the administration of the Tax Commission or charged with the custody of any such records or files shall be required by any court of this state to produce any of the records or files for the inspection of any person or for use in any action or proceeding, except when the records or files or the facts shown thereby are directly involved in an action or proceeding pursuant to the provisions of Section 201 et seq. of this ~~article~~ title or of the state tax law, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state pursuant to any state tax law, or when the information contained in the records or files

constitutes evidence of violation of the provisions of Section 201 et seq. of this article title or of any state tax law.

C. The provisions of this section shall not prevent the Tax Commission from disclosing the following information and no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission in the disclosure of such information:

1. The delivery to a taxpayer or his or her duly authorized representative of a copy of any report or any other paper filed by ~~him or her~~ the taxpayer pursuant to the provisions of the Uniform Tax Procedure Code, Section 201 et seq. of this title, or of any state tax law;

2. The Oklahoma Tax Commission from entering into reciprocal agreements with other state agencies or agencies of the federal government to exchange any information that is not protected by the federal Privacy Protection Act, 42 U.S.C., Section 2000aa et seq.;

3. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

4. The examination of ~~said~~ records and files by the State Auditor and Inspector or ~~his or her~~ duly authorized agents;

5. The disclosing of information or evidence to the Attorney General or any district attorney when ~~said~~ the information or evidence is to be used by ~~said~~ the officials to prosecute violations of the criminal provisions of Section 201 et seq. of this article title or of any state tax law. ~~Said~~ The information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of this state, and a violation by the Attorney General or district attorney by otherwise releasing the information shall be a felony;

6. The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any

report or return filed with any other division of the Tax Commission;

7. The furnishing, at the discretion of the Tax Commission, of any information disclosed by ~~said~~ records or files to any official person or body of this state, any other state or of the United States who is concerned with the administration or assessment of any similar tax in this state, any other state or the United States;

8. The furnishing of information to other state agencies for the limited purpose of aiding in the collection of debts owed by individuals to ~~said~~ the requesting agencies;

9. The furnishing of information requested by any member of the general public and stated in the sworn lists or schedules of taxable property of public service corporations organized, existing, or doing business in this state which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2858 of this title and Section 21 of Article X of the Oklahoma Constitution, provided such information would be a public record if filed pursuant to Sections 2838 and 2839 of this title on behalf of a corporation other than a public service corporation;

10. The furnishing of information requested by any member of the general public and stated in the findings of the Oklahoma Tax Commission as to the adjustment and equalization of the valuation of real and personal property of the counties of the state, which are submitted to and certified by the State Board of Equalization pursuant to the provisions of Section 2865 of this title and Section 21 of Article X of the Oklahoma Constitution;

11. The furnishing of information to an Oklahoma wholesaler of low-point beer, licensed under the provisions of Section 163.1 et seq. of Title 37 of the Oklahoma Statutes, of the licensed retailers authorized by law to purchase low-point beer in this state or the furnishing of information to a licensed Oklahoma wholesaler of shipments by licensed manufacturers into this state;

12. The furnishing of information as to the issuance or revocation of any tax permit, license or exemption by the Tax Commission as provided for by law. Such information shall be limited to the name of the person issued ~~said~~ the permit, license or exemption, the name of the business entity authorized to engage in business pursuant to ~~said~~ the permit, license or exemption, the address of ~~said~~ the business entity, and the grounds for ~~said~~ revocation;

13. The posting of notice of revocation of any tax permit or license upon the premises of the place of business of any business entity which has had any tax permit or license revoked by the Tax Commission as provided for by law. Such notice shall be limited to the name of the person issued said permit or license, the name of the business entity authorized to engage in business pursuant to said permit or license, the address of said business entity, and the grounds for said revocation;

14. The furnishing of information upon written request by any member of the general public as to the outstanding and unpaid amount due and owing by any taxpayer of this state for any delinquent tax, together with penalty and interest, for which a tax warrant or a certificate of indebtedness has been filed pursuant to law;

15. After the filing of a tax warrant pursuant to law, the furnishing of information upon written request by any member of the general public as to any agreement entered into by the Tax Commission concerning a compromise of tax liability for an amount less than the amount of tax liability stated on such warrant;

16. The disclosure of information necessary to complete the performance of any contract authorized by Sections 255 and 262 of this title to any person with whom the Oklahoma Tax Commission has contracted;

17. The disclosure of information to any person for a purpose as authorized by the taxpayer pursuant to a waiver of

confidentiality. The waiver shall be in writing and shall be made upon such form as the Commission may prescribe;

18. The disclosure of information required in order to comply with the provisions of Section 2369 of this title;

19. The disclosure to an employer, as defined in Sections 2385.1 and 2385.3 of this title, of information required in order to collect the tax imposed by Section 2385.2 of this title;

20. The disclosure to a plaintiff of a corporation's last-known address shown on the franchise tax or other records ~~of the Franchise Tax Division~~ of the Commission in order for such plaintiff to comply with the requirements of Section 2004 of Title 12 of the Oklahoma Statutes;

21. The disclosure to any person as determined by the Commission to be necessary if, pursuant to the provisions of Section 510 of this title, a distributor of motor fuel and diesel fuel is required to sell such fuel on a tax-paid basis;

22. The disclosure of information directly involved in the resolution of the protest by a taxpayer to an assessment of tax or additional tax or the resolution of a claim for refund filed by a taxpayer, including the disclosure of the pendency of an administrative proceeding involving such protest or claim, to a person called by the Tax Commission as an expert witness or as a witness whose area of knowledge or expertise specifically addresses the issue addressed in the protest or claim for refund. ~~Said~~ The disclosure to a witness shall be limited to information pertaining to the specific knowledge of that witness as to the transaction or relationship between taxpayer and witness;

23. The disclosure of information necessary to implement an agreement authorized by Section 2702 of this title when such information is directly involved in the resolution of issues arising out of the enforcement of a municipal sales tax ordinance. ~~Said~~ The

disclosure shall be to the governing body or to the municipal attorney, if so designated by the governing body;

24. The furnishing of information regarding incentive payments made pursuant to the provisions of Sections 3601 through 3609 of this title or incentive payments made pursuant to the provisions of Sections 3501 through 3508 of this title;

25. The furnishing to a prospective purchaser of any business, or his or her authorized representative, of information relating to any liabilities, delinquencies, assessments or warrants of the prospective seller of the business which have not been filed of record, established, or become final and which relate solely to the seller's business. Any disclosure under this paragraph shall only be allowed upon the presentment by the prospective buyer, or his or her authorized representative, of the purchase contract and a written authorization between the parties;

26. The notification to the suppliers of a motor fuel distributor who has been required by the Tax Commission to sell motor fuel or diesel fuel on a tax-paid basis pursuant to the provisions of subsection (c) of Section 510 of this title; or

27. The furnishing of information as to the amount of state revenue affected by the issuance or granting of any tax permit, license, exemption, deduction, credit or other tax preference by the Tax Commission as provided for by law. Such information shall be limited to the type of permit, license, exemption, deduction, credit or other tax preference issued or granted, the date and duration of such permit, license, exemption, deduction, credit or other tax preference and the amount of such revenue. The provisions of this paragraph shall not authorize the disclosure of the name of the person issued such permit, license, exemption, deduction, credit or other tax preference, or the name of the business entity authorized to engage in business pursuant to said permit, license, exemption, deduction, credit or other tax preference.

D. The Tax Commission shall cause to be prepared and made available for public inspection in the office of the Tax Commission in such manner as it may determine an annual list containing the name and post office address of each person, whether individual, corporate, or otherwise, making and filing an income tax return with the Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Tax Commission or any employee thereof for any error or omission of any name or address in the preparation and publication of ~~said~~ the list.

E. The Tax Commission shall prepare or cause to be prepared an annual report on all provisions of state tax law that reduce state revenue through exclusions, deductions, credits, exemptions, deferrals or other preferential tax treatments. The report shall be prepared not later than November 1 of each year and shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Tax Commission may prepare and submit supplements to the report at other times of the year if additional or updated information relevant to the report becomes available. The report shall include, for the previous fiscal year, the Tax Commission's best estimate of the amount of state revenue that would have been collected but for the existence of each such exclusion, deduction, credit, exemption, deferral or other preferential tax treatment allowed by law. The Tax Commission may request the assistance of other state agencies as may be needed to prepare the report.

F. It is further provided that the provisions of this section shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

G. Unless otherwise provided for in this section, any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by the imposition of a fine not exceeding One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding one (1) year, or by both ~~said~~ such fine and imprisonment, and the offender shall be removed or dismissed from office.

H. Offenses described in Section 2376 of this title shall be reported to the appropriate district attorney of this state by the Tax Commission as soon as ~~said~~ such offenses are discovered by the Tax Commission or its agents or employees. The Tax Commission shall make available to the appropriate district attorney or to the authorized agent of ~~said~~ the district attorney its records and files pertinent to ~~said~~ the prosecutions, and ~~said~~ the records and files shall be fully admissible as evidence for the purpose of said prosecutions.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 2370, is amended to read as follows:

Section 2370. A. For taxable years beginning after December 31, 1989, for the privilege of doing business within this state, every state banking association, national banking association and credit union organized under the laws of this state, located or doing business within the limits of the State of Oklahoma shall annually pay to this state a privilege tax at the rate of six percent (6%) of the amount of the taxable income as provided in this section.

B. 1. The privilege tax levied by this section shall be ~~in~~ ~~addition to the franchise tax levied in Article 12 of this title and~~ in lieu of the tax levied by Section 2355 of this title and in lieu of all taxes levied by the State of Oklahoma, or any subdivision thereof, upon the shares of stock or personal property of any

banking association or credit union subject to taxation under this section.

2. Nothing in this section shall be construed to exempt the real property of any banking associations or credit unions from taxation to the same extent, according to its value, as other real property is taxed. Nothing herein shall be construed to exempt an association from payment of any fee or tax authorized or levied pursuant to the banking laws.

3. Personal property which is subject to a lease agreement between a bank or credit union, as lessor, and a nonbanking business entity or individual, as lessee, is not exempt from personal property ad valorem taxation. Provided, further, that it shall be the duty of the lessee of such personal property to return sworn lists or schedules of their taxable property within each county to the county assessor of such county as provided in Sections ~~2433~~ 2838 and ~~2434~~ 2839 of this title.

C. Any tax levied under this section shall accrue on the last day of the taxable year and be payable as provided in Section 2375 of this title. The accrual of such tax for the first taxable year to which this act applies, shall apply notwithstanding the prior accrual of a tax in the same taxable year based upon the net income of the next preceding taxable year; provided, however, any additional deduction ~~enuring~~ inuring to the benefit of the taxpayer shall be deducted in accordance with the optional transitional deduction procedures in Section 2354 of this title.

D. The basis of the tax shall be United States taxable income as defined in paragraph 10 of Section 2353 of this title and any adjustments thereto under the provisions of Section 2358 of this title with the following adjustments:

1. There shall be deducted all interest income on obligations of the United States government and agencies thereof not otherwise exempted and all interest income on obligations of the State of

Oklahoma or political subdivisions thereof, including public trust authorities, not otherwise exempted under the laws of this state; and

2. Expense deductions claimed in arriving at taxable income under paragraph 10 of Section 2353 of this title shall be reduced by an amount equal to fifty percent (50%) of excluded interest income on obligations of the United States government or agencies thereof and obligations of the State of Oklahoma or political subdivisions thereof.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 2106, as amended by Section 4, Chapter 313, O.S.L. 1992 (74 O.S. Supp. 1996, Section 2106), is amended to read as follows:

Section 2106. A. An export trading company, with a registered office or other office in this state, shall be exempt from state corporate income tax ~~and franchise tax~~ for a period of two (2) years from the date the Oklahoma Tax Commission certifies the export trading company as a qualified export trading company. A copy of such certificate shall be filed with the Oklahoma Tax Commission which shall verify compliance with ~~this act~~ Section 2101 et seq. of this title prior to allowing the tax exemption provided for herein. For purposes of the Export Trading Company Act, an export trading company shall be deemed to have an office in Oklahoma if it performs export trade services in this state.

B. Export trading companies shall not qualify for the tax exemptions of this section for sales made within the United States.

C. A subsidiary or affiliate of a qualified export trading company shall not be entitled to the tax exemptions provided for in this section unless such subsidiary or affiliate is certified as a qualified export trading company pursuant to Section 2107 of this title.

SECTION 6. REPEALER 68 O.S. 1991, Sections 1201, as amended by Section 38, Chapter 366, O.S.L. 1993, 1202, 1203, 1204,

1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212 and 1213 (68 O.S. Supp. 1996, Section 1201), are hereby repealed.

SECTION 7. The provisions of Section 1212 of Title 68 of the Oklahoma Statutes shall continue to be in effect for entities which, on the effective date of this act, are delinquent in payment of the tax levied by Section 1204 of Title 68 of the Oklahoma Statutes. Such provisions shall remain effective as long as may be deemed necessary by the Oklahoma Tax Commission.

SECTION 8. The provisions of Section 7 of this act shall not be codified in the Oklahoma Statutes.

SECTION 9. This act shall become effective January 1, 1998.

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