

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1322

By: Fisher

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 1205, 1206, 1210, as amended by Section 3, Chapter 249, O.S.L. 1997 and 1212 (68 O.S. Supp. 1999, Section 1210), which relate to franchise taxes; modifying minimum and maximum amount of franchise taxes; exempting certain entities from payment of franchise taxes; modifying certain requirements relating to the filing of minimum and maximum franchise tax returns; requiring Oklahoma Tax Commission to prescribe form for use by corporations, associations or organizations exempt from payment of franchise tax; modifying circumstances under which Tax Commission may direct suspension of organizational charter; 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 1205, is amended to read as follows:

Section 1205. In determining the amount of tax to be levied, assessed and collected under the terms of ~~this Article~~ Section 1201 et seq. of this title, ~~the minimum amount shall, in no case, be less than Ten Dollars (\$10.00) nor shall the maximum amount for any tax year shall not exceed Twenty Thousand Dollars (\$20,000.00) Twenty-four Thousand Four Hundred Dollars (\$24,400.00).~~

SECTION 2. AMENDATORY 68 O.S. 1991, Section 1206, is amended to read as follows:

Section 1206. The terms of ~~this article~~ Section 1201 et seq. of this title shall not apply to the following institutions, foreign or domestic:

1. Savings and loan associations, ~~small~~;

2. Small business investment companies licensed under the Federal Small Business Act of 1958,~~credit;~~

3. Credit unions,~~trust;~~

4. Trust companies,~~real;~~

5. Real estate trusts operating under the Federal Real Estate Trust Act of 1960,~~insurance;~~

6. Insurance companies, including surety and bond companies,~~retirement;~~

7. Retirement or pension funds,~~savings;~~

8. Savings banks and savings fund societies; ~~nor to any~~

9. Any organization enumerated in Section 1201 of this title if such organization is neither organized for profit nor operated for profit, irrespective of the form of organization; or

10. Any corporation, association, or organization with less than Two Hundred Thousand Dollars (\$200,000.00) in capital used, invested or employed within this state in any taxable year.

SECTION 3. AMENDATORY 68 O.S. 1991, Section 1210, as amended by Section 3, Chapter 249, O.S.L. 1997 (68 O.S. Supp. 1999, 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 1201, 1203, and 1204 of this title, subject to the provisions of Section 1201 et seq. of this title, either during the period of July 1 to August 31, inclusive, of each year or on or before the date by which an income tax return is required to be filed pursuant to the provisions of subsection G of Section 2368 of this title or pursuant to the provisions of Section 216 of this title, based upon the election by the taxpayer regarding the due date for payment of tax, shall file with the Oklahoma Tax Commission a statement under oath of its president, secretary or managing officer, or managing agent in this state. The statement shall be in such form as the Tax Commission shall prescribe, including balance

sheets as at the close of its last preceding taxable year for which an income tax return was required to be filed, showing the following:

1. The amount of its authorized capital stock, interests, certificates, or other evidence of interest or ownership;
2. The amount thereof then paid up;
3. The number of units into which the same is divided;
4. The par value of each unit and the number of such units issued and outstanding;
5. The location of the office or offices;
6. The value of all property owned or used in its business and wherever located;
7. The value of all property owned or used in its business within this state as it existed on the last day of the tax year;
8. The total amount of all business wherever transacted during the tax year;
9. The total amount of business transacted within the State of Oklahoma during such year; and
10. The names of its officers and the residence and post office address of each as the same appear of record on the last day of the tax year, based upon the election by the taxpayer regarding the due date for payment of tax.

B. If any corporation, association or organization making a return under the provisions of Section 1201 et seq. of this title 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. It shall also, in making its return, make the showing required of all other corporations, associations and organizations, and each foreign corporation shall state the name of its registered agent residing at

the capital of the state. The return shall be in such form as the Tax Commission shall prescribe.

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)~~ Nineteen Million Five Hundred Twenty Thousand Dollars (\$19,520,000.00), 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, and for use by corporations, associations or organizations exempt from the tax pursuant to the provisions of paragraph 10 of Section 1206 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, or if the value of capital employed in this state allows the corporation or organization an exemption from the tax pursuant to the provisions of paragraph 10 of Section 1206 of this title. If a corporation or organization is required to file either the minimum or maximum a franchise tax return pursuant to the provisions of this subsection, 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 Tax Commission. The return shall be in such form as the Tax Commission shall prescribe.~~

SECTION 4. AMENDATORY 68 O.S. 1991, Section 1212, is amended to read as follows:

Section 1212. ~~(a)~~ A. If the report ~~herein~~ required ~~and the tax levied pursuant to the provisions of Section 1210 of this title is not filed and the tax levied pursuant to the provisions of Section 1203, 1204 or 1205 of this title is not~~ paid within the time provided under subsection ~~(e)~~ 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~~. In such event, or if a form is not filed, as required by subsection D of Section 1210 of this title, by a corporation, association or organization exempt from the tax pursuant to the provisions of paragraph 10 of Section 1206 of this title, 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. The Commissioner shall require the payment of such tax, plus interest and penalty, if any, 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.

~~(e)~~ 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 or her knowledge, approval and consent, within this state after such forfeiture and before the reinstatement of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such trustees, directors, and officers of such 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 corporation, association or organization. In any suit against such corporation, association or organization on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such 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 corporation, association or organization, after such forfeiture as provided herein, is hereby declared to be voidable.

~~(d)~~ D. Notice of such 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 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 record being made and the certificate of the Secretary of State or the county clerk shall be prima facie evidence of such suspension and forfeiture.

~~(f)~~ F. After the issuance of such 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 charter or other instrument of organization for the life of such corporation, association or organization.

SECTION 5. This act shall become effective July 1, 2000.

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.