CS for EHB 1738

THE STATE SENATE
Monday, April 4, 2005

Committee Substitute for
ENGROSSED
House Bill No. 1738

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1738 - By: TERRILL, MORGAN (Fred), WESSELHOFT, DANK, NANCE and McMULLEN of the House and GUMM of the Senate.

[revenue and taxation - amending 68 O.S., Section 1205 - franchise tax - exemption - effective date - emergency]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 1205, is amended to read as follows:

Section 1205. A. In determining the amount of tax to be levied, assessed and collected under the terms of this Article, ~~the minimum amount shall, in no case, be less than Ten Dollars ($10.00) nor shall~~ the maximum amount shall not exceed Twenty Thousand Dollars ($20,000.00).

B. If, as a result of the computation of tax required by Section 1209 of this title, the resulting liability is Ten Dollars ($10.00) or less, the corporation or other entity shall be exempt from the tax levied by Section 1203 or Section 1204 of this title for such reporting period.

(Bold face denotes Committee Amendments)

SECTION 2. AMENDATORY 68 O.S. 2001, 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), 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. The Tax Commission shall also prescribe a form for use by corporations or organizations exempt from the tax imposed by Sections 1203 and 1204 of this title pursuant to Section 1205 of this title. Such form shall include the

names of the officers of the corporation or organization and the residence and post office address of each as the same appears of record on the last day of the tax year and a statement attesting that no tax is due for the taxable period. If a corporation or organization is required to file ~~either~~ the ~~minimum or~~ maximum franchise tax return or is exempt from the tax imposed by Sections 1203 and 1204 of this title pursuant to Section 1205 of this title, 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 return shall be in such form as the Tax Commission shall prescribe.

SECTION 3. AMENDATORY 68 O.S. 2001, 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 Sections 1203, 1204 or 1205 of this title is not paid within the time provided under subsection ~~(c)~~ 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~~. 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 subsection B of Section 1205 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.

~~(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 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 4. This act shall become effective July 1, 2005.

SECTION 5. 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.

COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-29-05 - DO PASS, As Amended.