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3 91st General Assembly
4 Regular Session, 2017

A Bill

HOUSE BILL 1789

5
6 By: Representative Dotson

7 Filed with: House Committee on Revenue and Taxation
8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO AMEND LAWS CONCERNING THE CORPORATE
11 FRANCHISE TAX; TO REPEAL THE ARKANSAS CORPORATE
12 FRANCHISE TAX ACT OF 1979; TO MAKE CONFORMING
13 CHANGES; AND FOR OTHER PURPOSES

16 Subtitle

17 TO AMEND LAWS CONCERNING THE CORPORATE
18 FRANCHISE TAX; TO REPEAL THE ARKANSAS
19 CORPORATE FRANCHISE TAX ACT OF 1979; TO
20 MAKE CONFORMING CHANGES.

21
22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. Arkansas Code § 4-27-1622 is repealed.

26 ~~4-27-1622. Annual franchise tax report for Secretary of State.~~

27 ~~(a) Each domestic corporation, and each foreign corporation authorized~~
28 ~~to transact business in this state, shall deliver to the Secretary of State~~
29 ~~for filing an annual franchise tax report that sets forth:~~

30 ~~(1) the name of the corporation;~~

31 ~~(2) the jurisdiction under which the corporation is~~
32 ~~incorporated;~~

33 ~~(3) the information required by § 4-20-105(a);~~

34 ~~(4) the address of its principal office, wherever it is located;~~

35 ~~(5) the names of its principal officers;~~

1 ~~(6) the total number of authorized shares, itemized by class and~~
2 ~~series, if any, within each class;~~

3 ~~(7) the total number of issued and outstanding shares, itemized~~
4 ~~by class and series, if any, within each class; and~~

5 ~~(8) such other information as the Secretary of State may specify~~
6 ~~in a form promulgated pursuant to § 4-27-121(a).~~

7 ~~(b) The requirements as to the applicability, use, and filing of the~~
8 ~~annual franchise tax report shall be as set forth in the Arkansas Corporate~~
9 ~~Franchise Tax Act of 1979, § 26-54-101 et seq.~~

10
11 SECTION 2. Arkansas Code § 4-36-401(a)(1), concerning the annual
12 reports due under the Arkansas Benefit Corporation Act, is amended to read as
13 follows:

14 (a)(1) A benefit corporation shall prepare an annual benefit report
15 ~~and an annual franchise tax report under § 26-54-104.~~

16
17 SECTION 3. Arkansas Code § 4-36-401(b), concerning the annual reports
18 due under the Arkansas Benefit Corporation Act, is amended to read as
19 follows:

20 (b) A benefit corporation shall send a benefit report to each
21 shareholder annually:

22 (1) ~~Before the stated due date of an annual franchise tax under~~
23 ~~§ 26-54-104~~ May 1; or

24 (2) When the benefit corporation delivers an annual financial
25 report to its shareholders.

26
27 SECTION 4. Arkansas Code § 19-5-1227(b), concerning the Educational
28 Adequacy Fund, is amended to read as follows:

29 (b) After the Treasurer of State has made deductions from the revenues
30 under § 19-5-203(b)(2)(A), the Educational Adequacy Fund shall consist of:

31 (1) All net revenues collected due to enactments of the Eighty-
32 Fourth General Assembly meeting in Second Extraordinary Session, unless a
33 different distribution of those additional net revenues is otherwise provided
34 in the act creating those additional net revenues;

35 (2) ~~The revenues credited to the Educational Adequacy Fund under~~
36 ~~§ 26-54-113(b)(2);~~

1 ~~(3)~~ The revenues generated by §§ 26-52-302(d), 26-52-316, 26-52-
2 317(c)(1)(C), 26-52-319(a)(2)(C), 26-53-107(d), 26-53-145(c)(1)(C), 26-53-
3 148(a)(2)(C), 26-56-201(g)(1)(B), 26-56-224(c)(3), and 26-57-
4 1002(d)(1)(A)(ii); and

5 ~~(4)~~ (3) Other revenues as provided by law.
6

7 SECTION 5. Arkansas Code § 19-6-201(3), concerning the enumeration of
8 general revenues, is repealed.

9 ~~(3) Corporation franchise taxes, as enacted by Acts 1979,~~
10 ~~No. 889, known as the “Arkansas Corporate Franchise Tax Act of 1979”, and all~~
11 ~~laws amendatory thereto, § 26-54-101 et seq.;~~
12

13 SECTION 6. Arkansas Code Title 26, Chapter 54, is repealed.

14 ~~Chapter 54 — Arkansas Corporate Franchise Tax Act of 1979~~

15
16 ~~26-54-101. Title.~~

17 ~~This chapter shall be known and may be cited as the “Arkansas Corporate~~
18 ~~Franchise Tax Act of 1979”.~~

19
20 ~~26-54-102. Definition.~~

21 ~~(a) As used in this chapter, “corporation” means any corporation,~~
22 ~~domestic and foreign, active and inactive, which is organized in or qualified~~
23 ~~under the laws of the State of Arkansas and includes, but is not limited to,~~
24 ~~any person or group of persons, any association, joint-stock company,~~
25 ~~business trust, or other organizations with or without charter constituting a~~
26 ~~separate legal entity of relationship with the purpose of obtaining some~~
27 ~~corporate privilege or franchise which is not allowed to them as individuals~~
28 ~~and which is exercising, or attempting to exercise, corporate-type acts,~~
29 ~~whether or not existing by virtue of a particular statute.~~

30 ~~(b) However, “corporation” does not include:~~

31 ~~(1) Nonprofit corporations;~~

32 ~~(2) Corporations which are organizations exempt from the federal~~
33 ~~income tax; or~~

34 ~~(3) Organizations formed under or governed by the Uniform~~
35 ~~Partnership Act (1996), § 4-46-101 et seq., or the Uniform Limited~~
36 ~~Partnership Act (2001), § 4-47-101 et seq.~~

1
2 ~~26-54-103. Effect upon prior rights, etc.~~

3 ~~This chapter does not affect rights or duties that matured, liabilities~~
4 ~~or penalties that were incurred, or proceedings begun before January 1, 1980.~~

5
6 ~~26-54-104. Annual franchise tax.~~

7 ~~Unless exempted under § 26-54-105, every corporation shall file an~~
8 ~~annual franchise tax report and pay an annual franchise tax as follows:~~

9 ~~(1)(A) Each life, fire, accident, surety, liability, steam~~
10 ~~boiler, tornado, health, or other kind of insurance company of whatever~~
11 ~~nature, having an outstanding capital stock of less than five hundred~~
12 ~~thousand dollars (\$500,000) shall pay three hundred dollars (\$300).~~

13 ~~(B) Each company having an outstanding capital stock of~~
14 ~~five hundred thousand dollars (\$500,000) or more shall pay four hundred~~
15 ~~dollars (\$400);~~

16 ~~(2)(A) Each legal reserve mutual insurance corporation having~~
17 ~~assets of less than one hundred million dollars (\$100,000,000) shall pay~~
18 ~~three hundred dollars (\$300).~~

19 ~~(B) Each corporation having assets of one hundred million~~
20 ~~dollars (\$100,000,000) or more shall pay four hundred dollars (\$400);~~

21 ~~(3) Each mutual assessment insurance corporation shall pay three~~
22 ~~hundred dollars (\$300);~~

23 ~~(4)(A) Each mortgage loan corporation shall pay an amount~~
24 ~~equivalent to three-tenths of one percent (0.3%) of that proportion of the~~
25 ~~par value of its outstanding capital stock that its aggregate outstanding~~
26 ~~loans made in Arkansas bears to the total aggregate outstanding loans made in~~
27 ~~all states.~~

28 ~~(B) No corporation shall pay an annual tax of less than~~
29 ~~three hundred dollars (\$300);~~

30 ~~(5) Each corporation, other than those in subdivisions (2)-(4)~~
31 ~~of this section, without authorized capital stock shall pay three hundred~~
32 ~~dollars (\$300);~~

33 ~~(6)(A) Each corporation, other than those in subdivisions (1)-~~
34 ~~(5) of this section, shall pay an amount equivalent to three-tenths of one~~
35 ~~percent (0.3%) of that proportion of the par value of its outstanding capital~~

1 ~~stock that the value of its real and personal property in Arkansas bears to~~
2 ~~the total value of the real and personal property of the corporation.~~

3 ~~(B) No corporation shall pay an annual tax of less than~~
4 ~~one hundred fifty dollars (\$150);~~

5 ~~(7) Each corporation actually and actively in the process of~~
6 ~~liquidation and which does not rent or lease its property but which retains~~
7 ~~its corporate charter or authority for the sole purpose of winding up its~~
8 ~~affairs shall pay an annual tax as provided in subdivision (6) of this~~
9 ~~section or an amount equivalent to three tenths of one percent (0.3%) of the~~
10 ~~value of its real and tangible personal property in Arkansas, whichever is~~
11 ~~smaller, but in no instance shall the tax be less than one hundred fifty~~
12 ~~dollars (\$150); and~~

13 ~~(8) An organization formed pursuant to the Small Business Entity~~
14 ~~Tax Pass Through Act, § 4-32-101 et seq., shall pay the minimum franchise~~
15 ~~tax.~~

16
17 ~~26-54-105. Franchise tax reports.~~

18 ~~(a)(1) The Secretary of State shall furnish report forms to each~~
19 ~~corporation subject to the provisions of this chapter by mailing them to the~~
20 ~~corporation's current agent for service or other person identified by the~~
21 ~~corporation.~~

22 ~~(2) When filing the franchise tax report, a corporation may~~
23 ~~state who is to receive a franchise tax form the following year if that~~
24 ~~person is different from the agent for service on file for the corporation at~~
25 ~~that time.~~

26 ~~(b) Any corporation that fails to receive the report forms by March 20~~
27 ~~of the reporting year shall make written request for them to the Secretary of~~
28 ~~State on or before March 31.~~

29 ~~(c)(1) Each corporation subject to the requirements of this chapter~~
30 ~~shall file a franchise tax report with the Secretary of State which shows its~~
31 ~~condition and status as of the close of business on December 31 of the~~
32 ~~preceding calendar year and other information required by the Secretary of~~
33 ~~State.~~

34 ~~(2)(A) The franchise tax as computed on the report shall be~~
35 ~~remitted with the franchise tax report on or before June 1 of the reporting~~
36 ~~year for franchise tax due for calendar year 2003 and years prior to 2003.~~

1 ~~(B) The franchise tax as computed on the report shall be~~
2 ~~remitted with the franchise tax report on or before May 1 of the reporting~~
3 ~~year for franchise tax due for calendar year 2004 and subsequent years.~~

4 ~~(d)(1) Every corporation that dissolves shall be required to pay at~~
5 ~~the time of dissolution the franchise tax for the prior calendar year and pay~~
6 ~~at the time of dissolution the minimum franchise tax for the year in which~~
7 ~~dissolved or withdrawn.~~

8 ~~(2) Any newly formed corporation shall not be required to file a~~
9 ~~franchise tax report until the calendar year immediately following the~~
10 ~~calendar year of incorporation.~~

11 ~~(e)(1) When the par value of the shares of a corporation is required~~
12 ~~to be stated in any franchise tax report and the shares of the corporation~~
13 ~~are without par value, the number of shares shall be stated.~~

14 ~~(2) For the purpose of computing the franchise tax prescribed by~~
15 ~~this chapter, shares of no par value shall be considered to be of the par~~
16 ~~value of twenty five dollars (\$25.00) per share.~~

17 ~~(f) Each corporation which pays its tax computed by the full~~
18 ~~assessment of capital stock or property shall not be required to report the~~
19 ~~value of its real and personal property within or without this state.~~

20 ~~(g)(1) Every franchise tax report shall contain the following~~
21 ~~statement:~~
22 ~~"I declare, under the penalties of perjury, that the foregoing statements are~~
23 ~~true to the best of my knowledge and belief."~~

24 ~~(2) The statement shall be signed by the president, vice~~
25 ~~president, secretary, treasurer, or controller of the corporation or other~~
26 ~~authorized person.~~

27 ~~(h)(1) All information contained in a franchise tax report shall be~~
28 ~~confidential and not available for public inspection, except for the~~
29 ~~following:~~

- 30 ~~(A) The name and address of the corporation;~~
- 31 ~~(B) The name of the corporation's president, vice~~
32 ~~president, secretary, treasurer, and controller;~~
- 33 ~~(C) The total authorized capital stock with par value;~~
- 34 ~~(D) The total issued and outstanding capital stock with~~
35 ~~par value; and~~
- 36 ~~(E) The state of incorporation.~~

1 ~~(2) In the case of a franchise tax report filed by an~~
2 ~~organization formed under the Small Business Entity Tax Pass Through Act, §~~
3 ~~4-32-101 et seq., the names of members, except those designated in the~~
4 ~~organizations' franchise tax report as a manager, president, vice president,~~
5 ~~secretary, treasurer, or controller of the organization, shall be~~
6 ~~confidential and not available for public inspection unless the organization~~
7 ~~has no registered agent for service of process.~~

8
9 ~~26-54-107. Computation of tax — Penalty — Relief.~~

10 ~~(a) The Secretary of State from the information reported and from any~~
11 ~~other information received by him or her bearing upon the subject shall~~
12 ~~compute the amount of tax of each corporation at the rate or rates provided~~
13 ~~by this chapter.~~

14 ~~(b)(1)(A) If the taxpayer fails to comply with the filing and~~
15 ~~remittance requirements under § 26-54-105(c) by May 1, the Secretary of State~~
16 ~~shall assess the corporation a penalty of twenty five dollars (\$25.00) plus~~
17 ~~interest on the tax and penalty from the date due until paid at the rate of~~
18 ~~ten percent (10%) per year.~~

19 ~~(B) However, the franchise tax, penalty, and interest for~~
20 ~~any tax year shall not exceed two (2) times the corporation's tax owed.~~

21 ~~(2) On or before November 1 of each year, the Secretary of State~~
22 ~~shall mail notice to the corporation at its last known address stating that~~
23 ~~the corporation is subject to forfeiture of its corporate charter under § 26-~~
24 ~~54-111 for the failure to pay corporate franchise tax.~~

25 ~~(c) The Secretary of State or his or her designee may agree to settle~~
26 ~~or compromise a dispute concerning interest or penalties associated with~~
27 ~~corporate franchise taxes if the taxpayer:~~

28 ~~(1) Disputes the proposed amount; or~~

29 ~~(2) Is insolvent or bankrupt.~~

30 ~~(d)(1) The Secretary of State may waive any accrued interest or~~
31 ~~assessed penalties imposed on a taxpayer due to a failure to remit corporate~~
32 ~~franchise taxes under § 26-54-105(c), if:~~

33 ~~(A) The taxpayer is reasonably mistaken about the~~
34 ~~application of this chapter or the computation of the franchise tax to the~~
35 ~~corporation; or~~

1 ~~(B) A taxpayer cannot pay the accrued interest or assessed~~
2 ~~penalties because of the taxpayer's insolvency or bankruptcy.~~

3 ~~(2) The Secretary of State may waive any fees that a taxpayer~~
4 ~~owes if the taxpayer desires to dissolve the corporation.~~

5 ~~(e) If the parties cannot resolve the dispute, the parties may pursue~~
6 ~~any other remedy available to them, including, but not limited to, remedies~~
7 ~~available under the Arkansas Administrative Procedure Act, § 25-15-201 et~~
8 ~~seq.~~

9 ~~(f) The Secretary of State shall develop guidelines to assist a~~
10 ~~taxpayer in resolving a corporate franchise tax dispute.~~

11
12 ~~26-54-108. Taxes and penalties as lien.~~

13 ~~The taxes and penalties required to be paid by this chapter shall be a~~
14 ~~first lien on all property of the corporation, whether or not the property is~~
15 ~~employed by the corporation in the prosecution of its business or is in the~~
16 ~~hands of an assignee, receiver, or trustee.~~

17
18 ~~26-54-109. Lists of corporations to be prepared.~~

19 ~~(a)(1) The Bank Commissioner, Insurance Commissioner, and any other~~
20 ~~officer or agency of the state authorized to issue corporate permits or~~
21 ~~authorities to do business in this state shall prepare and maintain a correct~~
22 ~~list of all corporations organizing or qualifying through their respective~~
23 ~~offices or agencies.~~

24 ~~(2) Each official or agency shall file with the Secretary of~~
25 ~~State a monthly report showing:~~

26 ~~(A) The name and address of each new corporation organized~~
27 ~~or qualified;~~

28 ~~(B) The authorized and outstanding capital stock;~~

29 ~~(C) The name changes, mergers, charter forfeitures,~~
30 ~~dissolutions, or withdrawals; and~~

31 ~~(D) All other information concerning the corporation~~
32 ~~required by the Secretary of State.~~

33 ~~(b) Upon request of the Secretary of State, each official or agency~~
34 ~~shall prepare and certify to the Secretary of State a complete list of the~~
35 ~~names and addresses of all corporations which have organized or qualified~~

1 ~~through their respective office or agency and which are subject to the~~
2 ~~provisions of this chapter.~~

3 ~~(c) Officials or agencies of the state, county, or municipalities~~
4 ~~authorized to issue permits shall notify each corporation receiving a permit~~
5 ~~of the requirements to register the corporation with the Secretary of State~~
6 ~~prior to conducting business in Arkansas.~~

7 ~~(d) Any corporation filing instruments providing for the organization~~
8 ~~of any common law or statutory trust or similar organization with any county~~
9 ~~clerk, or other clerk of the various counties of this state, shall file them~~
10 ~~in duplicate. The clerk receiving the documents for filing or recordation~~
11 ~~shall file mark them and forward the file marked duplicate to the Secretary~~
12 ~~of State.~~

13 ~~(e) The Director of the Department of Finance and Administration shall~~
14 ~~provide the Secretary of State a list of corporations doing business in this~~
15 ~~state and filing tax reports with the Department of Finance and~~
16 ~~Administration. However, the director shall not include any information~~
17 ~~deemed confidential by any other law.~~

18
19 ~~26-54-110. Dissolution or withdrawal by corporations.~~

20 ~~Applications for dissolution or withdrawal by a corporation,~~
21 ~~association, or organization cannot be accepted by the authority which~~
22 ~~initially authorized or granted an authority to the corporation to do~~
23 ~~business in Arkansas until receipt of a statement verified by the Secretary~~
24 ~~of State that the franchise tax due has been paid.~~

25
26 ~~26-54-111. Charter forfeiture for failure to pay tax — Procedure.~~

27 ~~(a) On or before January 31 of each year, the Secretary of State shall~~
28 ~~proclaim as forfeited the corporate charters or authorities, as the case may~~
29 ~~be, of all corporations, both domestic and foreign that according to the~~
30 ~~Secretary of State's records are delinquent in the payment of the annual~~
31 ~~franchise tax for a prior year.~~

32 ~~(b) A copy of the proclamation, or applicable portion thereof, shall~~
33 ~~be furnished to each other official or agency of the state which is~~
34 ~~authorized to issue corporation charters or authorities. Upon their receipt~~
35 ~~of the proclamation, the several officials shall at once correct their~~
36 ~~respective records in accordance with the proclamation.~~

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~~26-54-112. Reinstatement of corporations.~~

~~(a)(1)(A)(i) Any corporation whose charter or permit authority to do business in the state has been declared forfeited by proclamation of the Governor or the Secretary of State may be reinstated to all its rights, powers, and property.~~

~~(ii) Reinstatement shall be retroactive to the time that the corporation's authority to do business in the state was declared forfeited.~~

~~(B) The reinstatement shall be made after the filing of all delinquent franchise tax reports satisfactory to the Secretary of State and the payment of all taxes and penalties due for each year of delinquency.~~

~~(2) However, no reinstatement shall be allowed after seven (7) years from the date the charter or permit authority to do business in the state was declared forfeited by proclamation of the Governor or the Secretary of State.~~

~~(b) If the Secretary of State issued the original corporate charter, permit, or authority, the Secretary of State shall reinstate the corporation upon payment by the corporation of all amounts due, as provided in subsection (a) of this section.~~

~~(c)(1) If the original corporate charter, permit, or authority was issued by an official other than the Secretary of State, the official shall reinstate the corporation upon the corporation's filing with the official the receipt of the Secretary of State showing payment of all amounts due, as provided in subsection (a) of this section.~~

~~(2) Thereafter, the corporation shall stand in all respects as though its name had never been declared forfeited.~~

~~26-54-113. Disposition of funds.~~

~~(a) All taxes and penalties collected under the provisions of this chapter each month shall be deposited into the State Treasury to the credit of the Revenue Holding Fund Account of the State Apportionment Fund.~~

~~(b)(1) On or before the fifth day of the following month, the Treasurer of State shall allocate and transfer the taxes and penalties collected to the General Revenue Fund Account of the State Apportionment Fund~~

1 ~~until a total of eight million dollars (\$8,000,000) has been transferred~~
2 ~~during a fiscal year.~~

3 ~~(2) After the transfers required by subdivision (b)(1) of this~~
4 ~~section have been made, the taxes and penalties collected under this chapter~~
5 ~~during the remainder of the fiscal year shall be special revenues, and the~~
6 ~~Treasurer of State shall transfer the taxes and penalties collected to the~~
7 ~~Educational Adequacy Fund after making the deductions required by § 19-5-~~
8 ~~203(b)(2).~~

9
10 ~~26-54-114. Nonpayment of franchise taxes.~~

11 ~~(a) No corporation or limited liability company shall be allowed to~~
12 ~~file any forms or documentation related to that corporation or limited~~
13 ~~liability company if the corporation or limited liability company owes past-~~
14 ~~due franchise taxes to the Secretary of State.~~

15 ~~(b) No person shall be allowed to file any initial forms or~~
16 ~~documentation with the Secretary of State to create any legal entity in the~~
17 ~~State of Arkansas or to obtain authority to do business in the State of~~
18 ~~Arkansas if that person is substantially connected to any corporation or~~
19 ~~limited liability company that owes past due franchise taxes to the Secretary~~
20 ~~of State.~~

21 ~~(c) As used in this section:~~

22 ~~(1) "Past due franchise taxes" means only those taxes owed three~~
23 ~~(3) years prior to the year in which the current filing is presented;~~

24 ~~(2) "Past officer or director" means a person who was associated~~
25 ~~with the corporation or limited liability company during the time that its~~
26 ~~charter was revoked for nonpayment of franchise taxes; and~~

27 ~~(3) "Substantially connected" means a present officer or~~
28 ~~director or a past officer or director of a corporation.~~

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31 Referred by the Arkansas House of Representatives

32 Prepared by: VJF

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