

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1619
93RD GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, May 4, 2006, with recommendation that the Senate Committee Substitute do pass.

4524S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 147.010 and 148.064, RSMo, and to enact in lieu thereof two new sections relating to annual franchise taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 147.010 and 148.064, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 147.010 and 148.064, to
3 read as follows:

147.010. 1. [For the transitional year defined in subsection 4 of this
2 section and each taxable year beginning on or after January 1, 1980, but before
3 January 1, 2000, every corporation organized pursuant to or subject to chapter
4 351, RSMo, or pursuant to any other law of this state shall, in addition to all
5 other fees and taxes now required or paid, pay an annual franchise tax to the
6 state of Missouri equal to one-twentieth of one percent of the par value of its
7 outstanding shares and surplus if its outstanding shares and surplus exceed two
8 hundred thousand dollars, or if the outstanding shares of such corporation or any
9 part thereof consist of shares without par value, then, in that event, for the
10 purpose contained in this section, such shares shall be considered as having a
11 value of five dollars per share unless the actual value of such shares exceeds five
12 dollars per share, in which case the tax shall be levied and collected on the actual
13 value and the surplus if the actual value and the surplus exceed two hundred
14 thousand dollars. If such corporation employs a part of its outstanding shares in
15 business in another state or country, then such corporation shall pay an annual
16 franchise tax equal to one-twentieth of one percent of its outstanding shares and
17 surplus employed in this state if its outstanding shares and surplus employed in

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 this state two hundred thousand dollars, and for the purposes of sections 147.010
19 to 147.120, such corporation shall be deemed to have employed in this state that
20 proportion of its entire outstanding shares and surplus that its property and
21 assets employed in this state bears to all its property and assets wherever
22 located. A foreign corporation engaged in business in this state, whether
23 pursuant to a certificate of authority issued pursuant to chapter 351, RSMo, or
24 not, shall be subject to this section. Any corporation whose outstanding shares
25 and surplus as calculated in this subsection does not exceed two hundred
26 thousand dollars shall state that fact on the annual report form prescribed by the
27 secretary of state.] For all taxable years beginning on or after January 1, 2000,
28 but ending on or before December 31, 2006, the annual franchise tax shall
29 be equal to one-thirtieth of one percent of the corporation's outstanding shares
30 and surplus if the outstanding shares and surplus exceed one million
31 dollars. Any corporation whose outstanding shares and surplus do not exceed one
32 million dollars shall state that fact on the annual report form prescribed by the
33 director of revenue. For taxable years beginning on or after January 1,
34 2007, the annual franchise tax shall be equal to the percentage rate
35 prescribed in this subsection for the corresponding taxable year of the
36 corporation's outstanding shares and surplus if the outstanding shares
37 and surplus exceed the corresponding minimum threshold amount
38 prescribed as follows:

- 39 (1) For tax year 2007, the rate shall be one-thirtieth of one
40 percent and the threshold amount shall be two million dollars;
41 (2) For tax year 2008, the rate shall be one-thirtieth of one
42 percent and the threshold amount shall be four million dollars;
43 (3) For tax year 2009, the rate shall be one-fiftieth of one percent
44 and the threshold amount shall be five million dollars;
45 (4) For tax year 2010, the rate shall be one-eightieth of one
46 percent and the threshold amount shall be six million dollars; and
47 (5) For tax year 2011, the rate shall be zero percent and the
48 threshold amount shall be zero dollars.

2. Sections 147.010 to 147.120 shall not apply to corporations not
2 organized for profit, nor to corporations organized pursuant to the provisions of
3 chapter 349, RSMo, nor to express companies, which now pay an annual tax on
4 their gross receipts in this state, nor to insurance companies, which pay an
5 annual tax on their premium receipts in this state, nor to state, district, county,

6 town and farmers' mutual companies now organized or that may be hereafter
7 organized pursuant to any of the laws of this state, organized for the sole purpose
8 of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and
9 mutual automobile insurance and for the purpose of paying any loss incurred by
10 any member by assessment, nor to any mutual insurance corporation not having
11 shares, nor to a company or association organized to transact business of life or
12 accident insurance on the assessment plan for the purpose of mutual protection
13 and benefit to its members and the payment of stipulated sums of moneys to the
14 family, heirs, executors, administrators or assigns of the deceased member, nor
15 to foreign life, fire, accident, surety, liability, steam boiler, tornado, health, or
16 other kind of insurance company of whatever nature coming within the provisions
17 of section 147.050 and doing business in this state, nor to savings and loan
18 associations and domestic and foreign regulated investment companies as defined
19 by Section 170 of the Act of Congress commonly known as the "Revenue Act of
20 1942", nor to electric and telephone corporations organized pursuant to chapter
21 351, RSMo, and chapter 392, RSMo, prior to January 1, 1980, which have been
22 declared tax exempt organizations pursuant to Section 501(c) of the Internal
23 Revenue Code of 1986, nor for taxable years beginning after December 31, 1986,
24 to banking institutions subject to the annual franchise tax imposed by sections
25 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the
26 individual depositor left for safekeeping and shall not be considered in computing
27 the amount of tax collectible pursuant to the provisions of sections 147.010 to
28 147.120.

29 3. A corporation's "taxable year" for purposes of sections 147.010 to
30 147.120 shall be its taxable year as provided in section 143.271, RSMo.

31 4. A corporation's "transitional year" for the purposes of sections 147.010
32 to 147.120 shall be its taxable year which includes parts of each of the years 1979
33 and 1980.

34 5. The franchise tax payable for a corporation's transitional year shall be
35 computed by multiplying the amount otherwise due for that year by a fraction,
36 the numerator of which is the number of months between January 1, 1980, and
37 the end of the taxable year and the denominator of which is twelve. The
38 franchise tax payable, if a corporation's taxable year is changed as provided in
39 section 143.271, RSMo, shall be similarly computed pursuant to regulations
40 prescribed by the director of revenue.

41 6. All franchise reports and franchise taxes shall be returned to the

42 director of revenue. All checks and drafts remitted for payment of franchise taxes
43 shall be made payable to the director of revenue.

44 7. Pursuant to section 32.057, RSMo, the director of revenue shall
45 maintain the confidentiality of all franchise tax reports returned to the director.

46 8. The director of the department of revenue shall honor all existing
47 agreements between taxpayers and the director of the department of revenue.

148.064. 1. Notwithstanding any law to the contrary, this section shall
2 determine the ordering and limit reductions for certain taxes and tax credits
3 which may be used as credits against various taxes paid or payable by banking
4 institutions. Except as adjusted in subsections 2, 3 and 6 of this section, such
5 credits shall be applied in the following order until used against:

6 (1) The tax on banks determined under subdivision (2) of subsection 2 of
7 section 148.030;

8 (2) The tax on banks determined under subdivision (1) of subsection 2 of
9 section 148.030;

10 (3) The state income tax in section 143.071, RSMo.

11 2. The tax credits permitted against taxes payable pursuant to subdivision
12 (2) of subsection 2 of section 148.030 shall be utilized first and include taxes
13 referenced in subdivisions (2) and (3) of subsection 1 of this section, which shall
14 be determined without reduction for any tax credits identified in subsection 5 of
15 this section which are used to reduce such taxes. Where a banking institution
16 subject to this section joins in the filing of a consolidated state income tax return
17 under chapter 143, RSMo, the credit allowed under this section for state income
18 taxes payable under chapter 143, RSMo, shall be determined based upon the
19 consolidated state income tax liability of the group and allocated to a banking
20 institution, without reduction for any tax credits identified in subsection 5 of this
21 section which are used to reduce such consolidated taxes as provided in chapter
22 143, RSMo.

23 3. The taxes referenced in subdivisions (2) and (3) of subsection 1 of this
24 section may be reduced by the tax credits in subsection 5 of this section without
25 regard to any adjustments in subsection 2 of this section.

26 4. To the extent that certain tax credits which the taxpayer is entitled to
27 claim are transferable, such transferability may include transfers among such
28 taxpayers who are members of a single consolidated income tax return, and this
29 subsection shall not impact other tax credit transferability.

30 5. For the purpose of this section, the tax credits referred to in

31 subsections 2 and 3 shall include tax credits available for economic development,
32 low-income housing and neighborhood assistance which the taxpayer is entitled
33 to claim for the year, including by way of example and not of limitation, tax
34 credits pursuant to the following sections: section 32.115, RSMo, section 100.286,
35 RSMo, and sections 135.110, 135.225, 135.352 and 135.403, RSMo.

36 6. For tax returns filed on or after January 1, 2001, including returns
37 based on income in the year 2000, and after, including tax returns filed on
38 or after January 1, 2011, including returns based on income in the year
39 2010, but ending thereafter, a banking institution shall be entitled to an
40 annual tax credit equal to one-sixtieth of one percent of its outstanding shares
41 and surplus employed in this state if the outstanding shares and surplus exceed
42 one million dollars, determined in the same manner as in section 147.010,
43 RSMo. This tax credit shall be taken as a dollar-for-dollar credit against the
44 bank tax provided for in subdivision (2) of subsection 2 of section 148.030; if such
45 bank tax was already reduced to zero by other credits, then against the corporate
46 income tax provided for in chapter 143, RSMo.

47 7. [In the event the corporation franchise tax in chapter 147, RSMo, is
48 repealed by the general assembly, there shall also be a reduction in the taxation
49 of banks as follows: in lieu of the loss of the corporation franchise tax credit
50 reduction in subdivision (1) of subsection 2 of section 148.030, the bank shall
51 receive a tax credit equal to one and one-half percent of net income as
52 determined in this chapter. This subsection shall take effect at the same time the
53 corporation franchise tax in chapter 147, RSMo, is repealed.] In addition to the
54 franchise tax actually paid, there shall be added to such amount the
55 amount in subsection 6 of this section and the following, which when
56 totaled with the actual franchise tax paid will be the franchise tax for
57 purposes of the credits allowable under chapter 148 against subdivision
58 (2) of subsection 2 of section 148.030 or 143, RSMo, as follows:

59 (1) For tax returns filed on or after January 1, 2008, including
60 returns based on income in the year 2007, a banking institution shall
61 be entitled to an additional annual tax credit equal to one-thirtieth of
62 one percent of its outstanding share and surplus employed in this state,
63 if the outstanding shares exceed one million dollars and are less than
64 two million dollars (determined in the same manner as in section
65 147.010, RSMo, as in effect for tax years ending on or before December
66 31, 2006);

67 (2) For tax returns filed on or after January 1, 2009, including
68 returns based on income in the year 2008, a banking institution shall
69 be entitled to an annual tax credit equal to one-thirtieth of one percent
70 of its outstanding share and surplus employed in this state, if the
71 outstanding shares exceed one million dollars and are less than four
72 million dollars (determined in the same manner as in section 147.010,
73 RSMo, as in effect for tax years ending on or before December 31, 2006);

74 (3) For tax returns filed on or after January 1, 2010, including
75 returns based on income in the year 2009, and after, a banking
76 institution shall be entitled to an annual tax credit equal to:

77 (a) One-seventy-fifth of one percent of its outstanding share and
78 surplus employed in this state, if the outstanding shares are five
79 million dollars or more (determined in the same manner as in section
80 147.010, RSMo, as in effect for tax years ending on or before December
81 31, 2006); or

82 (b) One-thirtieth of one percent of its outstanding share and
83 surplus employed in this state, if the outstanding shares exceed one
84 million dollars and less than five million dollars (determined in the
85 same manner as in section 147.010, RSMo, as in effect for tax years
86 ending on or before December 31, 2006);

87 (4) For tax returns filed on or after January 1, 2011, including
88 returns based on income in the year 2010, and after, a banking
89 institution shall be entitled to an annual tax credit equal to:

90 (a) One-forty-eighth of one percent of its outstanding share and
91 surplus employed in this state, if the outstanding shares are six million
92 dollars or more, (determined in the same manner as in section 147.010,
93 RSMo, as in effect for tax years ending on or before December 31, 2006);
94 or

95 (b) One-thirtieth of one percent of its outstanding share and
96 surplus employed in this state, if the outstanding shares exceed one
97 million dollars and are less than six million dollars (determined in the
98 same manner as in section 147.010, RSMo, as in effect for tax years
99 ending on or before December 31, 2006);

100 (5) For tax returns filed on or after January 1, 2012, including
101 returns base on income in the year 2011, and after, a banking
102 institution shall be entitled to an annual tax credit equal to one-
103 twentieth of one percent of its outstanding share and surplus employed

104 in this state, if the outstanding shares exceed one million dollars
105 (determined in the same manner as in section 147.010, RSMo, as in
106 effect for tax years ending before December 31, 2006);

107 8. An S corporation bank or bank holding company that otherwise
108 qualifies to distribute tax credits to its shareholders shall pass through any tax
109 credits referred to in subsection 5 of this section to its shareholders as otherwise
110 provided for in subsection 9 of section 143.471, RSMo, with no reductions or
111 limitations resulting from the transfer through such S corporation, and on the
112 same terms originally made available to the original taxpayer, subject to any
113 original dollar or percentage limitations on such credits, and when such S
114 corporation is the original taxpayer, treating such S corporation as having not
115 elected Subchapter S status.

116 9. Notwithstanding any law to the contrary, in the event the corporation
117 franchise tax in chapter 147, RSMo, is phased out or repealed by the general
118 assembly, [after such] in the course of such phase out and repeal all
119 Missouri taxes of any nature and type imposed directly or used as a tax credit
120 against the bank's taxes shall be passed through to the S corporation bank or
121 bank holding company shareholder in the form otherwise permitted by law, except
122 for the following:

123 (1) Credits for taxes on real estate and tangible personal property owned
124 by the bank and held for lease or rental to others;

125 (2) Contributions paid pursuant to the unemployment compensation tax
126 law of Missouri; or

127 (3) State and local sales and use taxes collected by the bank on its sales
128 of tangible personal property and the services enumerated in chapter 144, RSMo.

✓