

SECOND REGULAR SESSION

# HOUSE BILL NO. 2180

## 91ST GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE FROELKER.

Read 1<sup>st</sup> time March 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

5044L.011

---

### AN ACT

To repeal sections 147.010, 147.020, 147.030, 147.040, 147.050, 147.090, 147.100, and 147.120, RSMo, and to enact in lieu thereof eight new sections relating to corporation franchise tax.

---

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

Section A. Sections 147.010, 147.020, 147.030, 147.040, 147.050, 147.090, 147.100, and 147.120, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 147.010, 147.020, 147.030, 147.040, 147.050, 147.090, 147.100, and 147.120, to read as follows:

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

16 147.010 to 147.120, such corporation shall be deemed to have employed in this state that  
17 proportion of its entire outstanding shares and surplus that its property and assets employed in  
18 this state bears to all its property and assets wherever located. A foreign corporation engaged  
19 in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter  
20 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares  
21 and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall  
22 state that fact on the annual report form prescribed by the secretary of state. For all taxable years  
23 beginning on or after January 1, 2000, **but before January 1, 2002**, the annual franchise tax  
24 shall be equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus  
25 if the outstanding shares and surplus exceed one million dollars. Any corporation whose  
26 outstanding shares and surplus do not exceed one million dollars shall state that fact on the  
27 annual report form prescribed by the director of revenue.

28         2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit,  
29 nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express  
30 companies, which now pay an annual tax on their gross receipts in this state, nor to insurance  
31 companies, which pay an annual tax on their premium receipts in this state, nor to state, district,  
32 county, town and farmers' mutual companies now organized or that may be hereafter organized  
33 pursuant to any of the laws of this state, organized for the sole purpose of writing fire, lightning,  
34 windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the  
35 purpose of paying any loss incurred by any member by assessment, nor to any mutual insurance  
36 corporation not having shares, nor to a company or association organized to transact business of  
37 life or accident insurance on the assessment plan for the purpose of mutual protection and benefit  
38 to its members and the payment of stipulated sums of moneys to the family, heirs, executors,  
39 administrators or assigns of the deceased member, nor to foreign life, fire, accident, surety,  
40 liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature  
41 coming within the provisions of section 147.050 and doing business in this state, nor to savings  
42 and loan associations and domestic and foreign regulated investment companies as defined by  
43 Section 170 of the Act of Congress commonly known as the "Revenue Act of 1942", nor to  
44 electric and telephone corporations organized pursuant to chapter 351, RSMo, and chapter 392,  
45 RSMo, prior to January 1, 1980, which have been declared tax exempt organizations pursuant  
46 to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after  
47 December 31, 1986, to banking institutions subject to the annual franchise tax imposed by  
48 sections 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the  
49 individual depositor left for safekeeping and shall not be considered in computing the amount  
50 of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

51         3. A corporation's "taxable year" for purposes of sections 147.010 to 147.120 shall be

52 its taxable year as provided in section 143.271, RSMo.

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

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

61 6. All franchise reports and franchise taxes shall be returned to the director of revenue.  
62 All checks and drafts remitted for payment of franchise taxes shall be made payable to the  
63 director of revenue.

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

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

147.020. 1. For each taxable year beginning on or after January 1, 1980, **but before**  
2 **January 1, 2002**, every corporation liable for the tax prescribed in section 147.010 shall make  
3 a report in writing showing the financial condition of the corporation at the beginning of business  
4 on the first day of its taxable year to the director of revenue annually on or before the due date  
5 of the corporation's state income tax return pursuant to chapter 143, RSMo, in such form as the  
6 director of revenue may prescribe. The report shall be signed by an officer of the corporation.

7 2. For each taxable year beginning on or after January 1, 1980, **but before January 1,**  
8 **2002**, if a corporation obtains an extension of time for filing its annual Missouri income tax  
9 return pursuant to section 143.551, RSMo, such corporation shall also be granted a  
10 corresponding extension of time for filing the report required pursuant to sections 147.010 to  
11 147.120 for its taxable year immediately succeeding the taxable year for which the income tax  
12 extension is granted.

13 3. Every corporation having a transitional year liable for the tax prescribed in section  
14 147.010 shall make a report in writing, showing the financial condition of the corporation at the  
15 beginning of business on the first day of its transitional year, on or before April 15, 1980, in such  
16 form as the director may prescribe. The report shall be signed by an officer of the corporation.

147.030. 1. For each taxable year beginning on or after January 1, 1980, **but before**  
2 **January 1, 2002**, the franchise tax provided for in this chapter shall be paid on or before the due  
3 date of the corporation's state income tax return pursuant to chapter 143, RSMo.

4 2. For each taxable year beginning on or after January 1, 1980, **but before January 1,**

5 **2002**, if a corporation shall obtain an extension of time for paying its annual Missouri income  
6 tax pursuant to section 143.551, RSMo, such corporation will also be granted a corresponding  
7 extension of time for paying the franchise tax due pursuant to this chapter for its taxable year  
8 immediately succeeding the taxable year for which the income tax extension is granted.

9 3. If the time for filing the franchise tax report is extended pursuant to section 147.020,  
10 but the time for payment of the franchise tax is not extended pursuant to this section, the  
11 corporation shall pay, on or before the due date of such corporation's state income tax return  
12 pursuant to chapter 143, RSMo, the amount properly estimated as its franchise tax for the taxable  
13 year.

14 4. Every corporation having a transitional year shall pay the franchise tax provided for  
15 in this chapter on or before the fifteenth day of April, 1980.

147.040. 1. As soon as practical after a corporation's franchise tax report is filed, the  
2 director of revenue shall examine it to determine the correct amount of tax based upon the facts  
3 contained in the report or upon any information within the director's possession or that may come  
4 into the director's possession.

5 2. In the event that the amount of tax is understated on a corporation's franchise tax  
6 report, the director of revenue shall notify the corporation that an amount of tax in excess of that  
7 shown on the return is due and has been assessed. Such assessment shall be final unless the  
8 corporation files a protest with the director of revenue, setting forth the grounds on which the  
9 protest is based, within sixty days from the date the notice of assessment was mailed to the  
10 corporation.

11 3. If a protest is filed, the director of revenue shall reconsider the assessment, and, if the  
12 corporation has so requested, shall grant the corporation a hearing within ninety days after the  
13 protest is filed unless extended by agreement between the corporation and the director of  
14 revenue.

15 4. Notice of the director of revenue's determination shall be mailed to the corporation  
16 by certified or registered mail and such notice shall set forth briefly the director of revenue's  
17 findings of fact and the basis of decision in each case decided in whole or in part adversely to  
18 the corporation.

19 5. The action of the director of revenue on the corporation's protest is final upon the  
20 expiration of thirty days from the date when the director mails notice of the director's action to  
21 the corporation unless within this period the corporation seeks review of the director of revenue's  
22 determination by the administrative hearing commission.

23 6. In the event that the amount of tax is overstated on a corporation's franchise tax report,  
24 the director of revenue shall notify the corporation that the tax paid is more than the correct  
25 amount and credit such overpayment against any tax, interest, additions to tax or penalties due

26 from such corporation and refund the difference.

27 7. No assessment or refund shall be made unless the amount exceeds ten dollars.

28 8. If any corporation subject to the provisions of sections 147.010 to 147.120 fails or  
29 neglects to make the report required by sections 147.010 to 147.120 or pay its franchise taxes  
30 within ninety days after the time required by sections 147.010 to 147.120 (determined with  
31 regard to any extension of time for filing its franchise tax report or for the payment of its  
32 franchise tax), such corporation, if organized pursuant to the laws of this state, shall be  
33 administratively dissolved pursuant to the provisions of sections 351.484 and 351.486, RSMo,  
34 or if a foreign corporation, shall have its certificate of authority revoked pursuant to the  
35 provisions of sections 351.598 and 351.602, RSMo.

36 **9. The provisions of this section shall only apply to tax years beginning before**  
37 **January 1, 2002.**

147.050. 1. For each taxable year beginning on or after January 1, 1980, **but before**  
2 **January 1, 2002**, every corporation organized pursuant to any laws of this state and every  
3 foreign corporation engaged in business in this state and having no shares shall make a report  
4 in writing to the director of revenue, annually, on or before the fifteenth day of the fourth month  
5 of the corporation's taxable year, in the form as the director of revenue may prescribe.

6 2. The report shall be signed by an officer of the corporation, and forwarded to the  
7 director of revenue.

8 3. Every corporation having a transitional year and coming under the provisions of this  
9 section shall make the report required in this section on or before the fifteenth day of April, 1980.

147.090. The taxes and penalties to be paid by the provisions of this chapter **for tax**  
2 **years beginning before January 1, 2002**, shall be a first lien on all property and assets of the  
3 corporation within this state.

147.100. **For tax years beginning before January 1, 2002**, if any corporation fails or  
2 refuses to make full and complete answers to the questions contained in the report required to  
3 be filed by it, or if the director of revenue finds that any answer contained in such report is  
4 untrue, or if the director has reason to believe that any corporation has made a false statement  
5 or concealed any facts which are material in determining the amount of tax for which such  
6 corporation is liable pursuant to the provisions of sections 147.010 to 147.120, then the director  
7 may require the delinquent corporation, its officers, agents, or employees to furnish information  
8 concerning its shares which is necessary in determining the tax to be paid by it. Any corporation  
9 may seek a review of the determination of the tax due by the administrative hearing commission.

147.120. 1. If any corporation fails or refuses to pay the taxes (including interest and  
2 penalties) assessed against it after such assessment becomes final, the director of revenue shall  
3 certify a list of the corporations so delinquent to the attorney general who shall proceed forthwith

4 to collect the taxes. Suits for the collection of the taxes may be brought in the name of the state  
5 in any court of competent jurisdiction and any judgment rendered in such court in favor of the  
6 state shall be a first lien on all properties and assets of the corporation within this state.

7 2. The director of revenue shall notify the secretary of state of any corporation that fails  
8 or refuses to pay the taxes, including interest and penalties, assessed against it after such  
9 assessment becomes final and the secretary of state shall then administratively dissolve any  
10 domestic corporation that is delinquent pursuant to section 351.486, RSMo, and shall revoke the  
11 certificate of authority of any foreign corporation that is delinquent pursuant to section 351.602,  
12 RSMo.

13 3. Any tax provided for pursuant to sections 147.010 to 147.120 not paid on or before  
14 the last day prescribed for payment pursuant to sections 147.010 to 147.120 (determined with  
15 regard to any extension of time for payment) shall be collected with a penalty of five percent per  
16 month or fractional part thereof until paid, not exceeding twenty-five percent in the aggregate.  
17 Interest at the rate determined by section 32.065, RSMo, shall be added to any tax not paid on  
18 or before the date due pursuant to sections 147.010 to 147.120 (determined without regard to any  
19 extension of time for payment). Nothing in sections 147.010 to 147.120 shall be construed so  
20 as to permit any officer of this state to remit or abate such interest.

21 4. If any corporation fails to pay any tax due within the time prescribed pursuant to  
22 sections 147.010 to 147.120 or if any corporation makes errors and omissions in reports or  
23 payments, and the director of revenue determines that such action is the result of mistake or is  
24 due to circumstances beyond reasonable control and that such delinquency or inaccuracy was  
25 unavoidable or devoid of any intent to evade the tax, the director of revenue may, at the director's  
26 discretion, waive any penalty that would otherwise be imposed.

27 5. The director of revenue shall set the interest rate as determined in section 32.065,  
28 RSMo. Such interest rate shall be paid on all overpayments for the ensuing calendar year. The  
29 interest shall accrue from the due date or the date of overpayment, whichever is later. No interest  
30 shall be allowed or paid if overpayment is refunded within four months after the franchise tax  
31 report is filed.

32 6. Any notice of assessment of franchise tax due shall be mailed to the corporation  
33 within three years after the report was filed. The provisions of this subsection shall apply to all  
34 reports filed after December 31, 1981.

35 7. If no report is filed or if a false and fraudulent report is filed, a notice of assessment  
36 of franchise tax due may be mailed to the corporation at any time.

37 8. If fraud or evasion on the part of a corporation or anyone on behalf of a corporation  
38 is discovered, the director of revenue shall determine the amount of which the state has been  
39 defrauded, shall add to the amount so determined a penalty equal to fifty percent thereof, and

40 shall assess the same against the corporation. The amount so assessed shall be immediately due  
41 and payable; except that, the director of revenue shall promptly thereafter give to such  
42 corporation written notice of such assessment and penalty, which notice shall be served by  
43 registered mail. Such corporation shall have the right to petition for hearing of such assessment,  
44 as is provided in sections 147.010 to 147.120.

45 9. Any person who willfully makes a false corporation franchise tax report, or who  
46 willfully makes a false statement in any report under oath or otherwise filed with or transmitted  
47 to the director of revenue relating to the amount of any franchise tax due pursuant to sections  
48 147.010 to 147.120 shall, in addition to other penalties provided by law and upon conviction  
49 thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not  
50 more than one year or by not less than two nor more than five years in the state penitentiary or  
51 by both fine and imprisonment together with the cost of prosecution.

52 10. The director of revenue shall administer and enforce the tax imposed by sections  
53 147.010 to 147.120, and the director is authorized to make such rules and regulations and to  
54 require such facts and information to be reported as the director may deem necessary to enforce  
55 the provisions of sections 147.010 to 147.120.

56 11. No rule or portion of a rule promulgated pursuant to the authority of sections 147.010  
57 to 147.120 shall become effective unless it has been promulgated pursuant to the provisions of  
58 chapter 536, RSMo.

59 12. Except as otherwise specifically provided in sections 147.010 to 147.120 the  
60 franchise tax shall be administered as prescribed in the following provisions of chapter 143,  
61 RSMo: subsections 1 and 4 of section 143.551, RSMo, sections 143.561, 143.571, 143.621,  
62 143.631, 143.641, 143.651, 143.661, 143.681, 143.691, 143.721 and 143.731, RSMo, subsection  
63 1 of section 143.741, RSMo, subsections 1, 2 and 5 of section 143.751, RSMo, sections 143.771  
64 and 143.791, RSMo, subsections 1, 2 and 4 of section 143.811, RSMo, sections 143.831,  
65 143.841 and 143.851, RSMo, subsections 2 and 3 of section 143.861, RSMo, and sections  
66 143.901, 143.902, 143.971 and 143.986, RSMo.

67 **13. The provisions of this section shall only apply to tax years beginning before**  
68 **January 1, 2002.**