

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 76

96TH GENERAL ASSEMBLY

0446L.04P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 147.010, and 148.064, RSMo, and to enact in lieu thereof two new sections relating to the phase-out of the corporate franchise tax.

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*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Section A. Sections 147.010, and 148.064, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 147.010, and 148.064, to read as follows: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 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 **exceed** two hundred thousand dollars, and for the purposes of sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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 or not, shall be subject to this section. Any corporation whose outstanding shares and  
21 surplus as calculated in this subsection does not exceed two hundred thousand dollars shall state  
22 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 ending before December 31, 2009, the annual  
24 franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding shares  
25 and surplus if the outstanding shares and surplus exceed one million dollars. Any corporation  
26 whose outstanding shares and surplus do not exceed one million dollars shall state that fact on  
27 the annual report form prescribed by the director of revenue. For taxable years beginning on or  
28 after January 1, 2010, **but before December 31, 2011**, the annual franchise tax shall be equal  
29 to one-thirtieth of one percent of the corporation's outstanding shares and surplus if the  
30 outstanding shares and surplus exceed ten million dollars[, and] . **For all taxable years**  
31 **beginning on or after January 1, 2010, but before December 31, 2015**, any corporation whose  
32 outstanding shares and surplus do not exceed ten million dollars shall state that fact on the annual  
33 report form prescribed by the director of revenue. **For all taxable years beginning on or after**  
34 **January 1, 2011, but before December 31, 2015, a corporation's annual tax liability under**  
35 **this chapter shall not exceed the amount of annual franchise tax liability of such**  
36 **corporation for the taxable year ending on or before December 31, 2010. If the corporation**  
37 **had no annual franchise tax liability under this chapter for the taxable year ending on or**  
38 **before December 31, 2010, because such corporation was not in existence or doing business**  
39 **in Missouri, the annual franchise tax for the first taxable year in which such corporation**  
40 **exists shall be determined by applying the applicable rate of tax provided under the**  
41 **provisions of this subsection to the corporation's outstanding shares and surplus if the**  
42 **outstanding shares and surplus exceed ten million dollars, but in no case shall such**  
43 **corporation's tax liability for any subsequent taxable year exceed the amount of annual**  
44 **franchise tax liability of such corporation for the first full taxable year such corporation**  
45 **was in existence or doing business in Missouri. For taxable years beginning on or after**  
46 **January 1, 2012, the annual franchise tax shall be equal to the percentage rate prescribed**  
47 **in this subsection for the corresponding taxable year of the corporation's outstanding**  
48 **shares and surplus if the outstanding shares and surplus exceed the corresponding**  
49 **minimum threshold amount prescribed as follows:**  
50 (1) For tax year 2012, the rate shall be one-thirty-seventh of one percent and the  
51 threshold amount shall be ten million dollars;  
52 (2) For tax year 2013, the rate shall be one-fiftieth of one percent and the threshold  
53 amount shall be ten million dollars;

54           **(3) For tax year 2014, the rate shall be one-seventy-fifth of one percent and the**  
55 **threshold amount shall be ten million dollars;**

56           **(4) For tax year 2015, the rate shall be one-hundred-fiftieth of one percent and the**  
57 **threshold amount shall be ten million dollars;**

58           **(5) For tax years beginning on or after January 1, 2016, no annual franchise tax**  
59 **shall be imposed under this section.**

60           2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit,  
61 nor to corporations organized pursuant to the provisions of chapter 349, nor to express  
62 companies, which now pay an annual tax on their gross receipts in this state, nor to insurance  
63 companies, which are subject to an annual tax on their premium receipts in this state, nor to state,  
64 district, county, town and farmers' mutual companies now organized or that may be hereafter  
65 organized pursuant to any of the laws of this state, organized for the sole purpose of writing fire,  
66 lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and  
67 for the purpose of paying any loss incurred by any member by assessment, nor to any mutual  
68 insurance corporation not having shares, nor to a company or association organized to transact  
69 business of life or accident insurance on the assessment plan for the purpose of mutual protection  
70 and benefit to its members and the payment of stipulated sums of moneys to the family, heirs,  
71 executors, administrators or assigns of the deceased member, nor to foreign life, fire, accident,  
72 surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever  
73 nature coming within the provisions of section 147.050 and doing business in this state, nor to  
74 savings and loan associations and domestic and foreign regulated investment companies as  
75 defined by Section 170 of the Act of Congress commonly known as the Revenue Act of 1942,  
76 nor to electric and telephone corporations organized pursuant to chapter 351 and chapter 392  
77 prior to January 1, 1980, which have been declared tax-exempt organizations pursuant to Section  
78 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after December 31,  
79 1986, to banking institutions subject to the annual franchise tax imposed by sections 148.010 to  
80 148.110; but bank deposits shall be considered as funds of the individual depositor left for  
81 safekeeping and shall not be considered in computing the amount of tax collectible pursuant to  
82 the provisions of sections 147.010 to 147.120.

83           3. A corporation's taxable year for purposes of sections 147.010 to 147.120 shall be its  
84 taxable year as provided in section 143.271.

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

87           5. The franchise tax payable for a corporation's transitional year shall be computed by  
88 multiplying the amount otherwise due for that year by a fraction, the numerator of which is the  
89 number of months between January 1, 1980, and the end of the taxable year and the denominator

90 of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as  
91 provided in section 143.271, shall be similarly computed pursuant to regulations prescribed by  
92 the director of revenue.

93         6. All franchise reports and franchise taxes shall be returned to the director of revenue.  
94 All checks and drafts remitted for payment of franchise taxes shall be made payable to the  
95 director of revenue.

96         7. Pursuant to section 32.057, the director of revenue shall maintain the confidentiality  
97 of all franchise tax reports returned to the director.

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

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

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

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

9         (3) The state income tax in section 143.071.

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

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

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

27           5. For the purpose of this section, the tax credits referred to in subsections 2 and 3 shall  
28 include tax credits available for economic development, low-income housing and neighborhood  
29 assistance which the taxpayer is entitled to claim for the year, including by way of example and  
30 not of limitation, tax credits pursuant to the following sections: section 32.115, section 100.286,  
31 and sections 135.110, 135.225, 135.352 and 135.403.

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

40           7. In the event the corporation franchise tax in chapter 147 is repealed by the general  
41 assembly, there shall also be a reduction in the taxation of banks as follows: in lieu of the loss  
42 of the corporation franchise tax credit reduction in subdivision (1) of subsection 2 of section  
43 148.030, the bank shall receive a tax credit equal to one and one-half percent of net income as  
44 determined in this chapter. This subsection shall take effect at the same time the corporation  
45 franchise tax in chapter 147 is repealed.

46           8. An S corporation bank or bank holding company that otherwise qualifies to distribute  
47 tax credits to its shareholders shall pass through any tax credits referred to in subsection 5 of this  
48 section to its shareholders as otherwise provided for in subsection 9 of section 143.471 with no  
49 reductions or limitations resulting from the transfer through such S corporation, and on the same  
50 terms originally made available to the original taxpayer, subject to any original dollar or  
51 percentage limitations on such credits, and when such S corporation is the original taxpayer,  
52 treating such S corporation as having not elected Subchapter S status.

53           9. Notwithstanding any law to the contrary, in the event the corporation franchise tax in  
54 chapter 147 is repealed by the general assembly, after such repeal all Missouri taxes of any nature  
55 and type imposed directly or used as a tax credit against the bank's taxes shall be passed through  
56 to the S corporation bank or bank holding company shareholder in the form otherwise permitted  
57 by law, except for the following:

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

60           (2) Contributions paid pursuant to the unemployment compensation tax law of Missouri;

61 or

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

64 **10. For tax returns filed on or after January 1, 2012, any financial institution that**  
65 **is a limited liability company or limited liability partnership may claim the tax credit for**  
66 **such company's or partnership's annual franchise tax liability as provided in subsection**  
67 **6 of this section.**

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