

2011 -- H 5100

LC00376

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO TAXATION - FRANCHISE TAX

Introduced By: Representatives Costa, Ehrhardt, Chippendale, and Gordon

Date Introduced: January 20, 2011

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-12 of the General Laws entitled "Franchise Tax" is hereby
2 repealed in its entirety.

3 ~~CHAPTER 44-12~~

4 ~~Franchise Tax~~

5 ~~44-12-1. Tax imposed -- Corporations liable -- Credit for tax on income -- Reduced~~
6 ~~rate where no business done. --~~ (a) Every corporation, joint stock company, or association
7 incorporated in this state or qualified to do business in this state, whether or not doing business
8 for profit, all referred to in this section under the term "corporation", except those enumerated in
9 section 44-12-11, shall pay an annual franchise tax to the state upon its authorized capital stock of
10 two dollars fifty cents (\$2.50) for each ten thousand dollars (\$10,000) or fractional part, or the
11 sum of five hundred dollars (\$500), whichever is greater.

12 ~~-(b) In the case of corporations liable to a tax under chapter 11 of this title, only the~~
13 ~~amount by which the franchise tax exceeds the tax payable under that chapter shall be assessed.~~

14 ~~-(c) If a corporation shall show by supplemental affidavit attached to the prescribed return~~
15 ~~and signed in the manner provided for each return that it has not, at any time during its preceding~~
16 ~~taxable year, been engaged within the state in any business activities, it shall only pay an annual~~
17 ~~franchise tax upon its authorized capital stock at the following rates: five hundred dollars (\$500)~~
18 ~~where the stock does not exceed one million dollars (\$1,000,000); and the further sum of twelve~~
19 ~~dollars fifty cents (\$12.50) for each additional one million dollars (\$1,000,000) or fractional part~~

1 ~~of the stock.~~

2 ~~**44-12-2. Filing of returns -- Contents.** -- Every corporation shall, on or before the date~~
3 ~~fixed for filing returns under section 44-11-3, file with the tax administrator as of the last day of~~
4 ~~its next preceding taxable year a return, under oath or affirmation, signed by its treasurer or by an~~
5 ~~authorized officer or agent of the corporation, if organized, and if not organized, under oath of~~
6 ~~some one authorized to act by the incorporators, containing information as the tax administrator~~
7 ~~may require, including:~~

8 ~~(1) The name of the corporation and the location of its principal office.~~

9 ~~(2) The amount of its capital stock authorized, and the par value thereof.~~

10 ~~(3) The amount of its capital stock authorized, without par value.~~

11 ~~**44-12-3. Valuation of no-par stock.** -- In the case of corporations having capital stock of~~
12 ~~no-par value, one hundred dollars (\$100) per share shall be deemed to be the par value for the~~
13 ~~purposes of this chapter.~~

14 ~~**44-12-4. Assessment of tax -- Notice of amount.** -- The tax administrator, as soon as~~
15 ~~possible after the filing of the return, shall assess, as of the last day of its next preceding taxable~~
16 ~~year, a tax upon each corporation as provided in this chapter and shall mail a notice of the amount~~
17 ~~of the tax to each corporation, but failure to receive the notice shall not invalidate the tax or~~
18 ~~excuse the nonpayment of the tax.~~

19 ~~**44-12-4.1. Hearing by tax administrator on application.** -- Any corporation aggrieved~~
20 ~~by the action of the tax administrator in determining the amount of any tax or penalty imposed~~
21 ~~under the provisions of this chapter may apply to the tax administrator, in writing, within thirty~~
22 ~~(30) days after the notice of the action is mailed to it, for a hearing relative thereto. The tax~~
23 ~~administrator shall fix a time and place for the hearing and shall so notify the applicant. At the~~
24 ~~hearing the tax administrator shall correct manifest errors, if any, disclosed at the hearing and~~
25 ~~assess and collect the lawfully due tax together with any penalty or interest on the tax.~~

26 ~~**44-12-5. Payment of tax -- Collection powers.** -- The tax shall be payable within fifteen~~
27 ~~(15) days after its assessment and, if not paid when due, shall bear interest from the date of its~~
28 ~~assessment at the annual rate provided by section 44-1-7 until paid. The tax administrator shall~~
29 ~~receive and collect the taxes so assessed in the same manner and with the same powers as are~~
30 ~~prescribed for, and given to, collectors of taxes by chapters 7--9 of this title.~~

31 ~~**44-12-5.1. Claims for refund -- Hearing upon denial.** -- (a) Any corporation subject to~~
32 ~~the provisions of this chapter may file a claim for refund with the tax administrator at any time~~
33 ~~within two (2) years after the tax has been paid. If the tax administrator shall determine that the~~
34 ~~tax has been overpaid, he or she shall make a refund with interest at the annual rate provided by~~

1 ~~section 44-1-7.1 from the date of overpayment.~~

2 ~~(b) Any corporation whose claim for refund has been denied may, within thirty (30) days~~
3 ~~from the date of the mailing by the tax administrator of the notice of the decision, request a~~
4 ~~hearing, and the tax administrator shall, as soon as practicable, set a time and place for the~~
5 ~~hearing and shall notify the applicant.~~

6 ~~**44-12-6. Penalty for failure to make return.** --- If the return that is required to be made~~
7 ~~by section 44-12-2 is not made within the time fixed by this chapter, the officer or agent~~
8 ~~neglecting or refusing to make the return shall be fined not exceeding five hundred dollars (\$500).~~

9 ~~**44-12-7. Lien on real estate.** --- The tax shall from the date of assessment become a lien~~
10 ~~upon the real estate of the corporation liable for the tax until the tax is collected.~~

11 ~~**44-12-8. Forfeiture of charter or articles for nonpayment of tax.** --- The tax~~
12 ~~administrator may, after July 15 of each year, make up a list of all corporations which have failed~~
13 ~~to pay any franchise tax assessed for two (2) years after the tax became due and payable, shall~~
14 ~~certify to the correctness of the list, and shall file the list as a public record in the office of the~~
15 ~~secretary of state. Upon the filing of the certified list, the charter or articles of association of each~~
16 ~~of the corporations shall become forfeited by reason of the failure to pay the tax, and all the~~
17 ~~corporations shall cease to be bodies corporate, except as provided in section 7-1.2-1324. The~~
18 ~~secretary of state shall mail a notice of the forfeiture of charter or articles of association to each~~
19 ~~corporation at its last known address, but failure to receive the notice shall not invalidate the~~
20 ~~forfeiture. Any corporation or any stockholder, officer, or agent of the corporation, continuing to~~
21 ~~act thereafter under any forfeited charter or articles of association, except as provided in section~~
22 ~~7-1.2-1324, or pending an appeal from the forfeiture as provided, shall be deemed guilty of a~~
23 ~~misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than~~
24 ~~one thousand dollars (\$1,000) for each offense.~~

25 ~~**44-12-9. Publication of forfeitures -- Vacation on payment of tax.** --- The secretary of~~
26 ~~state shall publish in one or more of the daily public newspapers printed in the city of Providence~~
27 ~~the names of all corporations whose charters or articles of association have been forfeited. The~~
28 ~~forfeiture shall be vacated as to any corporation, which shall pay all taxes and all interest then due~~
29 ~~to the tax administrator within sixty (60) days of the date of the publication.~~

30 ~~**44-12-10. Appeal of forfeitures.** --- Any corporation, by any stockholder or officer of the~~
31 ~~corporation, aggrieved by the forfeiture of the charter or articles of association of the corporation~~
32 ~~may appeal from the forfeiture, within thirty (30) days from the date of the publication, to the~~
33 ~~sixth (6th) division of the district court, and the court shall proceed as soon as possible to hear the~~
34 ~~appeal after the manner of equitable causes. If the appellant shall show to the satisfaction of the~~

1 ~~court that the forfeiture of the charter or articles of association of the corporation was erroneous~~
2 ~~under the provisions, or that the tax assessed was improper or erroneous in whole or in part, and~~
3 ~~in that case if the appellant shall pay all taxes and all interest then due under this chapter, then the~~
4 ~~court shall sustain the appeal and shall vacate the forfeiture as to the appellant corporation. Upon~~
5 ~~failure to show error in the forfeiture under the provisions, or to pay all taxes and all interest due,~~
6 ~~the court shall dismiss the appeal and confirm the forfeiture. Upon the sustaining of the appeal of~~
7 ~~any corporation, the clerk of the district court shall, within ten (10) days, file with the secretary of~~
8 ~~state and with the division of taxation an attested copy of the decree vacating the forfeiture as to~~
9 ~~the appellant corporation. A party aggrieved by a final order of the court may seek review in the~~
10 ~~supreme court by writ of certiorari in accordance with the procedures contained in section 42-35-~~
11 ~~16.~~

12 ~~**44-12-11. Corporations exempt.** — The provisions of this section shall not apply to the~~
13 ~~following corporations: Roger Williams General Hospital, Women and Infants Hospital of Rhode~~
14 ~~Island, Rhode Island Hospital, St. Joseph's Hospital, Butler Hospital, Cranston General Hospital...~~
15 ~~Osteopathic, the Woonsocket Hospital, Newport Hospital, South County Hospital, Lincoln~~
16 ~~School, St. George's School, the Mary C. Wheeler School, Incorporated, insurance or surety~~
17 ~~companies, corporations mentioned in sections 7-6-4, 27-25-1, and 44-13-4, and all corporations~~
18 ~~exempt by charter or by the law of this state.~~

19 ~~**44-12-12. Declarations under penalty of perjury.** — The oath or affirmation required by~~
20 ~~this chapter as to any report or written statement shall not be required if the report or statement to~~
21 ~~be sworn to contains or is verified by a written declaration that it is made under the penalties of~~
22 ~~perjury; and whoever signs or issues any report or statement containing or verified by a written~~
23 ~~declaration shall, if the report or statement is willfully false, be guilty of perjury.~~

24 ~~**44-12-13. Appeals — Interest on refunds.** — Appeals from administrative orders or~~
25 ~~decisions made pursuant to any provisions of this chapter shall be to the sixth (6th) division~~
26 ~~district court pursuant to chapter 8 of title 8. The taxpayer's right to appeal shall be expressly~~
27 ~~made conditional upon prepayment of all taxes, interest, and penalties unless the taxpayer moves~~
28 ~~for and is granted an exemption from the prepayment requirement pursuant to section 8-8-26. If~~
29 ~~the court, after appeal, holds that the taxpayer is entitled to a refund, the taxpayer shall also be~~
30 ~~paid interest on the amount at the rate provided in section 44-1-7.1.~~

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION - FRANCHISE TAX

- 1 This act would repeal the Franchise Tax.
- 2 This act would take effect upon passage.

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