

SECOND REGULAR SESSION

# HOUSE BILL NO. 2100

## 91ST GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE HOHULIN.

Read 1<sup>st</sup> time March 5, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4965L.011

---

### AN ACT

To repeal sections 147.040 and 147.120, RSMo, and to enact in lieu thereof two new sections relating to franchise tax.

---

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

Section A. Sections 147.040 and 147.120, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 147.040 and 147.120, to read as follows:

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] **deficiency** was mailed  
10 to the 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

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

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] **one**  
28 **dollar.**

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

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.] 4. 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 **last date**  
31 **prescribed (or permitted by extension of time) for filing the return of such tax or within**  
32 **four months after the** franchise tax report is filed, **whichever is later.**

33 [6.] 5. Any notice of [assessment] **deficiency** of franchise tax due shall be mailed to the  
34 corporation within three years after the report was filed. [The provisions of] This subsection  
35 shall apply to all reports filed after December 31, 1981.

36 [7.] 6. If no report is filed or if a false and fraudulent report is filed, a notice of  
37 [assessment] **deficiency** of franchise tax due may be mailed to the corporation at any time.

38 [8.] 7. If fraud or evasion on the part of a corporation or anyone on behalf of a  
39 corporation is discovered, the director of revenue shall determine the amount of which the state  
40 has been defrauded, shall add to the amount so determined a penalty equal to fifty percent  
41 thereof, and shall assess the same against the corporation. The amount so assessed shall be  
42 immediately due and payable; except that, the director of revenue shall promptly thereafter give  
43 to such corporation written notice of such assessment and penalty, which notice shall be served  
44 by registered mail. Such corporation shall have the right to petition for hearing of such  
45 assessment, as is provided in sections 147.010 to 147.120.

46 [9.] 8. Any person who willfully makes a false corporation franchise tax report, or who  
47 willfully makes a false statement in any report under oath or otherwise filed with or transmitted  
48 to the director of revenue relating to the amount of any franchise tax due pursuant to sections  
49 147.010 to 147.120 shall, in addition to other penalties provided by law and upon conviction  
50 thereof, be fined not more than ten thousand dollars, or be imprisoned in the county jail for not  
51 more than one year or by not less than two nor more than five years in the state penitentiary or  
52 by both fine and imprisonment together with the cost of prosecution.

53           [10.] **9.** The director of revenue shall administer and enforce the tax imposed by sections  
54 147.010 to 147.120, and the director is authorized to make such rules and regulations and to  
55 require such facts and information to be reported as the director may deem necessary to enforce  
56 [the provisions of] sections 147.010 to 147.120.

57           [11.] **10.** No rule or portion of a rule promulgated pursuant to the authority of sections  
58 147.010 to 147.120 shall become effective unless it has been promulgated pursuant to the  
59 provisions of chapter 536, RSMo.

60           [12.] **11.** Except as otherwise specifically provided in sections 147.010 to 147.120 the  
61 franchise tax shall be administered as prescribed in the following provisions of chapter 143,  
62 RSMo: subsections 1 and 4 of section 143.551, RSMo, sections 143.561, 143.571, 143.621,  
63 143.631, 143.641, 143.651, 143.661, 143.681, 143.691, 143.721 and 143.731, RSMo, subsection  
64 1 of section 143.741, RSMo, subsections 1, 2 and 5 of section 143.751, RSMo, sections 143.771  
65 and 143.791, RSMo, **subsections 1 and 2 of section 143.801, RSMo**, subsections 1, 2 and 4 of  
66 section 143.811, RSMo, sections 143.831, 143.841 and 143.851, RSMo, subsections 2 and 3 of  
67 section 143.861, RSMo, and sections 143.901, 143.902, 143.971 and 143.986, RSMo.