

LC02656

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

A N A C T

RELATING TO TAXATION – FRANCHISE TAX

Introduced By: Representatives Reilly, Pires, Watson, Barr, and Trillo

Date Introduced: March 06, 2002

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2 repealed in its entirety.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 and fifty one hundredths dollars (\$2 50/100) for each ten thousand dollars (\$10,000) or
11 fractional part or the sum of two hundred fifty dollars (\$250.00), whichever is greater.

12 (b) In case of corporations liable to a tax under chapter 11 of this title, only the amount
13 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 return
15 prescribed and signed in the manner provided for each return that it has not, at any time during its
16 preceding taxable year, been engaged within the state in any business activities, it shall pay an
17 annual franchise tax upon its authorized capital stock only at the following rates: two hundred
18 fifty dollars (\$250.00) where the stock does not exceed one million dollars (\$1,000,000); and the
19 further sum of twelve dollars fifty cents (\$12.50) for each additional one million dollars

1 ~~(\$1,000,000) or fractional part 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 administrator on application.** -- Any corporation aggrieved by~~
20 ~~the action of the administrator in determining the amount of any tax or penalty imposed under the~~
21 ~~provisions of this chapter may apply to the administrator, in writing, within thirty (30) days after~~
22 ~~the notice of the action is mailed to it, for a hearing relative thereto. The administrator shall fix a~~
23 ~~time and place for the hearing and shall so notify the applicant. At the hearing the administrator~~
24 ~~shall correct manifest errors, if any, disclosed at the hearing and assess and collect the tax~~
25 ~~lawfully due 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, as amended, until paid. The tax~~
29 ~~administrator shall receive and collect the taxes so assessed, in the same manner and with the~~
30 ~~same powers as are 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, as amended, 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 required to be made by~~
7 ~~section 44-12-2 is not made within the time fixed by this chapter, the officer or agent neglecting~~
8 ~~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, and~~
14 ~~shall certify to the correctness of the list, and shall file the list as a public record in the office of~~
15 ~~the secretary of state; and upon the filing of the certified list, the charter or articles of association~~
16 ~~of each of the corporations shall become forfeited by reason of the failure to pay the tax, and all~~
17 ~~the corporations shall cease to be bodies corporate, except as provided in section 7-1-1-98, and~~
18 ~~the secretary of state shall mail a notice of the forfeiture of charter or articles of association to~~
19 ~~each corporation at its last known address, but failure to receive the notice shall not invalidate the~~
20 ~~forfeiture; and any corporation or any stockholder, officer, or agent of the corporation, continuing~~
21 ~~to act thereafter under any charter or articles of association forfeited, except as provided in~~
22 ~~section 7-1-1-98, 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 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; and if the appellant shall show to the satisfaction of~~

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

11 ~~in the supreme court by writ of certiorari in accordance with the procedures contained in~~
12 ~~section 42-35-16.~~

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

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

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

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

=====
LC02656
=====

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

- 1 This act would repeal the state franchise tax.
- 2 This act would take effect upon passage.

=====
LC02656
=====

