

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 525

By: Senators B. Sample, Caldwell, J. Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS CORPORATE FRANCHISE TAX ACT OF 1979; TO REVERSE CHANGES MADE UNDER ACT 819 OF 2019 AND RETURN THE ADMINISTRATION AND COLLECTION OF THE FRANCHISE TAX TO THE SECRETARY OF STATE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REVERSE CHANGES MADE UNDER ACT 819 OF 2019 AND RETURN THE ADMINISTRATION AND COLLECTION OF THE FRANCHISE TAX TO THE SECRETARY OF STATE; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Acts 2019, No. 819 will transfer responsibility for franchise tax collection and administration from the Secretary of State to the Department of Finance and Administration on May 1, 2021;

(2) In an effort to achieve a more seamless transition, the department began collecting and administering the franchise tax on January 1, 2021, under a Memorandum of Understanding with the Secretary of State;

(3) The transfer of franchise tax collection and administration has negatively impacted Arkansas taxpayers as they seek to comply with their franchise tax obligations; and

(4) Unless franchise tax collection and administration



responsibilities are immediately transferred from department back to the Secretary of State, Arkansas taxpayers will face significant difficulties as they seek to comply with Arkansas franchise tax laws.

(b) It is the intent of the General Assembly:

(1) To reverse the effects of certain provisions in Acts 2019, No. 819 by transferring the administration and collection of the franchise tax from the department back to the Secretary of State;

(2) That the Secretary of State should continue to administer the collection of franchise tax; and

(3) To accomplish this transfer in a manner that results in minimal impact to Arkansas taxpayers.

SECTION 2. Arkansas Code § 4-25-109(c)(1)(D), as amended by Acts 2019, No. 819, § 3, and effective on and after May 1, 2021, concerning the filing requirements for a corporation changing its state of incorporation, is amended to read as follows:

~~(D)(i)~~ A franchise tax contact sheet provided by the ~~Department of Finance and Administration~~ Secretary of State.

~~(ii)~~ ~~The Secretary of State shall send a copy of the franchise tax contact sheet required to be filed under this subdivision (c)(1)(D) to the department; and~~

SECTION 3. Arkansas Code § 4-27-120(i), as amended by Acts 2019, No. 819, § 4, and effective on and after May 1, 2021, concerning certain filing requirements under the Arkansas Business Corporation Act of 1987, is amended to read as follows:

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one (1) exact or conformed copy, the correct filing fee, and ~~proof of payment of~~ any franchise tax, license fee, or penalty required by this chapter or other law.

SECTION 4. Arkansas Code § 4-27-121(a), as amended by Acts 2019, No. 819, § 5, and effective on and after May 1, 2021, concerning the forms prescribed and furnished under the Arkansas Business Corporation Act of 1987, is amended to read as follows:

(a) The Secretary of State may prescribe and furnish on request forms

for: (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, ~~and~~ (3) a foreign corporation's application for a certificate of withdrawal, and (4) the annual franchise tax report. If the Secretary of State so requires, use of these forms is mandatory.

SECTION 5. Arkansas Code § 4-27-128(b)(4), as amended by Acts 2019, No. 819, § 6, and effective on and after May 1, 2021, concerning the contents of certificates of existence under the Arkansas Business Corporation Act of 1987, is amended to read as follows:

(4) that its most recent annual franchise tax report required by § 4-27-1622 has been delivered to the ~~Department of Finance and Administration~~ Secretary of State;

SECTION 6. Arkansas Code § 4-27-1420(2), as amended by Acts 2019, No. 819, § 7, and effective on and after May 1, 2021, concerning the grounds on which the Department of Finance and Administration may administratively dissolve a corporation, is amended to read as follows:

(2) the corporation does not deliver its annual franchise tax report to the ~~Department of Finance and Administration~~ Secretary of State within sixty (60) days after it is due;

SECTION 7. Arkansas Code § 4-27-1530(1), as amended by Acts 2019, No. 819, § 8, and effective on and after May 1, 2021, concerning the grounds on which the Department of Finance and Administration may begin a proceeding to revoke a foreign corporation's certificate of authority, is amended to read as follows:

(1) the foreign corporation does not deliver its annual franchise tax report to the ~~Department of Finance and Administration~~ Secretary of State within sixty (60) days after it is due;

SECTION 8. Arkansas Code § 4-27-1601(e)(7), as amended by Acts 2019, No. 819, § 9, and effective on and after May 1, 2021, concerning the records a corporation is required to maintain under the Arkansas Business Corporation Act of 1987, is amended to read as follows:

(7) its most recent annual franchise tax report delivered to the

~~Department of Finance and Administration~~ Secretary of State under § 4-27-1622.

SECTION 9. Arkansas Code § 4-27-1622(a), as amended by Acts 2019, No. 819, § 10, and effective on and after May 1, 2021, concerning the annual franchise tax report under the Arkansas Business Corporation Act of 1987, is amended to read as follows:

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the ~~Department of Finance and Administration~~ Secretary of State for filing an annual franchise tax report that sets forth:

- (1) the name of the corporation;
- (2) the jurisdiction under which the corporation is incorporated;
- (3) the information required by § 4-20-105(a);
- (4) the address of its principal office, wherever it is located;
- (5) the names of its principal officers;
- (6) the total number of authorized shares, itemized by class and series, if any, within each class;
- (7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and
- (8) such other information as the ~~Secretary of the Department of Finance and Administration~~ Secretary of State may specify in a form promulgated under ~~the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq~~ § 4-27-121(a).

SECTION 10. Arkansas Code § 4-33-120(i), as amended by Acts 2019, No. 819, § 11, and effective on and after May 1, 2021, concerning certain filing requirements under the Arkansas Nonprofit Corporation Act of 1993, is amended to read as follows:

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one (1) exact or conformed copy (except as provided in §§ 4-33-503 [repealed] and 4-33-1509), the correct filing fee, and ~~proof of payment of~~ any franchise tax, license fee, or penalty required by this chapter or other law.

SECTION 11. Arkansas Code § 17-19-202(c)(2), as amended by Acts 2019, No. 819, § 12, and effective on and after May 1, 2021, concerning the proof required to accompany licensing applications for bail bond companies, is amended to read as follows:

(2) A corporation shall file proof that its most recent annual franchise tax has been paid to the ~~Department of Finance and Administration~~ Secretary of State.

SECTION 12. Arkansas Code § 23-48-1009(1), as amended by Acts 2019, No. 819, § 13, and effective on and after May 1, 2021, concerning the Bank Commissioner's grounds for revoking the certificate of authority of a registered out-of-state bank, is amended to read as follows:

(1) The out-of-state bank does not deliver its annual franchise tax report to the ~~Department of Finance and Administration~~ Secretary of State within sixty (60) days after it is due;

SECTION 13. Arkansas Code § 25-16-708(a), as amended by Acts 2019, No. 819, § 14, effective on and after May 1, 2021, concerning the appointment of a special counsel by the Attorney General to collect moneys due to the state, is amended to read as follows:

(a) When there is past due and unpaid any special license fee, franchise tax, privilege tax, or other moneys due the state by individuals, officers, companies, firms, or corporations, and when in his or her judgment it would be in the best interest of the state to do so, the Attorney General may appoint special counsel to take any steps necessary for the collection of all those sums that are due and unpaid.

SECTION 14. Arkansas Code § 26-18-303(b)(14), as amended by Acts 2019, No. 819, § 15, and effective on and after May 1, 2021, concerning exemptions from the prohibition on disclosing certain confidential records under the Arkansas Tax Procedure Act, is amended to read as follows:

(14)(A) Disclosure of the following information concerning corporate franchise tax:

- (i) The name and address of a corporation;
- (ii) The name of a corporation's president, vice president, secretary, treasurer, and controller;

(iii) The total authorized capital stock with par value;

(iv) The total issued and outstanding capital stock with par value;

(v) The state of incorporation; and

(vi) ~~Information necessary to report to the Secretary of State, the Bank Commissioner, the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board, the Insurance Commissioner, or any other state agency or official authorized to take action against a corporation for failure to take any action required under the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq., including without limitation information concerning whether a corporation has filed a franchise tax report, whether a corporation has paid franchise tax due, and the name and address of the registered agent or principal office of the corporation~~ Information necessary to identify corporations that paid franchise tax to the Secretary of the Department of Finance and Administration in lieu of payment to the Secretary of State for franchise tax reporting year 2021 under Acts 2019, No. 819.

(B) In the case of a franchise tax report filed by an organization formed under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., the confidentiality provision of subsection (a) of this section shall apply to the names of members of the organization, except those designated in the organization’s franchise tax report as a manager, president, vice president, secretary, treasurer, or controller of the organization, unless the organization has+

~~(i) No~~ no registered agent for service of process, in which case the confidentiality provisions of subsection (a) of this section shall not apply; ~~or~~

~~(ii) Failed to take an action required under the Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq., in which case the disclosures identified in subdivision (b)(14)(A) of this section are allowed;~~

SECTION 15. Arkansas Code § 26-54-105(a)-(c), as amended by Acts 2019, No. 819, § 20, and effective on and after May 1, 2021, concerning franchise tax reports under the Arkansas Corporate Franchise Tax Act of 1979, are amended to read as follows:

(a)(1) ~~The Department of Finance and Administration~~ Secretary of State shall furnish report forms to each corporation subject to this chapter by mailing them to the corporation's current agent for service or other person identified by the corporation.

(2) When filing the franchise tax report, a corporation may state who is to receive a franchise tax form the following year if that person is different from the agent for service on file for the corporation at that time.

(b) A corporation that fails to receive the report forms by March 20 of the reporting year shall make written request for them to the ~~department~~ Secretary of State on or before March 31.

(c)(1) Each corporation subject to the requirements of this chapter shall file a franchise tax report with the ~~department~~ Secretary of State that shows the condition and status of the corporation as of the close of business on the last day of the corporation's preceding fiscal year and other information required by the ~~department~~ Secretary of State.

(2)(A) The franchise tax as computed on the report shall be remitted with the franchise tax report ~~and submitted to the department with the corporation's income tax return.~~

(B) ~~For a corporation that is not required to submit an income tax return, the~~ The franchise tax as computed on the report shall be remitted with the franchise tax report on or before May 1 of the reporting year for franchise tax due.

SECTION 16. Arkansas Code § 26-54-107, as amended by Acts 2019, No. 819, § 21, and effective on and after May 1, 2021, is amended to read as follows:

26-54-107. Computation of tax – Penalty – Relief.

(a) ~~The Secretary of the Department of Finance and Administration~~ Using from the information reported on the franchise tax report under § 26-54-105 and ~~from~~ any other information received by him or her bearing upon the subject, the Secretary of State shall compute the amount of tax of each corporation at the rate or rates provided by this chapter.

(b)(1)(A) If the taxpayer fails to comply with the filing and remittance requirements under § 26-54-105(c), the ~~secretary~~ Secretary of State shall assess the corporation a penalty of twenty-five dollars (\$25.00)

plus interest on the tax and penalty from the date due until paid at the rate of ten percent (10%) per year.

(B) However, the franchise tax, penalty, and interest for any tax year shall not exceed two (2) times the corporation's tax owed.

~~(2)(A) Except as provided in subdivision (b)(2)(B) of this section, on~~ On or before November 1 of each year, the ~~secretary~~ Secretary of State shall mail notice to the corporation at its last known address stating that the corporation is subject to forfeiture of its corporate charter under § 26-54-111 for the failure to pay corporate franchise tax.

~~(B) For a corporation that has a franchise tax due date after May 1, six (6) months after the franchise tax return due date for the corporation, taking into account any extensions of the due date, the secretary shall mail notice to the corporation at its last known address stating that the corporation is subject to forfeiture of its corporate charter under § 26-54-111 for the failure to pay corporate franchise tax.~~

(c) The ~~secretary~~ Secretary of State or his or her designee may agree to settle or compromise a dispute concerning interest or penalties associated with corporate franchise taxes if the taxpayer:

- (1) Disputes the proposed amount; or
- (2) Is insolvent or bankrupt.

(d)(1) The ~~secretary~~ Secretary of State may waive any accrued interest or assessed penalties imposed on a taxpayer due to a failure to remit corporate franchise taxes under § 26-54-105(c), if:

(A) The taxpayer is reasonably mistaken about the application of this chapter or the computation of the franchise tax to the corporation; or

(B) A taxpayer cannot pay the accrued interest or assessed penalties because of the taxpayer's insolvency or bankruptcy.

(2) The ~~secretary~~ Secretary of State may waive any fees that a taxpayer owes if the taxpayer desires to dissolve the corporation.

(3) If a taxpayer demonstrates that a corporation was not doing business in the state for the period for which penalties and interest are owed under this section, the ~~secretary~~ Secretary of State shall waive the amount due under this section if the taxpayer demonstrates that the taxpayer intends to dissolve the corporation.

~~(e) The Arkansas Tax Procedure Act, § 26-18-101 et seq., so far as is~~

~~practicable, is applicable to the franchise tax levied under this chapter and to the reporting, remitting, and enforcement of the franchise tax~~ If the parties cannot resolve the dispute, the parties may pursue any other remedy available to them, including without limitation remedies available under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) The ~~secretary~~ Secretary of State shall develop guidelines to assist a taxpayer in resolving a corporate franchise tax dispute.

SECTION 17. Arkansas Code § 26-54-109(a) and (b), as amended by Acts 2019, No. 819, § 22, and effective on and after May 1, 2021, concerning the lists of corporations required to be produced under the Arkansas Corporate Franchise Tax Act of 1979, are amended to read as follows:

(a)(1) The ~~Secretary of State~~, Bank Commissioner, Insurance Commissioner, and any other officer or agency of the state authorized to issue corporate permits or authorities to do business in this state shall prepare and maintain a correct list of all corporations organizing or qualifying through their respective offices or agencies.

(2) Each official or agency shall file with the ~~Department of Finance and Administration~~ Secretary of State a monthly report showing:

(A) The name and address of each new corporation organized or qualified;

(B) The authorized and outstanding capital stock;

(C) The name changes, mergers, charter forfeitures, or withdrawals;

(D) The name and address of each corporation that has provided official notification regarding the dissolution of the corporation; and

(E) All other information concerning the corporation required by the ~~department~~ Secretary of State.

(b) Upon request of the ~~Secretary of the Department of Finance and Administration~~ Secretary of State, each official or agency shall prepare and certify to the ~~Secretary of the Department of Finance and Administration~~ Secretary of State a complete list of the names and addresses of all corporations that have organized or qualified through their respective office or agency and that are subject to the provisions of this chapter.

SECTION 18. Arkansas Code § 26-54-109(e)(1), as amended by Acts 2019, No. 819, § 22, and effective on and after May 1, 2021, concerning the lists of certain corporations required to be produced under the Arkansas Corporate Franchise Tax Act of 1979, is repealed.

(e)(1) The Secretary of the Department of Finance and Administration shall provide the Secretary of State a list of corporations doing business in this state and filing ~~franchise~~ tax reports with the department.

SECTION 19. Arkansas Code § 26-54-110, as amended by Acts 2019, No. 819, § 22, and effective on and after May 1, 2021, is amended to read as follows:

26-54-110. Dissolution or withdrawal by corporations.

Applications for dissolution or withdrawal by a corporation, association, or organization cannot be accepted by the authority that initially authorized or granted an authority to the corporation to do business in Arkansas until receipt of a statement verified by the ~~Secretary of the Department of Finance and Administration~~ Secretary of State that the franchise tax due has been paid.

SECTION 20. Arkansas Code § 26-54-111(a), as amended by Acts 2019, No. 819, § 22, and effective on and after May 1, 2021, concerning the forfeiture of a charter for failure to pay taxes under the Arkansas Corporate Franchise Tax Act of 1979, is amended to read as follows:

~~(a)(1) Except as provided in subdivision (a)(2) of this section, on~~ On or before January 31 of each year, the Secretary of State shall proclaim as forfeited the corporate charters or authorities of all corporations, both domestic and foreign, that according to the ~~Department of Finance and Administration's~~ Secretary of State's records are delinquent in the payment of the annual franchise tax for a prior year.

~~(2) For a corporation that has a franchise tax due date after May 1, eight (8) months after the franchise tax return due date for the corporation, taking into account any extensions of the due date, the Secretary of State shall proclaim as forfeited the corporate charters or authorities of the corporations, both domestic and foreign, that according to the department's records are delinquent in the payment of the annual franchise tax for a prior year.~~

SECTION 21. Arkansas Code § 26-54-112(a)(1)(B), as amended by Acts 2019, No. 819, § 22, and effective on and after May 1, 2021, concerning the reinstatement of a corporate charter or permit under the Arkansas Corporate Franchise Tax Act of 1979, is amended to read as follows:

(B) The reinstatement shall be made after the filing of all delinquent franchise tax reports satisfactory to the ~~Department of Finance and Administration~~ Secretary of State and the payment of all taxes and penalties due for each year of delinquency.

SECTION 22. Arkansas Code § 26-54-112(c)(1), as amended by Acts 2019, No. 819, § 22, and effective on and after May 1, 2021, concerning the reinstatement of a corporate charter or permit under the Arkansas Corporate Franchise Tax Act of 1979, is amended to read as follows:

(c)(1) If the original corporate charter, permit, or authority was issued by an official other than the Secretary of State, the official shall reinstate the corporation upon the corporation's filing with the official the receipt of the ~~department~~ Secretary of State showing payment of all amounts due, as provided in subsection (a) of this section.

SECTION 23. Arkansas Code § 26-54-114(a) and (b), as amended by Acts 2019, No. 819, § 23, and effective on and after May 1, 2021, concerning certain consequences arising from a failure to pay franchise taxes under the Arkansas Corporate Franchise Tax Act of 1979, are amended to read as follows:

(a) A corporation or limited liability company is not allowed to file any forms or documentation related to that corporation or limited liability company if the corporation or limited liability company owes past-due franchise taxes to the ~~Department of Finance and Administration~~ Secretary of State.

(b) A person is not allowed to file any initial forms or documentation with the Secretary of State to create any legal entity in the State of Arkansas or to obtain authority to do business in the State of Arkansas if that person is substantially connected to any corporation or limited liability company that owes past-due franchise taxes to the ~~department~~ Secretary of State.

SECTION 24. Arkansas Code § 26-54-115, as created by Acts 2019, No. 819, § 24, effective on and after May 1, 2021, is repealed.

~~26-54-115. Rules.~~

~~The Secretary of the Department of Finance and Administration may adopt rules to implement and administer this chapter.~~

SECTION 25. The uncodified language of Acts 2019, No. 819, § 25, is repealed.

~~(a) When adopting the initial rules required under Section 3-17 and 20-24, of this act, the final rules shall be filed with the Secretary of State for adoption under § 25-15-204(f):~~

~~(1) On or before May 1, 2021; or~~

~~(2) If approval under § 10-3-309 has not occurred by May 1, 2021, as soon as practicable after approval under § 10-3-309.~~

~~(b) The director of the relevant state agency shall file the proposed rules with the Legislative Council under § 10-3-309(e) sufficiently in advance of May 1, 2021, so that the Legislative Council may consider the rules for approval before May 1, 2021.~~

SECTION 26. EMERGENCY CLAUSE. It is found and determined by the General Assembly that Acts 2019, No. 819 transferred collection and administration of corporate franchise tax from the Secretary of State to the Department of Finance and Administration; that this transfer has created hardships and compliance issues for Arkansas taxpayers; that these issues necessitate the immediate return of the collection and administration of the franchise tax back to the Secretary of State; that Acts 2019, No. 819 will take effect on May 1, 2021; and that the immediate return of the franchise tax collection responsibilities to the Secretary of State will prevent further tax compliance issues for Arkansas taxpayers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor.

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is

overridden, the date the last house overrides the veto.

APPROVED: 4/1/21