



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Peter J. Roskam

SYNOPSIS AS INTRODUCED:

805 ILCS 5/15.40

from Ch. 32, par. 15.40

Amends the Business Corporation Act of 1983. Makes a technical change in a Section concerning the basis for computation of franchise taxes payable by domestic corporations.

LRB093 19259 RXD 44994 b

1 AN ACT concerning business organizations.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Corporation Act of 1983 is amended
5 by changing Section 15.40 as follows:

6 (805 ILCS 5/15.40) (from Ch. 32, par. 15.40)

7 Sec. 15.40. Basis for computation of franchise taxes
8 payable by domestic corporations.

9 (a) The basis for the initial franchise tax payable by a
10 domestic corporation shall be the amount represented in this
11 State, determined in accordance with the provisions of this
12 Section, of its paid-in capital as disclosed by its first
13 report of the issuance of shares.

14 (b) The basis for an additional franchise tax payable by a
15 domestic corporation, except in the case of a statutory merger
16 or consolidation, shall be the increased amount represented in
17 this State, determined in accordance with the provisions of
18 this Section, of its paid-in capital as disclosed by any report
19 of issuance of additional shares, or of an increase in paid-in
20 capital without the issuance of shares, or of an exchange or
21 reclassification of shares, or of cumulative changes in paid-in
22 capital.

23 (c) In the case of a statutory merger or consolidation of
24 domestic corporations, the basis for an additional franchise
25 tax payable by the surviving or new corporation shall be the
26 increased amount represented in this State, determined in
27 accordance with the provisions of this Section of the paid-in
28 capital of the surviving or new corporation immediately after
29 the merger or consolidation over the aggregate of the amounts
30 represented in this State of the paid-in capital of the merged
31 or consolidated corporations disclosed by the latest reports
32 filed by those corporations, respectively, with the Secretary

1 of State as required by this Act; provided, however, the basis
2 for a further additional franchise tax payable by the surviving
3 or new corporation shall be determined in accordance with the
4 provisions of this Section, on the paid-in capital of each of
5 the merged or consolidated corporations as last reported by it
6 in any document, other than an annual report, required by this
7 Act to be filed with the Secretary of State, from its taxable
8 year end to the next succeeding anniversary month or, in the
9 case of a corporation that has established an extended filing
10 month, the next succeeding extended filing month of the
11 surviving or new corporation; however if the taxable year ends
12 within the 2 month period immediately preceding the anniversary
13 month or, in the case of a corporation that has established an
14 extended filing month, the next succeeding extended filing
15 month of the surviving or new corporation the tax shall be
16 computed to the anniversary month or, in the case of a
17 corporation that has established an extended filing month, the
18 next succeeding extended filing month of the surviving or new
19 corporation in the next succeeding calendar year.

20 (d) The basis for the annual franchise tax payable by a
21 domestic corporation shall be the amount represented in this
22 State, determined in accordance with the provisions of this
23 Section, of its paid-in capital on the last day of the third
24 month preceding the anniversary month or, in the case of a
25 corporation that has established an extended filing month, on
26 the last day of the corporation's fiscal year preceding the
27 extended filing month.

28 (e) For the purpose of determining the amount represented
29 in this State of the paid-in capital of a domestic corporation,
30 the amount represented in this State shall be that proportion
31 of its paid-in capital that the sum of (1) the value of its
32 property located in this State and (2) the gross amount of
33 business transacted by it at or from places of business in this
34 State bears to the sum of (1) the value of all of its property,
35 wherever located, and (2) the gross amount of its business,
36 wherever transacted, except as follows:

1 (1) If the corporation elects in its annual report in
2 any year to pay its franchise tax upon its entire paid-in
3 capital, all franchise taxes accruing against the
4 corporation for that taxable year shall be computed
5 accordingly until the corporation elects otherwise in an
6 annual report for a subsequent year.

7 (2) If the corporation fails to file its annual report
8 or final transition annual report in any year within the
9 time prescribed by this Act, the proportion of its paid-in
10 capital represented in this State shall be deemed to be its
11 entire paid-in capital unless its annual report is
12 thereafter filed and its franchise taxes are thereafter
13 adjusted by the Secretary of State in accordance with the
14 provisions of this Act, in which case the proportion shall
15 ~~likewise~~ be adjusted to the same proportion that would have
16 prevailed if the corporation had filed its annual report
17 within the time prescribed by this Act.

18 (3) In the case of a statutory merger or consolidation
19 that becomes effective either prior to January 1, 1991 or
20 on or prior to the last day of the third month preceding
21 the corporation's anniversary month in 1991, the amount of
22 the paid-in capital represented in this State of the
23 surviving or new corporation immediately after the merger
24 or consolidation, until the filing of the next annual
25 report of such corporation, shall be deemed to be that
26 proportion of the paid-in capital of the surviving or new
27 corporation that the aggregate amounts represented in this
28 State of the sum of the paid-in capital of the merged or
29 consolidated corporations, separately determined, bore to
30 the total of the sum of the paid-in capital of all of the
31 merged or consolidated corporations immediately prior to
32 the merger or consolidation.

33 (f) For increases in paid-in capital that occur either
34 prior to January 1, 1991 or on or prior to the last day of the
35 third month preceding the corporation's anniversary month in
36 1991, the proportion corporation on file on the date

1 represented in this State of the paid-in capital of a domestic
2 corporation shall be determined from information contained in
3 the latest annual report of the corporation on file on the date
4 the particular increase in paid-in capital is shown to have
5 been made, or, if no annual report was on file on the date of
6 the increase, from information contained in its articles of
7 incorporation, or, in case of a merger or consolidation that
8 becomes effective either prior to January 1, 1991 or on or
9 prior to the last day of the third month preceding the
10 corporation's anniversary month in 1991, from information
11 contained in the report of the surviving or new corporation of
12 the amount of its paid-in capital following the merger or
13 consolidation. For increases in paid-in capital that occur
14 after both December 31, 1990 and the last day of such third
15 month, the proportion represented in this State of the paid-in
16 capital of a domestic corporation shall be determined from
17 information contained in the latest annual report of the
18 corporation for the taxable period in which the particular
19 increase in paid-in capital is shown to have been made or, if
20 no annual report was on file on the date of the increase, from
21 information contained in its articles of incorporation.

22 (g) No basis under this Section may consist of any
23 redeemable preference shares sold to the United States
24 Secretary of Transportation under Sections 505 and 506 of
25 Public Law 94-210.

26 (Source: P.A. 91-464, eff. 1-1-00.)