

**CHAPTER 40. FRANCHISE TAX**

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[Authority: 68 O.S. §§203, 1207, and 1213]

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## CHAPTER 40. FRANCHISE TAX

### 710:40-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of the Oklahoma Franchise Tax.

### 710:40-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Affiliated corporations"** means those entities authorized or required to file a consolidated Federal Income Tax Return by the applicable provisions of the Internal Revenue Code, as amended, and regulations promulgated pursuant to such code.

**"Business situs"** means the location at which a reporting entity exercises control over an intangible asset. For purposes of this Chapter, a branch location shall not be considered to be the business situs for an intangible asset unless the asset is managed, directed and controlled from that location.

**"Current liability"** means any bond, note, debenture, or other evidences of indebtedness, or any portion thereof, payable within three (3) years or less after issuance. Current liability shall not include that portion of a debt which matures more than three (3) years after issuance.

[Source: Amended at 20 Ok Reg 2158, eff 6-26-03]

### 710:40-1-2.1. Examples of current liabilities for franchise tax purposes

Examples of amounts which may be treated as current liabilities in the case of a non-renewable, ten-year note, payable in annual installments, are as follows:

- (1) In the year of issuance, an amount equal to the sum of three years of payments from the date of issuance may be considered a current liability.
- (2) In the second year after issuance, the sum of two years of payments from the date of issuance may be considered a current liability.
- (3) In the third year after issuance, one year's payment may be considered a current liability.
- (4) In the fourth year and thereafter, no amount of the obligation is considered to be a current liability for franchise tax purposes.

[Source: Added at 20 Ok Reg 2158, eff 6-26-03]

### 710:40-1-3. Scope of rules

The provisions of this Chapter shall be applicable to the computation of Franchise Tax, reports and returns for purposes of computing Franchise Tax, the suspension and reinstatement of corporations and such other matters as may be specifically provided by the provisions of the Commission governing Franchise Tax.

### 710:40-1-4. Appreciation of assets

The book value of an asset shall include appreciation as reflected in the financial records of the reporting entity.

#### **710:40-1-5. Balance sheet**

The information contained on the balance sheet of the Franchise Tax Return shall be taken from the federal or Oklahoma Income Tax Return for the income tax year of the reporting entity immediately preceding the taxable year for which the Franchise Tax Report is being filed. If the reporting entity has not had an Oklahoma income tax year close prior to the July 1 date then the reporting entity shall indicate at the top of the balance sheet "NO INCOME TAX YEAR END" and the reporting entity shall pay the minimum tax required by the Oklahoma Franchise Tax Code. [**See:** 68 O.S. §1205]

#### **710:40-1-6. Accounting and reporting; suspension and reinstatement**

(a) **General provisions.** For tax year 2023 and previous tax years, a franchise tax is levied upon every corporation, association, joint-stock company and business trust organized under the laws of Oklahoma, or organized and existing by virtue of the laws of some other state, territory or country, doing business in Oklahoma,

(b) **Filing.** On or before July 1, 2014, each corporation, regardless of its prior filing status, must file either a franchise tax return or an election to use the corporation's income tax return due date as the due date for payment and filing of the corporation's franchise tax return.

(c) **Franchise tax returns due July 1, 2014.** A corporation filing its franchise tax return on July 1, 2014 shall use the corporation's 2013 income tax year balance sheet in preparing the return, regardless of whether the corporation is a calendar year filer or has an income tax year end other than December 31.

(d) **Franchise tax returns due on income tax year end.** A corporation who elects on July 1, 2014 to use its income tax return due date for payment and filing of the corporation's franchise tax return shall use the corporation's 2013 income tax year balance sheet in preparing the return. The franchise tax return is due the fifteenth (15th) day of the third month following the close of the corporation's 2013 tax year; however, if the due date for the filing of the corporation's 2013 income tax return is prior to July 1, 2014, the due date for the filing of its franchise tax return shall be July 1, 2014.

(e) **Franchise tax returns due in subsequent years.** Franchise tax returns due July 1, 2015 or, pursuant to an election to use the corporation's income tax year end in 2015 shall use the corporation's 2014 income tax year balance sheet in preparing the corporation's franchise tax return.

(f) **Good standing certificates.** A corporation shall be issued a good standing certificate (required for filings with the Secretary of State) during the period following the date on which the corporation's franchise tax return is due until the date the corporation's franchise tax return is delinquent.

(g) **Delinquency date.** The date on which the annual franchise tax return and payment is considered to be delinquent is:

- (1) For franchise tax returns due July 1, the return is delinquent if not filed and paid on or before the next September 15.

(2) Except as provided in (c) of this Section, corporations who have elected to file franchise tax returns and pay franchise tax on their corporate income tax due date, the return is delinquent if not filed and paid no later than thirty (30) days after the due date established under the Internal Revenue Code. However, if the corporate income tax return due date has been extended, the franchise tax due date shall also be extended. This extension of the due date for filing the return will not serve to extend the date on which the payment of the tax is due.

(3) For those taxpayers that remitted the maximum amount of tax pursuant to Section 1205 for the preceding tax year, the tax levied by 68 O.S. Section 1201 et seq. shall become due and payable on May 1 of each year, and the return is delinquent if not filed and paid on or before the ensuing June 1.

(h) **Suspension and reinstatement.** [See: 68 O.S. § 1212] The Order issued by the Tax Commission reinstating or reviving the charter or other instrument of organization of a previously suspended organization shall state the effective date of the reinstatement or revival. The effective date shall be the date on or by which, as determined by the Commission, the corporation, association, or organization met all requirements for reinstatement, including:

- (1) Payment of tax;
- (2) Filing of returns;
- (3) Filing of officer lists; and
- (4) Meeting other requirements as determined by the Commission under applicable law.

(i) **Parent-subsidiary corporate relationships.** In the case of parent-subsidiary corporate relationships, both the parent corporation and any subsidiary corporations shall use the same accounting method as was employed for the last Oklahoma income tax return.

(j) **Consolidated Oklahoma income tax returns.** When a consolidated Oklahoma income tax return has been filed for the parent/subsidiary corporate group, all subsidiary corporations shall file Oklahoma franchise tax returns based upon the method of accounting used by each subsidiary, provided that any undistributed income which is reported on the subsidiary corporation's Oklahoma franchise tax return may be eliminated from the computation on the parent's Oklahoma franchise tax returns.

[Source: Amended at 9 Ok Reg 3021, eff 7-13-92; Amended at 15 Ok Reg 2415, eff 6-11-98; Amended at 19 Ok Reg 2431, eff 6-27-02; Amended at 20 Ok Reg 2158, eff 6-26-03; Amended at 31 Ok Reg 2425, eff 9-12-14; Amended at 23 Ok Reg 1343, eff 8-27-15; Amended at 35 Ok Reg 2057, eff 9-14-18; Amended at 41 Ok Reg 1631, eff 8-11-24]

#### **710:40-1-7. Bank holding company**

A bank holding company may exclude from the computation of capital employed the capital employed of a bank held by such holding company to the extent of the holding company's ownership percentage in the held bank. If a bank holding company owns less than one hundred percent (100%) of the stock of the held bank, then the bank holding company shall multiply its percentage of stock ownership in the held bank by the amount of capital employed of such held bank as reflected on the held bank's Franchise Tax

Return. The resulting amount shall be excluded from the computation of capital employed of the bank holding company.

**710:40-1-8. Business done**

In order to compute the amount of business done for Franchise Tax purposes, a reporting entity shall use the figure reported as either gross receipts or sales as reported on the most recent Oklahoma Income Tax Return.

**710:40-1-9. Intangible drilling costs and intangible development costs**

Intangible drilling costs and intangible development costs shall be allocated to the location of the mineral property for which such costs were expended. Intangible drilling costs and intangible development costs shall be reported on the Oklahoma Franchise Tax Return as a tangible capital asset.

**710:40-1-10. Inter-company balances**

Inter-company balances shall be eliminated from the computation of capital employed on the Franchise Tax Return. A reporting entity with an inter-company receivable account or note shall eliminate such amount from the value of its assets. A reporting entity with an inter-company payable account or note shall eliminate such amount from its current liabilities. The requirements of this Section shall apply solely to inter-company eliminations between a parent and its subsidiary corporation. [See: 68 O.S. §1209(b)]

[Source: Amended at 20 Ok Reg 2158, eff 6-26-03]

**710:40-1-11. Investment in partnerships, limited partnerships and joint ventures**

Investment in partnerships, limited partnerships and joint ventures shall be included in the value of intangible assets on the Franchise Tax Return. For purposes of 710:40-1-2, the business situs for assets as described in this Section shall be the location at which control of the asset is exercised.

**710:40-1-12. Investment in subsidiary**

Investment in a subsidiary shall be reported as an intangible asset on the Franchise Tax Return. An investment in a subsidiary within the meaning of this Section shall not be treated as an inter-company advance and shall not be eliminated from the calculation of capital employed.

**710:40-1-13. Licenses**

If a reporting entity files a "no tax" report, it shall not be necessary for such entity to be issued a "no tax" license in any documentary form. For purposes of the Oklahoma Franchise Tax Code, any reference to a "**license**" shall refer only to the right or privilege to engage in business and it shall not be necessary for the Commission to issue any document evidencing such right or privilege. For purposes of any provision of the Oklahoma Franchise Tax Code relating to penalties for exercising or attempting to exercise powers without a license to do so, the term "**license**" shall refer to the right of the corporation or other organization to do business and shall not be construed to mean any

document issued by the Oklahoma Tax Commission.

**710:40-1-14. Royalty income**

Royalty income shall be allocated on the Franchise Tax Return according to the situs of the property which produces the income.

**710:40-1-15. Subchapter S Corporations**

Subchapter S Corporations, as defined in the Internal Revenue Code of 1986, as amended, shall file an Oklahoma Franchise Tax Return in the same manner and according to the same requirements for all other reporting entities.

**710:40-1-16. Working interest**

A working interest for purposes of this Section shall be reported as a tangible asset on the Oklahoma Franchise Tax Return. A working interest shall be allocated according to the situs of the mineral property.

**710:40-1-17. Reporting form to be used by taxpayers exempt from the tax as a result of a tax of \$250.00 or less being due**

For all franchise tax returns due on or after January 1, 2008, if a taxpayer computes the franchise tax due and determines that it amounts to \$250.00 or less, the taxpayer is exempt from the tax and a "no tax due" report as prescribed by the Tax Commission is required to be filed. A schedule of corporate officers must still be filed and, for foreign corporations, the \$100.00 registered agents fee is still due. [See: 68 O.S. § 1205]

[Source: Added at 23 Ok Reg 2816, eff 6-25-06; Amended at 19 Ok Reg 2038, eff 7-1-08]