SPONSOR: Rep. Schwartzkopf & Rep. Longhurst & Rep. Viola & Rep. D. Short & Rep. Hudson & Sen. McBride & Sen. Henry & Sen. Poore & Sen. Simpson & Sen. Lavelle

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 175

AN ACT TO AMEND TITLE 6, TITLE 8, AND TITLE 12 OF THE DELAWARE CODE RELATING TO VARIOUS FEES AND TAXES CHARGED BY THE SECRETARY OF STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 9-525(a), Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) Initial financing statement or other record; general rule. Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b), is:

(1) The amount specified in subsection (c), if applicable, plus an amount not to exceed $~~100~~125 and an amount of $2 per page for each page in excess of four pages if the record is communicated in writing or as an image; or

(2) An amount not to exceed $~~50~~100 if the record is communicated via the Internet or a similar medium authorized by filing office rule, provided that filings complying with such rule shall be exempt from fees described in subsection (c) and subsection (d)(3) of this section.

Section 2. Amend § 502(c), Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) If the annual franchise tax report and the franchise tax due are not filed or paid by the corporation as required by this chapter, the Secretary of State shall ascertain and fix the amount of the franchise tax as determined in the manner prescribed by § 503(a) of this title and the amount so fixed by the Secretary of State shall stand as the basis of taxation under the provisions of this chapter unless the corporation shall thereafter elect to compute the franchise tax in the manner prescribed by § 503(a)(2) of this title by filing the annual franchise tax report and complying with the provisions of § 503(b) of this title. In the event of neglect, refusal or failure on the part of any corporation to file a complete annual franchise tax report with the Secretary of State on or before March 1, the corporation shall pay the sum of $~~125~~200 to be recovered by adding that amount to the franchise tax as herein determined and fixed, and such additional sum shall become

a part of the franchise tax as so determined and fixed, and shall be collected in the same manner and subject to the same penalties.

Section 3. Amend § 503(a), Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) All corporations accepting the provisions of the Constitution of this State and coming under Chapter 1 of this title, and all corporations which have heretofore filed or may hereafter file a certificate of incorporation under said chapter, shall pay to the Secretary of State as an annual franchise tax whichever of the applicable amounts prescribed by paragraphs (a)(1) and (a)(2) of this section is the lesser:

(1) Where a corporation that is not authorized to issue capital stock is not an exempt corporation under § 501(b) of this title, $175; where the authorized capital stock does not exceed 5,000 shares, $175; where the authorized capital stock exceeds 5,000 shares, but is not more than 10,000 shares, $250; and the further sum of $~~75~~85 on each 10,000 shares or part thereof.

(2) One hundred and seventy-five dollars where the assumed no-par capital of the corporation, found in the manner provided in this paragraph, does not exceed $500,000; $250 where the assumed no-par capital exceeds $500,000 but is not more than $1,000,000; and the further sum of $~~75~~85 for each $1,000,000 or part thereof of such additional assumed no-par capital."

For the purpose of computing the tax in accordance with paragraph (a)(2) of this section, the corporation's assumed no-par capital, whenever the phrase "assumed no-par capital" is used in paragraph (a)(2) of this section, shall be found by multiplying the number of authorized shares of capital stock without par value by $100.

To the amount of tax attributable to the corporation's assumed no-par capital, computed as above prescribed, add $~~350~~400 for each $1,000,000 or fraction thereof in excess of $1,000,000 of an assumed par value capital, found by multiplying the number of authorized shares of capital stock having par value by the quotient resulting from dividing the amount of the total assets of the corporation, as shown in the manner hereinafter provided, by the total number of issued shares of all denominations and classes. If the quotient shall be less than the par value of any denomination or class of authorized shares having par value, the number of the shares of each class shall be multiplied by their par value for the purpose of ascertaining the assumed par value capital in respect of the shares and the number of authorized shares having a par value to be multiplied by the quotient, as aforesaid, shall be reduced by the number of the shares whose par value exceeds the quotient; and where, to determine the assumed par value capital, it is necessary to multiply a class or classes of shares by the quotient and also to multiply a class or classes of shares by the par value of the shares, the assumed par value capital of the corporation shall be the sum of the products of the multiplications. Whenever the amount of the assumed par value

capital, computed as above prescribed, is less than $1,000,000, the amount of the tax attributable thereto shall be the amount that bears the same relation to $~~350~~400 that the amount of the assumed par value capital bears to $1,000,000.

Section 4. Amend § 503(c), Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) Except as provided in this subsection, ~~I~~in no case shall the tax on any corporation for a full taxable year, computed by paragraph (a)(1) of this section be more than $~~180,000~~200,000 nor less than $175; or computed by paragraph (a)(2) of this section be more than $~~180,000~~200,000 nor less than $~~350~~400. In each calendar year, the Secretary of State shall compile a list of each corporation that as of December 1:

(1) had a class or series of stock listed on a national securities exchange; and

(2) reported in its financial statements prepared in accordance with United States GAAP or IFRS and included in its most recent annual report filed with the United States Securities and Exchange Commission or any similar agency outside the United States with responsibility for enforcing securities laws or serving as a public repository for the corporation's financial disclosures, both of the following:

a. consolidated annual gross revenues equal to or greater than $750,000,000 or consolidated assets equal to or greater than $750,000,000; and

b. consolidated annual gross revenues not less than $250,000,000 and consolidated assets not less than $250,000,000;

provided that if the corporation's financial statements are reported in a currency other than United States dollars, then, for purposes of measuring the amount of revenues and assets set forth therein, such amounts shall be converted into United States dollars using the applicable spot exchange rate for value established by Bloomberg as of the last day of the corporation's most recently completed fiscal year.

Notwithstanding subsection (a) of this section and the first sentence of this subsection, for each corporation satisfying the requirements of (1) and (2) of this subsection for a fiscal year for which its annual franchise tax would otherwise be $200,000 as computed under paragraph (1) or (2) of subsection (a) (each, a "Large Corporate Filer"), the Secretary of State shall fix the annual franchise tax for such taxable year at $250,000. In the event that a corporation would otherwise qualify as a Large Corporate Filer but has no filed annual report with the United States Securities and Exchange Commission (or any similar foreign agency), and became listed on a national securities exchange in connection with a succession within the taxable year, then reference shall be made to the most recent annual report of the predecessor of such corporation for purposes of determining whether such corporation has satisfied the requirements of a. and b. of paragraph (c)(2).

(3) As used in this subsection:

a. "predecessor" means, with respect to any corporation, any other corporation or other entity whose consolidated assets and liabilities, immediately prior to a succession, are substantially the same as the consolidated assets and liabilities of such corporation immediately following such succession; and

b. "succession" means the direct acquisition of assets and liabilities comprising a going business from a predecessor, whether by merger, consolidation, purchase or other direct transfer.

Section 5. Amend § 3813(a)(2), Chapter 38, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(2) Upon the receipt for filing of a certificate of trust, a certificate of amendment, a certificate of cancellation or a certificate of merger or consolidation, a certificate of correction, a corrected certificate, a certificate of conversion, a certificate of transfer, a certificate of transfer and continuance, a certificate of statutory trust domestication, a certificate of termination or amendment or a restated certificate, a fee in the amount of up to $~~300~~500.

Section 6. Sections 2 and 3 of this Act shall be effective on January 1, 2018. Section 4 of this Act shall be effective for the tax year beginning on January 1, 2017 with the exception of the increase of $350 to $400 which shall be effective on January 1, 2018. All other sections of this Act shall take effect on August 1, 2017.

SYNOPSIS

This Act alters various fees assessed by the Delaware Secretary of State. The Act provides that most changes to the fees and taxes assessed will take effect on August 1, 2017; however increases to the maximum franchise tax and the late penalty for the filing of an annual franchise tax report shall take effect for the tax year beginning January 1, 2017, and the increase of the assumed par value multiplier for calculation of the corporate franchise tax and the authorized shares multiplier for corporations with greater than 10,000 authorized shares for calculation of the corporate franchise tax shall take effect for the tax year beginning on January 1, 2018.