

## **CORPORATE FRANCHISE TAX**

**STATUTORY PROVISION:** Title 8, Delaware Code, Chapter 5

**COLLECTION/ADMINISTRATIVE AGENCY:** The Secretary of State administers the corporate franchise tax.

**GENERAL LIABILITY:** Domestic corporations must pay a corporate franchise tax for the privilege of being incorporated in Delaware. Retention of a charter by a corporation creates an obligation to pay the tax unless specifically exempted by law. Companies incorporated in another state, but doing business in Delaware, must also register with the Secretary of State. Banks and certain other financial institutions pay a franchise tax to the Bank Commissioner in lieu of the corporate franchise tax.

**TAX RATES:** Domestic stock corporations are taxed based on the number of authorized shares at the following tax rates:

<u>Corporations With:</u>	<u>Fee:</u>
Up to 5,000 shares	\$175.00 (Minimum Tax)
5,001 - 10,000 shares	\$250.00
Over 10,000 shares	\$250.00, plus \$85.00 for each additional 10,000 shares or part thereof, not to exceed \$200,000

Non-stock, non-exempt domestic corporations pay an annual tax of \$175.

The maximum tax on regulated investment companies is \$90,000. Periods of inactivity are taxed at 50% of the amount otherwise due, but never less than the minimum tax of \$175.

Domestic corporations may also opt to pay taxes based on the assumed par value capital method. The tax rate using this method is \$400 per \$1 million or portion of a \$1 million assumed par value capital. The assumed par value capital is calculated using a formula that takes into account a corporation's issued shares, authorized shares and total gross assets. Corporations paying on the assumed par value capital method will never pay less than \$400.

Effective for tax year 2018, a two-tier franchise tax methodology is now in place for domestic Delaware corporations who qualify for the maximum tax rate. 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 generally accepted accounting principles (GAAP) or International Financial Reporting Standards (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

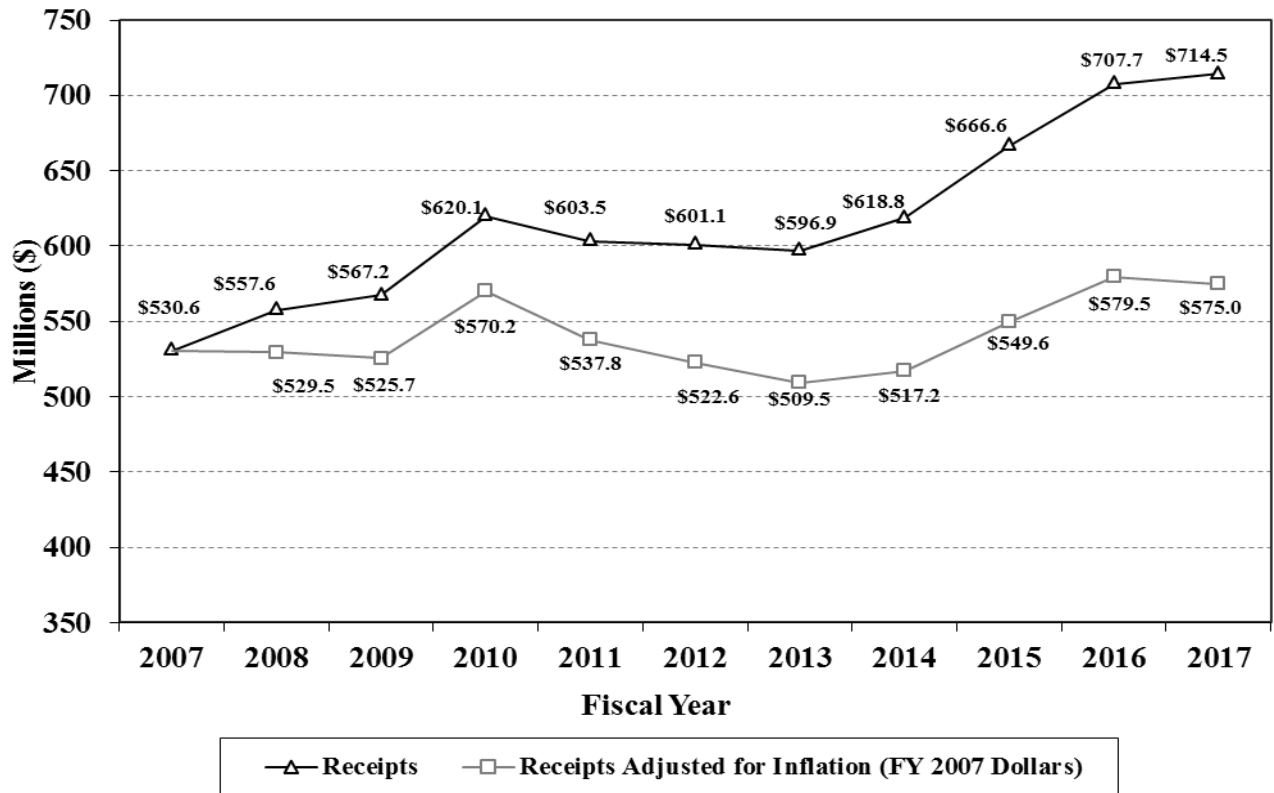
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less than \$250,000,000; provided that if the corporation's financial statements are reported in a currency other than United States dollars, then, for purposes of measuring the amount of revenues and assets set forth therein, such amounts shall be 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.

Each corporation complying with (1) and (2) above for a fiscal year for which its annual franchise tax would otherwise be \$200,000 as computed by either the authorized shares method or assumed par value methods (as stated in preceding paragraphs) are considered a "large corporate filer" and the annual franchise tax for such taxable year will be fixed 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 (2)a. and b. above. "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 "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

### TAX RECEIPTS

**Corporate Franchise Tax (Net of Refunds)**



## CORPORATE FRANCHISE TAX

### LEGISLATIVE HISTORY

<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
5/27/65	1/1/66	Assigned corporate franchise tax administrative responsibilities to the Secretary of State (55 Del. Laws c 90).
6/23/69	7/15/69	Set franchise tax minimum at \$20 and maximum at \$110,000. Increased other rates by 10% (57 Del. Laws c 150).
6/7/69	-	Removed the former exemption for professional corporations (57 Del. Laws c 127).
5/16/70	7/1/70	Moved the last day for payment to June 1, from July 1 (57 Del. Laws c 421).
7/15/70	1/1/70	Mandated revocation of charters for corporations in arrears for more than a year (previously two years) (57 Del. Laws c 712).
6/12/72	1/1/73	Moved the last day for payment to March 1, from June 1. Required corporations to compute their own taxes (58 Del. Laws c 450).
4/8/76	5/1/76	Made tax due on a quarterly basis for corporations whose annual liability is expected to exceed \$5,000 (60 Del. Laws c 353; HB 834).
7/2/84	1/1/84	Increased rates on domestic corporations to a minimum of \$30 (was \$20) and to a maximum of \$130,000 (was \$110,000). Raised rates for regulated investment companies to \$200 (was \$181.50) for each \$1 million of average gross assets; and maximum tax to \$65,000 (was \$55,000). Increased the penalty for failure to file timely tax reports \$50, from \$25 (64 Del. Laws c 317; HB 500).
7/7/89	7/7/89	Allowed the Secretary of State to increase fees charged for expedited services (67 Del. Laws c 99; SB 245).
6/12/90	6/12/90	Increased various corporate filing fees (67 Del. Laws c 229; HB 628).
7/1/91	1/1/91	Increased rates on all corporations except those with less than 3,000 shares of capital stock. Maximum tax rate increased to \$150,000, from \$130,000 (68 Del. Laws c 81; HB 348).
7/1/91	1/1/92	Changed the estimated tax payment schedule for corporations whose liability is expected to exceed \$5,000: June 1, 40% (formerly 25%); September 1, 20% (formerly 25%); December 1, 20% (formerly 25%); March 1, balance of tax as determined at close of calendar year (68 Del. Laws c 81; HB 348).
7/11/91	7/11/91	Increased the fee – paid in lieu of franchise taxes and penalties -- for corporations that renew their certificates of incorporation after having been voided for five or more years, to three times the annual amount of the annual franchise tax payment (formerly two times) (68 Del. Laws c 163; HB 141).

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Approved Date	Effective Date	<u>Description of Changes</u>
5/15/92	5/15/92	Increased the interest penalty for unpaid tax to 1.5% per month (formerly 1.0% per month) (68 Del. Laws c 246; HB 467).
7/1/92	7/1/92	Authorized the Department of State to enter into a written agreement with private contractors for the purpose of collecting franchise taxes that are six or more months past due. Empowered the Secretary of State to establish the terms of any contract, including the method of payment (68 Del. Laws c 290; SB 444).
6/30/93	6/30/93	Removed the requirement that a corporation's annual franchise tax report specify the date appointed for the next annual meeting of the stockholders for the election of directors. Required the report must also include the names and addresses of all the directors and no more than two of the officers (69 Del. Laws c 53; SB 104).
6/30/93	6/30/93	Required the Secretary of State to forward annual franchise tax reports on request and keep returned reports open for public inspection (69 Del. Laws c 54; SB 105).
7/1/93	6/30/93	Permitted Delaware corporations to merge or consolidate with limited liability companies of this state, any other state, or the District of Columbia, unless the other states or the District of Columbia forbid the merger or consolidation (69 Del. Laws c 61; SB 146).
7/2/99	7/1/99	Provided that any corporation of this State may convert to a limited liability company (LLC), limited partnership (LP) or business trust of this State upon obtaining the requisite approval, including the approval of the holders of all outstanding shares of stock of the corporation, whether voting or nonvoting, and the filing of a certificate of conversion with the Secretary of State (72 Del. Laws c 123; SB 137).
7/2/99	8/1/99	Permitted for the conversion of a corporation to a limited partnership (LP) and the conversion of a LP to a corporation and confirms that a limited partnership that has been converted continues as the same entity (72 Del. Laws c 128; SB 177).
7/2/99	8/1/99	Permitted the conversion of a corporation to a limited liability company (LLC) and the conversion of a LLC to a corporation and confirms that a LLC that has been converted continues as the same entity (72 Del. Laws c 129; SB 178).
6/19/03	1/1/03	Increased rates on all corporations. Minimum tax increased to \$35 (from \$30); maximum tax increased to \$165,000 (from \$150,000). Increased the penalty for neglect, refusal, or failure to file an annual franchise tax report to \$100 (from \$50) (74 Del. Laws c 51; HB 267).
6/19/03	8/1/03	Increased the annual franchise tax report fee to \$25 (from \$20) (74 Del Laws c 51; HB 267).
6/27/06	1/1/07	Implemented a \$100 penalty for failure to file a complete annual franchise tax report. (75 Del Laws c 306; SB 322).
7/1/08	1/1/08	Increased rates on all domestic corporations paying on the authorized shares method. Minimum tax increased to \$75 (from \$35). Maximum tax rate and assumed par value method unchanged. Increase annual report fee for foreign corporations from \$60 to \$100. (76 Del Laws c 286; HB 519).

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Approved Date	Effective Date	<u>Description of Changes</u>
7/1/09	1/1/09	Increased the multiplier for domestic corporations filing taxes using the assumed par value capital method from \$250 to \$350; increased maximum franchise tax from \$165,000 to \$180,000; and increased maximum franchise tax for Regulated Investment Companies from \$75,000 to \$90,000 (77 Del Laws c 78; HS1 for HB 267 aab HA2).
7/1/09	8/1/09	Increased foreign corporation annual filing fee from \$100 to \$125; increased foreign corporation penalty from \$100 to \$125. Increased domestic corporation annual filing fee for non-exempt corporations from \$25 to \$50 (77 Del Laws c 78; HS1 for HB267 aab HA2).
7/1/09	1/1/10	Increased domestic corporation penalty from \$100 to \$125. Increased the minimum tax paid by corporations filing using the assumed par value capital method from \$75 to \$350 (77 Del Laws c 78; HS1 for HB 267 aab HA2).
5/3/10	8/1/10	Provided that non-stock domestic corporations which are not exempt from tax pay an annual tax of \$75. (77 Del Laws c 253; HB 341).
3/28/13	3/28/13	Eliminated the sunset on current bank franchise tax rates. (79 Del Laws c 12; HB 52).
6/30/13	4/1/14	Permitted Delaware corporations to file certificate(s) of validation and provided that the filing of any certificate of validation will not reduce the amount of franchise taxes due for any period prior to such filing or serve as the basis for a refund of franchise taxes paid or due for prior calendar years. (79 Del Laws c 72; HB 127).
4/15/14	1/1/14	Increased the minimum franchise tax to \$175 (from \$75). (79 Del Laws c 212; HB 265 aab HA 1 and HA 3).
7/2/17	8/1/17	Increased domestic corporation penalty from \$125 to \$200.
7/2/17	1/1/18	Increased 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 from \$75 to \$85. For assumed no-par capital calculations the \$350 added for each \$1,000,000 or fraction thereof in excess of \$1,000,000 of an assumed par value capital is increased to \$400, and increased minimum for assumed par value method from \$350 to \$400. Effective date of amendments is August 1, 2017 which will be effective for the tax year beginning January 1, 2018. (81 Del Laws c 53; HB 175).
7/2/17	1/1/17	Created a two-tier franchise tax methodology for domestic Delaware corporations who qualify for the maximum tax rate. The maximum tax was increased from \$180,000 to \$200,000 and will apply to those companies who qualify for the tier one tax. Companies qualifying for the tier two tax rate are subject to a maximum tax of \$250,000. (81 Del Laws c 53; HB 175).

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Approved Effective  
Date      Date

Description of Changes

7/21/17	8/1/17	In order to conform the annual reporting requirements for foreign corporations with the requirements for domestic corporations, the following amendments were instituted: mandated the annual report be on a form designated by the Secretary of State of Delaware, required name and address of only 1 officer who signs the report, required names and addresses of all directors and deleted requirement for term expiration date of directors to be listed, deleted requirement for stock and par value to be listed, deleted requirement for what stock has been issued, deleted requirement for amount of capital invested in real estate in other property in this State and the tax paid thereon, deleted requirement for exempt entities to state facts of eligibility for tax exemption, added the penalty of perjury statement for any knowingly false statements on report. Amended domestic annual report statute to remove the requirement to list the county of the registered agent on the annual report. (81 Del Laws c 86; SB 69).
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**FILING PROCEDURES:** All domestic corporations must file an Annual Franchise Tax Report with the Secretary of State on or before March 1 each year. Exempt corporations are required to pay an annual filing fee of \$25 and a fee of \$50 shall be paid by all other corporations. All stock corporations incorporated in Delaware must pay a franchise tax of not less than \$175 but not more than \$200,000. All non-stock, non-exempt corporations incorporated in Delaware must pay a franchise tax of \$175. Exempt corporations (non-profit organizations, religious, etc.) are not assessed any tax. Foreign corporations (companies incorporated elsewhere but doing business in Delaware) are required to file an annual report with the Secretary of State and pay a \$125 annual report filing fee, both of which are due on or before June 30<sup>th</sup> each year, but do not pay franchise taxes.

**PAYMENT DATES:** Corporations with expected annual liabilities of less than \$5,000 must make their annual franchise tax payments on or before March 1 each year. Corporations with expected liabilities of \$5,000 or more must make quarterly payments according to the following schedule:

First Payment	Due June 1, 40% of payment.
Second Payment	Due September 1, 20% of payment.
Third Payment	Due December 1, 20% of payment.
Final Payment	Due March 1, balance of payment.

**PENALTIES FOR FAILURE TO FILE:** Delaware Code requires a penalty in the amount of \$200 be applied to all corporations which have not filed an Annual Franchise Tax Report on or before March 1. Interest upon unpaid taxes and penalties accrues at a rate of 1.5% per month or portion thereof. If any corporation neglects or refuses to pay franchise taxes for one year, its charter may be declared null and void.

## CORPORATION INCOME TAX

**STATUTORY PROVISION:** Title 30, Delaware Code, Chapters 19 and 64.

**COLLECTION/ADMINISTRATIVE AGENCY:** The Department of Finance, Division of Revenue administers the corporation income tax.

**GENERAL LIABILITY:** Every domestic and foreign corporation doing business in Delaware must file a corporation income tax return, regardless of the amount of its gross income or its taxable income, unless specifically exempt by law. Corporations that maintain a statutory corporate office in Delaware, but not doing business in the state, are not required to file a corporate income tax return.

Taxes are computed on the amount of a corporation's taxable income that is apportioned and allocated to Delaware. Taxable income does not include: interest on obligations of the United States, the State of Delaware, or its subdivisions; gains from the sale of securities issued by the United States, the State of Delaware, or its subdivisions; dividends, interest, and royalties of foreign corporations that qualify for a foreign tax credit for federal purposes; and interest from affiliated corporations. Additional deductions are allowed for wages under Federal Jobs Credit program, handicapped accessibility improvements, and donations to neighborhood assistance programs.

Income from interest, rents, royalties, patents, and gains and losses from the sale of real and tangible property, is allocated directly to the state in which the property is physically located or the transactions took place, reduced by the applicable and related expenses.

Apportionment of unallocated income has historically been based on a three-factor formula (see below) that averages the ratios of: 1) Delaware property to total United States property; 2) Delaware wages to total United States wages; and 3) Delaware gross receipts to total United States gross receipts for interstate businesses. Non-U.S. corporations may not use property or payroll without the United States of America to dilute their payroll and property apportionment factors. The apportionment formula is applied to a company's entire taxable income, excluding its allocated and exempt income.

Delaware is currently moving from equally weighted apportionment to gross receipts only apportionment with the arithmetic table below defining the correct calculations before, during, and after the transition:

<b>2016 and years prior</b>	<i>Apportionment Ratio= .333*Property Ratio +.333*Salary Ratio +.333*Sales Ratio</i>
<b>2017</b>	<i>Apportionment Ratio= .25*Property Ratio +.25*Salary Ratio +.50*Sales Ratio</i>
<b>2018</b>	<i>Apportionment Ratio= .20*Property Ratio +.20*Salary Ratio +.60*Sales Ratio</i>
<b>2019</b>	<i>Apportionment Ratio= .125*Property Ratio +.125*Salary Ratio +.75*Sales Ratio</i>
<b>2020 and beyond</b>	<i>Apportionment Ratio= Sales Ratio</i>

**TAX RATE:** 8.7% of taxable income

**HEADQUARTERS MANAGEMENT COMPANIES (HMC):** Headquarters Management Companies (HMCs) are entities “treated as a corporation under the Internal Revenue Code of the United States (Title 26 of the United States Code) that: (a) make an election to be taxed as a Headquarters Management Corporation; and (b) whose activities in this State are certified by the Director of Revenue to be confined to investment activities and/or the provision of headquarters services to itself and members of its affiliated group.