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Corporation Business Tax

Sec. 12-214-1. Carrying on, or having the right to carry on, business

(a) A company is “carrying on business in this state” if, within this state, it engages in one or more of the following activities, including but not limited to:

- (1) owning or leasing (as lessee) real property;
- (2) maintaining an office, or compensating its employee for the use of his home if such employee works from such home; if its property, including product samples, brochures and advertising materials, and instructions on product usage, is stored in such home; and if the address or telephone number of such home is listed in its advertisements and public announcements;
- (3) selling tangible personal property (as opposed to soliciting orders therefor);
- (4) performing or soliciting orders for services;
- (5) selling or soliciting orders for real property;
- (6) maintaining a stock of inventory in a public warehouse;
- (7) having an employee, wherever based: engage in managerial or research activities; make collections on regular or delinquent accounts; offer technical assistance and training to its customer or user of its product after the sale; repair or replace faulty or damaged goods; install or assemble its product; visit its customer or user of its product to determine customer or user satisfaction; pick up returned merchandise from its customer or user of its product; rectify or assist in rectifying any product, credit, shipping or similar complaint arising from the purchase or use of its product; verify the destruction of damaged merchandise; coordinate the delivery of merchandise, whether or not special promotions are involved; distribute replacement parts; inspect the installation of its product by its customer or user of its product; or conduct credit investigations or arrange for credit and financing for its customer or user of its product;
- (8) delivering merchandise inventory on consignment to its distributors or dealers;
- (9) owning or leasing (as lessee) personal property which is not related to solicitation of orders; and
- (10) participating in the approval of servicing distributors and dealers where its customer or user of its product can have such product serviced or repaired.

(b) A company has “the right to carry on business in this state” if:

(1) in the case of a company incorporated or organized under the laws of this state, the secretary of the state has endorsed its certificate of incorporation. A company shall thereafter have such right until a certificate of dissolution is filed as required by Section 33-376 (d), 33-377 (b), 33-383 (d) or 33-387 (d).

(2) in the case of a company incorporated or organized under the laws of another state, the secretary of the state has issued to it a certificate of authority. A company shall thereafter have such right until a certificate of withdrawal is filed as required by Section 33-408 (c) or until a certificate of revocation is filed as required by Section 33-409 (c).

(Effective December 19, 1984)

Sec. 12-214-2. Companies exempt from tax

(a) **In general.** Any corporation carrying on, or having the right to carry on, business in this state is subject to the tax imposed under chapter 208 (the corporation business tax). Section 12-214 exempts certain companies from the tax imposed under chapter 208. Subsection (b) of this section defines, to the extent not otherwise defined in section 12-213, terms used in this section and section 12-214. Subsection

(b) of this section also describes the companies which are exempt from the tax imposed under chapter 208.

(b) **Definitions.** As used in this section and in section 12-214, the following terms have the meaning ascribed to them in this subsection. The meaning which such terms have ascribed to them elsewhere is not pertinent to their use in this section and section 12-214.

(1) “Insurance company incorporated or organized under the laws of any other state or foreign government” means an insurance company (as defined in section 12-201) other than a domestic insurance company (as defined in section 12-201). Domestic insurance companies are subject to the taxes imposed under chapters 207 and 208. Insurance companies incorporated or organized under the laws of any other state or foreign government are subject to the taxes imposed under chapter 207 (sections 12-210 and 12-211).

(2) “Company exempt by the federal corporation net income tax law” means:

(A) a farmers’ cooperative marketing and purchasing association which is exempt from federal income taxes under section 521 (a) of the Internal Revenue Code and which has been determined by the Internal Revenue Service to be an association described in section 521 (b) (1) of the Internal Revenue Code and section 1.521-1 of title 26 of the Code of Federal Regulations. The association shall be exempt from the tax imposed under chapter 208 for each income year to which such determination applies. If the Internal Revenue Service subsequently determines that the association has ceased to be exempt from federal income taxes under section 521 (a), the association shall immediately give written notice of such subsequent determination to the commissioner and shall be subject to the tax imposed under chapter 208 for each income year to which such subsequent determination applies. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the association shall file with the commissioner a copy of its Form 990-C within the time, including extensions, allowed for filing an income tax return with the Internal Revenue Service for the year to which the Form 990-C pertains. The fact that the association is or may be, under the provisions of section 1381 (b) of the Internal Revenue Code, subject to the taxes imposed by section 11 or 1201 of the Internal Revenue Code shall not affect its exemption from the tax imposed under chapter 208.

(B) a homeowners association (whether a condominium management association or a residential real estate management association) which is exempt from federal income taxes under section 528 (a) of the Internal Revenue Code, which is described in section 528 (c) (1) of the Internal Revenue Code and section 1.528-1 of title 26 of the Code of Federal Regulations, and which has elected to be treated as a homeowners association under the provisions of section 1.528-8 of title 26 of the Code of Federal Regulations. For each income year for which such an election is not made, the association shall be subject to the tax imposed under chapter 208. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the association shall file with the commissioner a copy of its Form 1120H within the time, including extensions, allowed for filing an income tax return with the Internal Revenue Service for the year to which the Form 1120H pertains. The fact that the association is or may be subject to the tax imposed by section 528 (b) of the Internal Revenue Code shall not affect its exemption from the tax imposed under chapter 208.

(C) a domestic international sales corporation which is exempt from federal income taxes under section 991 of the Internal Revenue Code, which is described

in section 992 (a) (1) of the Internal Revenue Code, and which has elected to be treated as a domestic international sales corporation under the provisions of section 992 (b) (1) of the Internal Revenue Code. For each income year for which the company is not treated as a domestic international sales corporation (either because of its failure to satisfy the conditions of section 992 (a) (1) of the Internal Revenue Code or because of its revocation of the election), the company shall immediately give written notice of such treatment to the commissioner and shall be subject to the tax imposed under chapter 208. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the company shall file with the commissioner a copy of its Form 1120-DISC within the time, including extensions, allowed for filing an income tax return with the Internal Revenue Service for the year to which the Form 1120-DISC pertains. The fact that the company is or may be subject to the tax imposed by section 1491 of the Internal Revenue Code shall not affect its exemption from the tax imposed under chapter 208.

(D) a company (other than a company which is described in any of the preceding paragraphs of this subdivision or in any of the subdivisions of this subsection) which is exempt from federal income taxes under section 501 (a) or any other section of the Internal Revenue Code and which has been determined by the Internal Revenue Service, in a determination referring to the company, to be a company which is exempt from federal income taxes. The company shall be exempt from the tax imposed under chapter 208 for each income year to which such determination applies. If the Internal Revenue Service subsequently determines that the company has ceased to be exempt from federal income taxes, the company shall immediately give written notice of such subsequent determination to the commissioner and shall be subject to the tax imposed under chapter 208 for each income year to which such subsequent determination applies. The fact that the company is or may be subject to the tax imposed by section 507 (c), 511 (a) (1) or 527 (f) (1) of the Internal Revenue Code shall not affect its exemption from the tax imposed under chapter 208.

(3) “Company subject to gross earnings taxes under chapter 210” means a company which is described in section 12-249. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the company shall file with the commissioner the annual return which is required by section 12-222, by the due date of such return or, if applicable, its extended due date.

(4) “Company all of the properties of which in this state are operated by a company subject to such gross earnings taxes” means a company, all of the properties of which in this state are operated for railroad purposes by another company which is subject to gross earnings taxes under chapter 210. If all such properties (or any portion thereof) in this state are not operated by such other company for railroad purposes, then the company which owns such property shall be subject to the tax imposed under chapter 208. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the company shall file with the commissioner the annual return which is required by section 12-222, by the due date of such return or, if applicable, its extended due date.

(5) “Nonprofit cooperative ownership housing stock and nonstock corporation, when residence in such housing is restricted to members of the corporation and ownership in such corporation is restricted to occupants of such housing” means a company which is described in section 1715e (a) (1) of title 12 of the United States Code, which is eleemosynary, and which owns or leases houses or apartment buildings and restricts occupancy of such houses or apartments in such apartment

buildings to members, in the case of a nonstock corporation, or to shareholders, in the case of a stock corporation. As used in the preceding sentence, “occupancy” means occupancy for dwelling purposes. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the company shall file with the commissioner the annual return which is required by section 12-222, by the due date of such return or, if applicable, its extended due date.

(6) “Cooperative housing corporation which has no taxable income” means a company which is described in section 216 (b) (1) of the Internal Revenue Code and section 1.216-1 (d) of title 26 of the Code of Federal Regulations and which has no taxable income as described in section 63 (a) of the Internal Revenue Code. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the company shall file with the commissioner the annual return which is required by section 12-222, by the due date of such return or, if applicable, its extended due date.

(7) “Organization or association of two or more persons established and operated for the exclusive purpose of promoting the success or defeat of any candidate for public office, of any political party, or of any question or constitutional amendment to be voted upon at any state or national election” means an organization which is exempt from federal income taxes under section 527 (a) of the Internal Revenue Code and which is described in section 527 (e) (1) of the Internal Revenue Code and section 1.527-2 (a) of title 26 of the Code of Federal Regulations. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the organization shall file with the commissioner a copy of its Form 1120-POL within the time, including extensions, allowed for filing an income tax return with the Internal Revenue Service for the year to which the Form 1120-POL pertains. The fact that the organization is or may be, under the provisions of section 527 (b) of the Internal Revenue Code, subject to the taxes imposed by section 11 or 1201 of the Internal Revenue Code shall not affect its exemption from the tax imposed under chapter 208.

(8) “Individually owned company which had gross annual revenues not in excess of one hundred million dollars in the most recently completed year; which engaged in the research, design, manufacture, sale or installation of alternative energy systems; and the net income of which is directly attributable to engaging in the research, design, manufacture, sale or installation of alternative energy systems; and the net income of which is directly attributable to engaging in the research, design, manufacture, sale or installation of alternative energy systems” means a company, the gross receipts or sales of which in its income year next preceding the income year for which exemption from the tax imposed under chapter 208 is claimed (as reported on the Form 1120 or Form 1120S which it filed for such preceding year) were not in excess of one hundred million dollars; the net income of which for the income year for which exemption from the tax imposed under chapter 208 is claimed is directly attributable to the research, design, manufacture, sale or installation of alternative energy systems (as defined in section 12-213) or parts and components thereof; and which has only one shareholder, and such shareholder is an individual. Notwithstanding the provisions of the preceding sentence, the company may have two shareholders, if the two are married to each other. For each income year for which exemption from the tax imposed under chapter 208 is claimed, the company shall file with the commissioner the annual return which is required by section 12-222, by the due date of such return or, if applicable, its extended due date.

(Effective December 19, 1984)