

tain any evidence of the suspension at the time the response was filed. Moncrieff-Yeates also responded that the July 24, 2012 judgment and the February 6, 2012 order were not mailed to him in compliance with the applicable statutes so as to make his appeal untimely.

¶11 On June 24, 2013, this Court dismissed the appeal as untimely, erroneously finding that the record before this Court “contains an affidavit of mailing filed August 31, 2012, showing mailing of the July 24 judgment to the appellant on July 25, 2012.” K.O.D. never supplied this Court with this affidavit of mailing. On July 3, 2013, Moncrieff-Yeates filed a motion to reconsider, urging that K.O.D. waived its right to sue “when it neglected to revive its charter at the earliest possible opportunity,” citing title 68, section 1212(C) of the Oklahoma Statutes. Whereupon, this Court ordered the district court clerk to transmit the entire record to this Court. Although the district court clerk transmitted only a partial record, it is sufficient for our review of the issue before this Court.

## II. PETITION IN ERROR RECAST AS APPLICATION TO ASSUME ORIGINAL JURISDICTION AND FOR A PREROGATIVE WRIT

¶12 This Court will, under proper circumstances, recast a petition in error as an application to assume original jurisdiction and a request for extraordinary relief. *See State ex rel., Bd. of Regents of the Univ. of Okla. v. Lucas*, 2013 OK 14, ¶ 1, 297 P.3d 378,380; *Smith v. Moore*, 2002 OK 49, ¶ 0, 50 P.3d 215, 216; *S.W. v. Hon. Duncan*, 2001 OK 39, ¶ 12, 24 P.3d 846, 850. Considerations in recasting an appeal as an original action are whether the issue is one of first impression, whether the issue is one that has been historically recognized by this Court as proper for extraordinary relief, and whether a writ is a proper remedy to prevent an inferior court from proceeding in a cause without authority or in excess of its jurisdiction. *S.W.*, 2001 OK 39 at ¶ 12, 24 P.3d at 850.

¶13 The first impression issue presented here is whether title 18, section 1099 can be utilized to avoid the imposition of title 68, section 1212(C)’s penalties upon a suspended corporation for failing to pay its franchise taxes. The second and third considerations are tied in this case. Historically, this Court has recognized that a writ is proper to prevent an inferior court from acting in excess of its authority. *Lucas*, 2013 OK 14 at ¶ 12, n. 11, 297 P.3d at 386, n. 11;

*S.W.*, 2001 OK 39 at ¶ 12, 24 P.3d at 850. When a court exercises jurisdiction over a suit brought by a party whose right to sue has been withdrawn by the Legislature, the court is acting in excess of its authority. In an order filed this same day, we recast the petition in error as an application to assume original jurisdiction and for a writ of mandamus for the reasons discussed below.

## III. ANALYSIS

¶14 Title 68, section 1212 of the Oklahoma Statutes sets forth the procedures for suspending a corporation for failure to comply with the tax code, i.e., failure to file and pay its corporate taxes.<sup>1</sup> The Tax Commission may enter an order directing the suspension of the corporation’s charter. The Tax Commission transmits the order to the Secretary of the State of Oklahoma who records it. 68 O.S.2011, § 1212(E). This record constitutes notice to the public of the suspension. *Id.*

¶15 Subsection (C) of section 1212 delineates the penalties that apply while the corporate charter is suspended: (1) During the time of suspension, the directors and officers become liable for any and all debts of the corporation incurred or created with their knowledge, approval, and consent as if the directors and officers were partners; (2) Any contract entered into by the corporation during suspension is voidable; (3) No affirmative relief shall be granted to the corporation on a cause of action arising before forfeiture unless the corporation is reinstated; and (4) The corporation loses its right to sue or defend in any court of this state, except in a suit for forfeiture of its charter. 68 O.S.2011, § 1212(C); *Williams v. Smith & Nephew, Inc.*, 2009 OK 36, ¶ 14, 212 P.3d 484, 488. If a corporation forfeits its right to sue, then a district court would not have the authority to grant it affirmative relief during its suspension. *Williams*, ¶ 16, p. 488.

¶16 The right to sue, to defend, and to be granted affirmative relief can be restored upon reinstatement. *Id.* ¶ 21, p. 491. In *Corman v. H-30 Drilling, Inc.*, 2001 OK 92, 40 P.3d 1051, an oil and gas leaseholder sued a drilling company for reimbursement of clean-up costs incurred as a result of an Oklahoma Corporation Commission order. *Id.* ¶ 1, p. 1051. Although having known for two years that the drilling company’s corporate charter was suspended for failure to pay corporate franchise taxes, the leaseholder waited until the day of trial to raise the