

Form 811—General Information (Certificate of Reinstatement)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

An entity organized or registered under the provisions of the Texas Business Organizations Code (BOC), or that has elected to adopt the provisions of the BOC may use this form to reinstate: (1) the existence of a domestic filing entity that has been terminated by the filing of a certificate of termination; (2) the existence of a domestic filing entity that has been involuntarily terminated by action of the secretary of state; or (3) the registration of a foreign filing entity whose certificate of registration has been revoked by action of the secretary of state.

An entity that has forfeited its existence or registration under the provisions of the Tax Code must use Form 801 to reinstate its existence or registration.

An entity that has had its certificate of formation or its certificate of registration terminated or revoked by court order may not file a certificate of reinstatement.

🕒 Time Frames for Reinstatement 🕒

- **Terminated Domestic Entity**: A certificate of reinstatement for a voluntarily terminated domestic entity must be filed no later than the third (3rd) anniversary of the effective date of the certificate of termination. (The condition for reinstatement described under 4A of the form.)
- **Involuntarily Terminated Domestic Entity**: A certificate of reinstatement for a domestic filing entity that has had its certificate of formation involuntarily terminated by the secretary of state may be filed at any time so long as the entity would otherwise have continued to exist. However, a domestic filing entity is considered to have continued in existence without interruption from the date of termination only if the filing entity is reinstated before the third (3rd) anniversary of the date of its involuntary termination. (The condition described under 4B.)
- **Revoked Foreign Entity Registration**: A certificate of reinstatement for a foreign filing entity that has had its certificate of registration revoked by action of the secretary of state must be filed no later than the third (3rd) anniversary of the effective date of the certificate of revocation. (The condition described under 4C.)

Instructions for Form

- **Item 1—Entity Name and File Number**: Set forth the legal name of the filing entity and the file number assigned by the secretary of state. If the entity is a foreign filing entity that was granted authority to transact business under a different name, then also set forth the assumed name under which the foreign filing entity was registered to transact business.
- **Item 2—Jurisdictional Information**: It is recommended that the jurisdiction of organization and the entity's date of organization or registration in Texas be provided to ensure that the correct entity is reinstated.
- **Item 3—Date of Termination or Revocation**: Provide the effective date of the termination or revocation of the entity's certificate of formation or certificate of registration. In the case of a

terminated domestic entity that has delayed the effectiveness of the filing of its certificate of termination, provide the effective date as stated on the certificate.

- **Item 4—Conditions for Reinstatement:** Check the box that describes the grounds or conditions for reinstatement of the entity’s certificate of formation or registration. Do not check more than one box. If unsure, verification of the circumstances giving rise to the inactive status of the entity may be obtained by calling the secretary of state at (512) 463-5555, by dialing 7-1-1 for relay services, by sending e-mail to corpinfo@sos.state.tx.us or by accessing the information on-line as a subscriber to SOSDirect. (Visit <http://www.sos.state.tx.us/corp/sosda/index.shtml> for SOSDirect information.)

4A. Reinstatement of a Texas Entity Following a Voluntary Termination: Under subchapter E of chapter 11 of the BOC, a terminated domestic filing entity may reinstate its existence no later than the third anniversary of the effective date of the filing of a certificate of termination if:

- (1) the termination was by mistake or was inadvertent;
- (2) the termination occurred without the approval of the entity’s governing persons when approval is required by the title of the BOC governing the entity;
- (3) the process of winding up before termination had not been completed by the entity; or
- (4) the legal existence of the entity is necessary to convey or assign property, to settle or release a claim or liability, to take an action, or to sign an instrument or agreement.

The owners, members, governing persons, or other persons specified by the BOC must approve the reinstatement of the entity in the manner provided by the title of the BOC governing the domestic entity.

4B. Reinstatement of a Texas Entity Following an Involuntary Termination: Under subchapter F of chapter 11 of the BOC, the secretary of state may involuntarily terminate the existence of a domestic filing entity, other than a domestic real estate investment trust, if the secretary finds that the entity has failed to:

- (1) file a report within the period required by law or to pay a fee or penalty prescribed by law when due and payable;
- (2) maintain a registered agent or registered office in Texas as required by law; or
- (3) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment.

As a condition to reinstatement, the entity must correct the circumstances that led to its involuntary termination and correct any other circumstances of the type described above, including the payment of any fees, interest or penalties.

4C. Reinstatement Following Revocation of a Registration of a Foreign Entity: Pursuant to subchapter C of chapter 9 of the BOC, the secretary of state may revoke the certificate of registration of a foreign filing entity if the secretary finds that the entity has failed to:

- (1) file a report within the period required by law or to pay a fee or penalty prescribed by law when due and payable;
- (2) maintain a registered agent or registered office in Texas as required by law;
- (3) amend its registration when required by law; or
- (4) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment.

As a condition to reinstatement, the entity must correct the circumstances that led to the revocation of its certificate of registration and correct any other circumstances of the type described above, including the payment of any fees, interest or penalties.

- **Item 5—Registered Agent and Registered Office:** A filing entity that requests reinstatement is required to provide the secretary of state with current registered agent and registered office information. The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The filing entity cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

A filing entity that was involuntarily terminated or that had its certificate of registration revoked for failure to maintain a registered agent or registered office in Texas need not submit an additional filing to effect a change to the registered agent or registered office. By providing the name of the newly designated agent and registered office, the entity will correct the deficiency that led to the involuntary termination or revocation.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the reinstatement. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Entity Name Availability:** The certificate of reinstatement cannot be filed if the entity name is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state.

If the entity name is no longer available or if a letter of consent cannot be obtained for the use of the name, it will be necessary to simultaneously submit a certificate of amendment to the certificate of formation to change the name of the entity as a condition of reinstatement. If the legal name of a foreign filing entity is not available, or if consent cannot be obtained, the foreign entity must reinstate and qualify to do business under an assumed name that meets the requirements for entity names by simultaneously filing an amended certificate of registration that states the assumed name under which the entity shall transact business.

- **Tax Clearance from Comptroller of Public Accounts:** Unless the filing entity is a nonprofit corporation, a certificate of reinstatement must be accompanied by a tax clearance letter from the Texas Comptroller of Public Accounts stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated.

Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter. The Comptroller may be contacted by e-mail at tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.

- **Execution:** A certificate of reinstatement submitted to reinstate a filing entity must be signed by a person authorized to act on behalf of the entity in regard to the filing instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

The certificate of reinstatement need not be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as the registered agent by a managerial official is an affirmation by that official that the person named in the instrument has consented to serve as registered agent. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

- **Payment and Delivery Instructions:**

- The filing fee for a certificate of reinstatement following an involuntary termination is **\$75**, unless the entity is a nonprofit corporation or a cooperative association. The filing fee for a certificate of reinstatement for a nonprofit corporation or a cooperative association is **\$5**.
- The filing fee for a certificate of reinstatement following a voluntary termination is **\$15**, unless the entity is a nonprofit corporation or a cooperative association. The filing fee for a certificate of reinstatement for a nonprofit corporation or a cooperative association is **\$5**.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or MasterCard, Visa, and Discover credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Applicable fees for any additional filings required as a condition for reinstatement must be submitted together with the appropriate filing fee for the certificate of reinstatement.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

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