

Instructions for Form D5

Purpose of Form

Filing this Notification of Dissolution or Surrender, form D5, shall serve as a corporation's notice to the Ohio Department of Taxation of the corporation's intent to dissolve its Ohio charter or surrender its foreign license with the Ohio Secretary of State. In addition, in certain situations, a domestic for-profit corporation will need to file form D5 for other dissolution/surrender scenarios involving a merger, consolidation or conversion. Form D5 and these instructions apply only to the Certificate of Tax Clearance requirements and affidavit requirements as they pertain to the Ohio Department of Taxation. This form **must be submitted to the Ohio Department of Taxation at least 30 days prior to the date that the corporation intends to file for dissolution/surrender with the Ohio Secretary of State.** These instructions do not address all other requirements for releases and affidavits required by the Ohio Secretary of State and other governmental agencies. Please visit www.OhioSecretaryofState.gov for their filing information and requirements.

Definitions

As used throughout form D5 and these instructions:

- A domestic corporation is either (1) a corporation organized under laws of Ohio or (2) a bank, savings bank or savings and loan association chartered under the laws of the United States, the main office of which is located in Ohio.
- A foreign corporation is (1) a corporation organized under the laws of a state other than Ohio, (2) a corporation organized under the laws of the District of Columbia or another country or (3) a bank, savings bank or savings and loan association chartered under the laws of the United States, the main office of which is located in another state.
- A nonprofit or not-for-profit corporation is a domestic or foreign corporation or domestic or foreign agricultural cooperative corporation that is formed for reasons other than gain or profit.
- The Certificate of Tax Clearance (Certificate) method is the process whereby a corporation obtains a Certificate of Tax Clearance from the Ohio Department of Taxation that confirms all tax returns that are administered by the tax commissioner are filed and all tax liabilities and fees are paid. The Certificate of Tax Clearance must accompany the corporation's filing of dissolution/surrender with the Ohio Secretary of State. This method is required for domestic for-profit corporations to voluntarily dissolve with the Ohio Secretary of State. Other corporations may elect this method or the affidavit method.
- The affidavit method is the process whereby a corporation notifies the Ohio Department of Taxation of its intent to file for dissolution/surrender with the Ohio Secretary of State and in lieu of obtaining a Certificate of Tax Clearance from the Ohio Department of Taxation, the corporation acknowledges that the dissolution/surrender does not relieve the corporation from filing all tax returns administered by the tax commissioner and payment of all tax liabilities and fees. Domestic nonprofit corporations, domestic nonprofit agricultural co-

operatives, foreign for-profit corporations, foreign nonprofit corporations and foreign nonprofit agricultural cooperatives may elect this method or the Certificate method.

Secretary of State

Each domestic corporation, whether organized for-profit or not-for-profit, seeking to dissolve its Ohio charter and each foreign corporation, whether organized for-profit or not-for-profit, seeking to surrender its Ohio license is required to file for dissolution/surrender with the Ohio Secretary of State. The filing for dissolution/surrender with the Ohio Secretary of State must be accompanied by certain affidavits, guarantees, releases or other documents obtained from various governmental agencies including the Ohio Department of Taxation, the Ohio Department of Job and Family Services and the Ohio Bureau of Workers' Compensation. Visit www.OhioSecretaryofState.gov for their filing information and requirements.

1. Domestic For-Profit Corporations

A domestic for-profit corporation seeking to dissolve its Ohio charter is required to use the Certificate method. The corporation must obtain from the Ohio Department of Taxation a Certificate of Tax Clearance confirming that all applicable taxes/fees administered by the tax commissioner have been paid through the issue date on the Certificate of Tax Clearance. The corporation must then file for dissolution or surrender with the Ohio Secretary of State, accompanied by the Certificate of Tax Clearance issued by the Ohio Department of Taxation and required documents from the other state agencies pursuant to R.C. 1701.86(H).

In addition, the Certificate method must be used by any domestic for-profit corporation that will dissolve as a result of a merger, conversion or consolidation into an entity that is not a corporation that is chartered/licensed in Ohio.

By example, this includes, but is not limited to the following:

- Domestic for-profit corporation merges into a domestic LLC;
- Domestic for-profit corporation converts into a foreign LLC; and
- Domestic for-profit corporation consolidates into a foreign corporation that is not registered to do business in Ohio.

Note: A Certificate of Tax Clearance is not required if a domestic for-profit corporation merges, consolidates or converts into a foreign licensed corporation that is registered with the Ohio Secretary of State.

To apply for a Certificate of Tax Clearance, select the "Certificate of Tax Clearance" box as the dissolution/surrender method on line 3 of form D5 and **submit the form to the Ohio Department of Taxation at least 30 days prior to the date that such Certificate of Tax Clearance is desired.** Upon receipt of form D5, the Ohio Department of Taxation will review all business tax accounts associated with the corporation to verify that all tax returns have been filed and all liabilities and fees paid. If the Ohio Department of Taxation ascertains that

there are any additional outstanding tax liabilities and fees owed or any tax returns that have not been filed, a notice will be sent to the corporation detailing what is owed. All outstanding liabilities and fees or filings that are due and detailed in this notice must be paid with certified checks or money orders before a Certificate of Tax Clearance will be issued.

To avoid delay, any delinquent tax returns or reports should accompany form D5 together with separate certified checks or money orders in payment of each of the taxes/fees due thereon. Failure to do so may necessitate the issuance of bills and assessments, and will delay issuance of the desired Certificate of Tax Clearance. See section 3 for instructions on filing requirements and how to close the various tax-types accounts of a corporation with the Ohio Department of Taxation.

Upon determining that all applicable taxes/fees have been paid, the Ohio Department of Taxation will issue a Certificate of Tax Clearance to the corporation.

2. All Corporations Other than Domestic For-Profit Corporations

A. Certificate Method

If the corporation chooses the Certificate method, the process for obtaining the Certificate of Tax Clearance from the Ohio Department of Taxation is the same as described in section 1.

B. Affidavit Method

If a corporation, other than a domestic for-profit corporation, chooses the affidavit method to dissolve its Ohio charter or surrender its foreign license, filing form D5 shall satisfy the requirements under R.C. sections 1703.17(D), 1729.55(H)(6) and 1702.47(G)(3). The corporation would select the "Affidavit" box as the dissolution/surrender method on line 3 of form D5 and **submit the form to the Ohio Department of Taxation at least 30 days prior to the date that such corporation intends to file for dissolution/surrender with the Ohio Secretary of State.**

Even though under this method the corporation will not obtain a Certificate of Tax Clearance from the Ohio Department of Taxation, the department will still ascertain if there are any additional outstanding tax liabilities and fees owed or any tax returns that have not been filed. If a deficiency exists, a notice will be sent to the corporation detailing what is owed. All outstanding liabilities and fees or filings that are due and detailed in this notice must be paid by the corporation with certified checks or money orders. Failure to do so may necessitate the issuance of bills and assessments.

3. Requirements for Closing Accounts with the Ohio Department of Taxation

There are certain tax responsibilities that must be followed when closing a business in Ohio. Please see below for instructions or visit tax.ohio.gov and click on Business.

A. Sales and Use Tax

- A business with a vendor's license is required to file a final sales tax return. This return would be filed for the period in which the final sale was made. The vendor's license

can be closed while filing the final return through the Ohio Business Gateway by selecting "Cancel my account" or through the TeleFile system.

- If the final return has previously been filed, form ST 3C can be used to request a date of cancellation.

B. Employer Withholding Tax

- A business that withholds individual income and/or school district income from its employee(s), and is closing, must complete form IT WHC, Change of Ohio Employer Name, Address or Status. This form may also be filed online through Ohio Business Gateway.
- The business must also file form IT 941, Ohio Employer's Annual Reconciliation, no later than 15 days after the discontinuation of business. This form may also be filed online through Ohio Business Gateway.
- EFT filers must file form IT 942, Ohio Employer's 4th Quarter/Annual Reconciliation, through Ohio Business Gateway.
- If the business has more than 250 employees, form IT 3 and all W-2s are required to be filed no later than 60 days from the last date of payroll.

C. School District Employer Withholding Tax

- A business that withholds individual income and/or school district income from its employee(s), and is closing, must complete form IT WHC, Change of Ohio Employer Name, Address or Status. This form may also be filed online through Ohio Business Gateway.
- A business that withholds school district income from its employee(s), and is closing, must also file form SD 141, Ohio School District Employer's Annual Reconciliation, no later than 15 days after the discontinuation of business. This form may also be filed online through Ohio Business Gateway.
- If the business has more than 250 employees, form IT 3 and all W-2s are required to be filed no later than 60 days from the last date of payroll.

D. Commercial Activity Tax

- Taxpayers who do not anticipate taxable gross receipts exceeding \$150,000 must cancel their account on or before May 10th of the current calendar year to avoid being subject to the annual minimum tax for that calendar year.
- Taxpayers that are registered as a combined or consolidated elected taxpayer group should complete form CAT CR and provide documentation detailing the value of ownership interest and registration status of the remaining members of the group. It may be necessary for the group to remain intact if some of the members remain subject to CAT.
- The taxpayer is required to file and pay all tax periods through the cancellation date.
- Taxpayers may cancel their CAT account via form CAT CR, which is available on the Ohio Department of Taxation's Web site at tax.ohio.gov or on Ohio Business Gateway.

E. Excise/Energy Tax

- The taxpayer is required to file and pay all required taxes up through the cancellation date. If the taxpayer cancels in the middle of a reporting period, the taxpayer must file a return and payment for the partial period.