

**THE WALKING DEAD:
FORFEITURES AND INVOLUNTARY TERMINATIONS OF
FILING ENTITIES**

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CHAPTER 12.1

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Secretary of State Form 803 (Periodic Report–Professional Association Reinstatement)

Secretary of State Form 804 (Periodic Report–Limited Partnership Reinstatement)

Secretary of State Form 811 (Certificate of Reinstatement of Filing Entity Voluntarily or Involuntarily Terminated Under Chapter 11 of BOC)

Secretary of State Form 814 (Certificate of Reinstatement of Professional Association After Failure to File Annual Statement)

Comptroller Form 05-359 (Request for Certificate of Account Status to Voluntarily Terminate a Taxable Entity's Existence in Texas)

Comptroller Form 05-391 (Tax Clearance Letter Request for Reinstatement)

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The Walking Dead: Forfeitures and Involuntary Terminations of Filing Entities

I. Introduction

Do either of these sound familiar?

Your client tells you she wants to terminate her entity and she has heard that if she just ignores the notices from the Comptroller's officer to file the franchise tax report the state will terminate her company for her. Your client called the Secretary of State's office, and they told her she needs to file documents with the Comptroller and Secretary of State. The client asks why she should go to all that trouble when the state will terminate the entity for her if she does nothing?

The client's existence was forfeited for failure to pay franchise taxes in 2010, but the company has continued to operate and has a substantial amount of real and personal property, including intangible property such as receivables. This situation comes to your attention when you filed suit for the company to collect on a promissory note executed in favor of the company in 2009 that became due in 2015. The maker of the note is arguing that the company cannot sue on the note and that the claim is barred because it was not brought within three years after the company's existence was forfeited. Now that the company's "forfeited existence" has come to your attention, you and the client have many questions. Can the company collect on the note? Where does the company stand with respect to its assets, rights, and liabilities? Does anyone in the company have any personal liability for liabilities incurred in the business? Can the company reinstate even though it is beyond the three-year post-termination survival period? What effect will a reinstatement have?

II. Types of Forfeitures and Involuntary Terminations of Filing Entities

A. Forfeiture of Taxable Entity Under Tax Code

The Secretary of State forfeits a taxable entity's charter or certificate if the Comptroller has forfeited the entity's privileges for failure to file a required report or pay franchise tax or penalty and has notified the Secretary of State that the entity has not revived its privileges within 120 days after the forfeiture of its privileges. Tax Code §§ 171.251, 171.2515, 171.309-171.311, 171.3125.

B. Involuntary Termination of Filing Entity by Secretary of State Under Chapter 11 of Business Organizations Code

The Secretary of State involuntarily terminates the existence of a filing entity for failure to maintain a registered office or registered agent or failure to timely file a required report (note that forfeiture of a limited partnership or nonprofit corporation for failure to file its periodic report occurs under the more specific provisions of Chapter 153 or Chapter 22), pay a fee or penalty, or cure the nonpayment or dishonor of a filing fee in connection with the filing of a certificate of formation. BOC §§ 11.251-11.252.

In the past, there has often been confusion about whether a termination arising from failure to pay franchise taxes was effectuated under the Tax Code or Article 7.01 of the Texas Business Corporation Act (TBCA), the predecessor to Section 11.251 of the Business Organizations Code (BOC). Even though Article 7.01 of the TBCA provided that failure to pay franchise taxes was a ground for involuntary dissolution by the Secretary of State under Article 7.01, it has long been the practice of the Secretary of State to proceed against a corporation that failed to pay its franchise tax by forfeiting the corporation's charter as provided under the Tax Code (after notification by the Comptroller that the corporation's privileges had been forfeited) rather than involuntarily dissolving the corporation under Article 7.01. There should be less confusion under current law in this regard since, unlike Article 7.01 of the TBCA, Section 11.251 of the BOC does not specify failure to pay franchise taxes as a ground for involuntary termination under the BOC.

C. Involuntary Termination of Limited Partnership by Secretary of State Under Chapter 153 of Business Organizations Code

The Secretary of State forfeits a limited partnership's right to transact business and ultimately terminates its certificate of formation if the limited partnership fails to file a periodic report required by Section 153.301 of the BOC. BOC §§ 153.307-153.311. Most limited partnerships are required to file an annual report in connection with the annual franchise tax filing, but are no longer required to file periodic reports under the BOC. A limited partnership that is not a taxable entity under the Tax Code (by virtue of being exempt from the franchise tax as a "passive entity") will still be subject to the periodic reporting requirements of the BOC. BOC § 153.301.

D. Involuntary Termination of Nonprofit Corporation by Secretary of State Under Chapter 22 of Business Organizations Code

The Secretary of State forfeits a nonprofit corporation's right to conduct affairs and ultimately involuntarily terminates the nonprofit corporation if the corporation fails to file its periodic report. BOC §§ 22.360-22.364.

E. Winding Up and Termination Pursuant to Judicial Proceedings

Statutory provisions that provide for winding up and/or termination of entities pursuant to judicial proceedings include the following: involuntary winding up and termination by judicial proceeding brought by Attorney General under BOC § 11.301; judicial decree of winding up on application of partner of partnership or member of limited liability company under BOC § 11.314; liquidating receivership and judicial decree of involuntary termination under BOC §§ 11.405, 11.412; suit by Attorney General under Tax Code § 171.303 to forfeit charter of taxable entity if ground exists for forfeiture.

F. Termination of LLP Registration as Distinguished from Winding Up and Termination of Underlying Partnership

The voluntary or involuntary termination of a partnership's registration as a limited liability partnership (LLP) does not terminate the partnership itself or require the winding up of the partnership. The liability protection provided to the general partners by the LLP registration would

cease upon termination of the LLP registration, but the underlying general partnership or limited partnership would continue to exist without the LLP feature. A general partnership, even a general partnership that has registered as an LLP, is not a “filing entity” under the BOC, and the involuntary termination provisions of the BOC that apply to “filing entities” thus do not apply to a general partnership. The forfeiture provisions of the Tax Code apply to “taxable entities,” which include general partnerships that are LLPs or that have an owner that is not a natural person, but the manner in which Section 171.309 of the Tax Code applies to a general partnership is not clear inasmuch as a general partnership does not file a charter or certificate with the Secretary of State.

G. Forfeiture and Involuntary Termination of Foreign Entity’s Registration to Transact Business in Texas

Some of the provisions discussed in this paper apply to foreign entities registered to transact business in Texas and provide for forfeiture of privileges and termination of a foreign entity’s registration to transact business in Texas. The focus of this paper is on forfeiture and involuntary termination provisions as they apply to domestic filing entities.

III. Effects of Forfeitures and Involuntary Terminations

A. Specific Effects of Forfeiture of Privileges and Charter of Taxable Entity Under Tax Code

Sec. 171.252. EFFECTS OF FORFEITURE. If the corporate privileges of a corporation are forfeited under this subchapter:

- (1) the corporation shall be denied the right to sue or defend in a court of this state; and
- (2) each director or officer of the corporation is liable for a debt of the corporation as provided by Section 171.255 of this code.

Sec. 171.253. SUIT ON CAUSE OF ACTION ARISING BEFORE FORFEITURE. In a suit against a corporation on a cause of action arising before the forfeiture of the corporate privileges of the corporation, affirmative relief may not be granted to the corporation unless its corporate privileges are revived under this chapter.

Sec. 171.255. LIABILITY OF DIRECTOR AND OFFICERS. (a) If the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. The liability includes liability for any tax or penalty imposed by this chapter on the corporation that becomes due and payable after the date of the forfeiture.

(b) The liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership.

(c) A director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred:

- (1) over the director's objection; or

(2) without the director's knowledge and that the exercise of reasonable diligence to become acquainted with the affairs of the corporation would not have revealed the intention to create the debt.

(d) If a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this chapter, the liability under this section of a director or officer of the corporation is not affected by the revival of the charter or certificate and the corporate privileges.

Sec. 171.2515. FORFEITURE OF RIGHT OF TAXABLE ENTITY TO TRANSACT BUSINESS IN THIS STATE.

...

(b) The provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to the forfeiture of a taxable entity's right to transact business in this state.

Sec. 171.302. CERTIFICATION BY COMPTROLLER. After the 120th day after the date that the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall certify the name of the corporation to the attorney general and the secretary of state.

Sec. 171.309. FORFEITURE BY SECRETARY OF STATE. The secretary of state may forfeit the charter, certificate, or registration of a taxable entity if:

- (1) the secretary receives the comptroller's certification under Section 171.302; and
- (2) the taxable entity does not revive its forfeited privileges within 120 days after the date that the privileges were forfeited.

Notwithstanding the language in Section 171.252(1) that appears to preclude a corporation whose privileges have been forfeited from defending an action, there is case law interpreting the language to prohibit such a corporation from bringing cross actions but not from merely defending itself or appealing an adverse judgment. *See Zaidi v. Shah*, 502 S.W.3d 434 (Tex.App.–Houston [14th Dist.] 2016, pet. filed); *Cognata v. Down Hole Injection, Inc.*, 375 S.W.3d 370 (Tex.App.–Houston [14th Dist.] 2012, pet. denied); *Cruse v. O'Quinn*, 273 S.W.3d 766, 770 (Tex.App.–Houston [14th Dist.] 2008, pet. denied); *Mello v. A.M.F., Inc.*, 7 S.W.3d 329, 331 (Tex.App.–Beaumont 1999, pet. denied); *Midwest Mech. Contractors, Inc. v. Commonwealth Constr. Co.*, 801 F.2d 748, 752 (5th Cir. 1986); *Bryan v. Cleveland Sand & Gravel Co.*, 139 S.W.2d 612, 613 (Tex.Civ.App.–Beaumont 1940, writ ref'd). Courts have long interpreted Section 171.252 and its predecessor to preclude an entity only from filing suit after forfeiting its right to do business, not to prohibit it from continuing an action filed before its privileges were forfeited. *See Waterway Ranch, LLC v. City of Annetta*, 411 S.W.3d 667 (Tex.App.–Fort Worth 2013, no pet.); *Texas Clinical Labs, Inc. v. Leavitt*, 535 F.3d 397 (5th Cir. 2008); *Scogin v. Texas Eagle Ford Shale Magazine*, Civil No. 2:14-CV-478, 2016 WL 632031 (S.D. Tex. Feb. 17, 2016).

A forfeiture of corporate privileges deprives a corporation of the capacity to sue but does not make a suit void, and the lack of capacity is waived unless challenged by a verified plea. *Cognata v. Down Hole Injection, Inc.*, 375 S.W.3d 370, 376 (Tex.App.–Houston [14th Dist.] 2012, pet. denied). If a forfeited corporation's capacity to sue is challenged, abatement rather than dismissal is favored, and the corporation is afforded the opportunity to cure the defect by paying the delinquent

taxes or requesting that the forfeiture be set aside. *Cognata v. Down Hole Injection, Inc.*, 375 S.W.3d 370, 376 (Tex.App.–Houston [14th Dist.] 2012, pet. denied). The denial of the right to sue or defend applies by its plain terms only to the corporation and does not apply to directors and officers; the penalty applicable to an officer or director under the forfeiture provision is personal liability for corporate debts under Section 171.255. *Suntide Sandpit, Inc. v. H & H Sand and Gravel, Inc.*, No. 13-11-00323-0CV, 2012 WL 2929605 (Tex.App.–Corpus Christi July 19, 2012, pet. denied).

In *Guardian Life Insurance Company of America v. Kinder*, Civil Action No. H-06-1745, 2008 WL 243707 (S.D. Tex. Jan. 29, 2008), the court held that the right of a corporation whose charter had been forfeited under the Tax Code to defend itself and bring counterclaims in a suit brought within the three-year period under TBCA Article 7.12 controlled over the denial of the forfeited corporation's right to sue or defend under the Tax Code. *See also Donald v. Rhone*, 489 S.W.3d 584, 587 n. 5 (Tex.App.–Texarkana 2016, no pet.) (noting that trial court's holding that forfeited corporation was barred from asserting affirmative claims under Sections 171.252 and 171.253 failed to take into account BOC Section 11.356, which permits a terminated corporation to prosecute and defend legal actions after its termination). In another case discussing the interplay between the tax forfeiture provisions of the Tax Code and Article 7.12 of the TBCA, the court concluded that Section 171.251 of the Tax Code (barring a corporation from suing in a court of this state) rather than Article 7.12A of the TBCA (permitting a dissolved corporation to bring a suit during the three years following dissolution) controlled where a corporation filed suit after its privileges had been forfeited by the Comptroller and before its charter was forfeited by the Secretary of State. *Sun Packing, Inc. v. XenaCare Holdings, Inc.*, 924 F.Supp.2d 749 (S.D. Tex. 2012). It is not clear why the court in *Sun Packing* was applying Article 7.12 of the TBCA, which had expired at the time in question, but presumably the court would have reached the same result applying Section 11.356(a) of the BOC.

Whether a shareholder of a forfeited corporation may sue individually or derivatively on behalf of the corporation to enforce a right belonging to the corporation has been addressed in a number of cases over the years. The court in *Robinette v. Merrill Lynch, Pierce, Fenner & Smith*, Civil Action Nos. 3:96-CV-2923-D, 3:97-CV-0353-D, 2004 WL 6389547 (N.D. Tex. Nov. 23, 2004), discussed these cases at some length and concluded that the cases established the following principles: (1) forfeiture of a corporation's charter does not prohibit stockholders from obtaining relief from fraudulent and oppressive acts of corporate directors or prevent stockholders from redressing wrongs that injure their right and interest in corporate assets; (2) suit can only be maintained by a stockholder for the benefit of a corporation where the cause of action is based on fraud, ultra vires acts, or negligence of the directors; (3) an incapacitated corporation cannot bring a cause of action that is an ordinary one that accrues to the corporation in the due course of business, and such a suit cannot be maintained for the corporation's benefit by an agent, assignee, or stockholder; (4) when a corporation has been denied the right to use the courts, property the corporation holds in trust for its stockholders is not subject to appropriation by third parties, and suit must be brought by the individual stockholders in their own right; and (5) forfeiture of a corporate charter does not destroy or forfeit the property of the corporation, and the stockholders, who are the beneficial owners of the property, are authorized to prosecute or defend such actions in court as are necessary to protect their property rights. The court did not discuss whether Article 7.12 of the TBCA (recodified in Section 11.351-11.359 of the BOC) would alter the reasoning employed in the cases from which these principles were derived. (See discussion in Section IV. *infra* of the 1993

amendment to Article 7.12 of the TBCA that expanded the definition of a “dissolved corporation” under Article 7.12 to include a corporation whose charter has been forfeited under the Tax Code.)

Note that once a taxable entity’s privileges are forfeited (the first step in a forfeiture of the entity’s charter or certificate of formation), Section 171.255 provides that the personal liability of officers and directors extends back to debts created or incurred after the report, tax, or penalty was due. Reinstatement of the entity after the forfeiture of its privileges and charter does not extinguish the liability of a director or officer for debts created or incurred before the reinstatement. Although the provisions are expressed in corporate terms, they also apply to other taxable entities, such as limited partnerships and limited liability companies, pursuant to Section 171.2515(b). *See Bruce v. Freeman Decorating Servs., Inc.*, No. 14-10-00611-CV, 2011 WL 3585619 (Tex.App.–Houston [14th Dist.] Aug. 15, 2011, pet. denied) (rejecting argument that Section 171.255 only applies to corporations and holding individual who signed LLC’s Public Information Reports in years preceding forfeiture and who was listed as officer and/or director of LLC in such reports could reasonably be inferred to be officer or director at time debt at issue was created or incurred and was personally liable for amounts owed for services provided to LLC after forfeiture). The specific inclusion of liability for “any tax or penalty” imposed by Chapter 171 of the Tax Code after the forfeiture does not limit the scope of the debts for which directors and officers have personal liability under Section 171.255. The statute expressly provides that officers and directors are liable for “each debt” incurred under the specified circumstances, in addition to the liability for taxes and penalties. *See Bosch v. Cirro Group, Inc.*, No. 03-11-01625-CV, 2012 WL 5949481 (Tex.App.–Dallas Nov. 28, 2012, pet. denied).

Over the years, courts have wrestled with when a debt was incurred or created for purposes of Section 171.255 or its statutory predecessor. *See, e.g., Schwab v. Schlumberger Well Surveying Corp.*, 154 Tex. 379, 198 S.W.2d 79 (1946) (holding debt was created or incurred when original promissory note was executed before forfeiture rather than when subsequent renewal notes were executed); *Cain v. State*, 882 S.W.2d 515 (Tex.App.–Austin 1994, no writ) (applying rule of strict construction and holding debt for amounts expended by State of Texas to plug wells was created or incurred when State expended funds, rather than date of prior authorization by State to expend funds to plug wells, because debt was unliquidated obligation prior to actual expenditure); *River Oaks Shopping Center v. Pagan*, 712 S.W.2d 190 (Tex.App.–Houston [14th Dist.] 1986, writ ref’d n.r.e.) (holding post-forfeiture breach and damages related back to execution of lease so that debt was created or incurred on date of execution of lease); *Rogers v. Adler*, 697 S.W.2d 674 (Tex.App.–Dallas 1985, writ ref’d n.r.e.) (holding debt was created when contract was entered into prior to forfeiture rather than when judgment was entered after forfeiture); *Curry Auto Leasing, Inc. v. Byrd*, 683 S.W.3d 109 (Tex.App.–Dallas 1984, no writ) (holding corporate debts arising from failure to adhere to leasing contract related back to, and were created or incurred, when rental agreement was entered into rather than at the time defaults occurred).

Numerous recent cases have examined the issue of when a debt was created or incurred for purposes of liability of officers and directors under Section 171.255. In *Hovel v. Batzri*, 480 S.W.3d 132 (Tex. App.–Houston [1st Dist.] 2016, pet. filed), homeowners who had contracted with an LLC to build their home sued the LLC homebuilder for breach of contract and DTPA violations, and the LLC’s privileges were forfeited due to failure pay franchise taxes. The forfeiture occurred after the suit was filed but before any determination of liability. The plaintiffs obtained a default judgment against the LLC and then sought to hold the sole manager of the LLC personally liable for the LLC’s

debt under Section 171.255 of the Texas Tax Code. The trial court granted the manager's motion for summary judgment, and the court of appeals affirmed because there was no dispute that the contract was executed pre-forfeiture, and the breach, tortious conduct, and injury occurred pre-forfeiture. The plaintiffs argued that a debt does not come into existence until it is liquidated, relying in part on a narrow definition of "debt" adopted by the legislature in 1987. According to the plaintiffs, their damages remained unliquidated until they obtained the default judgment, and no debt was created or incurred until the default judgment issued during the forfeiture. Conversely, the LLC manager argued that the 1987 narrow definition of "debt" is no longer significant because the legislation enacting it has been repealed. The manager asserted a broad definition of "debt" that includes unliquidated obligations such that the LLC's debt was created or incurred before the forfeiture, when the acts or omissions that gave rise to the plaintiffs' claim occurred, and the default judgment related back to that time. Characterizing Section 171.255 as a penal statute such that any ambiguity must be "strictly construed" in favor of the party penalized by it, the court discussed numerous cases decided before the adoption of the definition of "debt" in 1987. The pre-1987 case law strictly construed the statute to treat debts as created or incurred at the time the relevant contractual obligations were incurred rather than at a later date when the obligations were breached or became due. Consistent with strict construction and this broad approach to "create or incur," the pre-1987 case law applied a "relation-back" doctrine. Next the court of appeals discussed the legislature's adoption and repeal of a narrow definition of "debt" and the subsequent case law in which the "relation-back" doctrine was applied inconsistently. The definition of "debt" adopted in the Tax Code in 1987 was "any legally enforceable obligation measured in a certain amount of money which must be performed or paid within an ascertainable period of time or on demand." This definition precluded corporations from deducting their contingent and unfixed losses from their taxable corporate surplus and thus increased revenue for the State. The definition also eliminated the ambiguity in "debt" and precluded courts from giving it a broad meaning. In 2008, the legislature repealed the definition of "debt" when it amended the Tax Code to adopt an entirely new method of calculating the franchise tax. After the repeal of the definition, the "relation-back" doctrine reemerged, and courts again concluded that a judgment debt is created or incurred when the conduct or contract occurs, even if the obligation is unliquidated at that time. With the historical context above in mind, the court of appeals considered whether the trial court erred by concluding that the LLC's debt in this case was not a debt created or incurred during forfeiture and, as a result, the manager did not have individual liability under Section 171.255. Applying the rule of strict construction and relying on pre-1987 Texas Supreme Court case law defining the terms "created" and "incurred," the court of appeals in this case concluded that the debt evidenced by the default judgment obtained by the plaintiffs against the LLC was created or incurred pre-forfeiture at the time that the parties established their contractual and other obligations. Thus, the court held that the manager was not individually liable for the LLC's debt. The court identified public policy goals of Section 171.255 and concluded that its interpretation did not run afoul of these public policy considerations.

In a vigorous and lengthy dissenting opinion in *Hovel v. Batzri*, Justice Keyes differed in her interpretation of how the principle of "strict construction" affects the interpretation of Section 171.255 as well as how to interpret the case law defining "debt" for purposes of the statute. Justice Keyes would have held the manager personally liable in this case on the basis that this was a judgment debt for wrongful acts of the entity that occurred prior to forfeiture with knowledge of the manager although the debt was not reduced to a legally enforceable obligation until after forfeiture.

In Justice Keyes' view, this is one of the types of debts for which officers and directors may be held personally liable under Section 171.255.

In *Taylor v. First Community Credit Union*, 316 S.W.3d 863 (Tex.App.–Houston [14th Dist.] 2010, no pet.), the court of appeals held an officer/director of a forfeited automobile dealership personally liable to a credit union for damages resulting from the corporation's breach of a dealership agreement on the basis that the debt was created or incurred when the agreement was breached, which occurred after the dealership's franchise tax report was due, rather than when the dealership entered into the contract in 2003, before the franchise tax was due. The court discussed a number of other cases dealing with the timing of when a debt is created or incurred for purposes of Section 171.255, and the court found earlier cases in which courts had based the creation or incurrence on the execution of the original contract were either distinguishable on their facts or impacted by a definition of "debt" adopted by the legislature in 1987. This definition stated that a "debt" is "any legally enforceable obligation measured in a certain amount of money which must be performed or paid within an ascertainable period of time or on demand." A holding that the execution of the dealer agreement in this case created a debt under Section 171.255 when no breach had occurred and no money was owed at that time would have conflicted with the statutory definition, and the court therefore declined to follow case law pre-dating the definition that would have equated the creation of the debt with entering into the contract. The definition relied upon by the court in *Taylor* was repealed in 2008 when the new margin tax provisions took effect, and there is currently no statutory definition of "debt" in Chapter 171 of the Tax Code.

Other recent cases in which the timing of the creation or incurrence of a contractual debt for purposes of Section 171.255 has been addressed include: *Viajes Gerpa, S.A. v. Fazeli*, No. 14-15-00608-CV, ___ S.W.3d ___ (Tex.App.–Houston [14th Dist.] 2016, no pet. h.) (discussing "relation back" theory and effect of repeal of statutory definition of "debt" and concluding that debt under MSA was created or incurred before forfeiture even assuming without deciding that "relation back" theory did not apply because default existed before forfeiture); *Lindley v. Performance Food Grp. of Texas, L.P.*, No. 04-16-00219-CV, 2016 WL 6242835 (Tex.App.–San Antonio 2016, no pet. h.) (relying on *Schwab v. Schlumberger* and distinguishing cases such as *Curry Auto Leasing* in which courts held that debts were incurred when initial contract or lease was signed; holding officer was personally liable for purchases of goods delivered when corporate charter was forfeited because debt on open account is incurred when goods or services are delivered or performed); *Super Ventures, Inc. v. Chaudry*, 501 S.W.3d 121 (Tex.App.–Fort Worth 2016, no pet.) (holding corporate officer personally liable under option provision of lease amendment because debt for breach of contract is created or incurred when contract in question is executed and lease amendment at issue was signed after corporation's franchise tax report was due and before corporation's privileges were reinstated); *Willis v. BPMT, LLC*, 471 S.W.3d 27 (Tex.App.–Houston [1st Dist.] 2015, no pet.) (relying on *Schwab* and discussing effect of repeal of definition of "debt" and holding that debts arising from obligations under lease agreement were created when lease agreement was entered into rather than later time when amount of money owed became certain); *Bon Amour Int'l, LLC v. Premier Place of Dallas, LLC*, No. 05-14-00816-CV, 2015 WL 4736784 (Tex.App.–Dallas 2015, no pet.) (relying on *Beesley v. Hydrocarbon Separation* and holding officer of LLC was not personally liable for past due rent and other charges due in 2013 under lease executed in 2011 because LLC was in good standing when lease was entered into); *Rossmann v. Bishop Colorado Retail Plaza, L.P.*, 455 S.W.3d 797 (Tex.App.–Dallas 2015, pet. denied) (holding debt for damages for breach of lease agreement, including costs of re-letting, was created or incurred when lease was entered into in 2010, not in

2012 after forfeiture of lessee); (*Beesley v. Hydrocarbon Separation, Inc.*, 358 S.W.3d 415, 423 (Tex.App.–Dallas 2012, no pet.) (discussing other cases in which debt was deemed to be created or incurred when underlying contract was originally entered into rather than when later breach, judgment, or renewal occurred and concluding debt was created when employment contract that required yearly payments was signed rather than when each payment became due); *Endsley Electric, Inc. v. Altech, Inc.*, 378 S.W.3d 15 (Tex.App.–Texarkana 2012, no pet.) (holding there was no evidence that liability was created or incurred after the corporate forfeiture so as to hold officers of electrical subcontractor liable under Section 171.255 where contract between contractor and subcontractor was signed in October 2008 and completed in March or April 2010, suit was filed on April 14, 2010, subcontractor’s charter was forfeited under Section 171.309 for failure to pay franchise taxes on January 28, 2011, and judgment was entered in August 2011).

In *Tryco Enterprises, Inc. v. Robinson*, 390 S.W.3d 497 (Tex.App.–Houston [1st Dist.] 2012, pet. dism’d), concurring and dissenting justices expressed differing views on whether James and Sharon Dixon, the owners and officers of a forfeited corporation, had personal liability under Section 171.255 of the Tax Code with respect to amounts owed by the corporation on a judgment stemming from violations of the Fair Labor Standards Act. The corporation’s charter was forfeited after the jury verdict and shortly before the judgment was entered. The majority found it unnecessary to reach the issue of the Dixons’ liability under Section 171.255 because it concluded the record supported personal liability based on veil-piercing findings. The dissenting justice did not believe that the record supported personal liability on veil-piercing grounds and thus analyzed whether the Dixons had personal liability as officers under Section 171.255, i.e., whether the FLSA liability at issue was a debt “created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived.” The dissenting justice concluded that the debt for unpaid overtime wages was created or incurred on the paydays for the pay periods in which the overtime labor was performed and that there was thus no liability for these amounts under Section 171.255 since the paydays preceded the event occasioning the forfeiture of corporate privileges. On the other hand, the dissent concluded that the Dixons did have personal liability under Section 171.255 for the statutory penalties and attorney’s fees included in the judgment, reasoning that these amounts were not created or incurred until the trial court determined the amount of these awards in its judgment, which was entered after the forfeiture. In a lengthy analysis of the application of Section 171.255, the concurring justice concluded that the Dixons had personal liability for the entire amount of damages in the FLSA suit on the basis that the debt was not created until the judgment was entered after the corporation’s forfeiture. The concurring justice reasoned that the damages were not the type of debt to which the relation-back doctrine applies and were not a sum certain (as required under the definition of “debt” in effect at the time) until the judgment in the FLSA lawsuit was entered.

In *Segarra v. Implemetrics Inc.*, Civil Action No. 4:13-CV-217, 2013 WL 5936602 (S.D. Tex. Nov. 5, 2013), the court held that the defendant corporation’s “debt” to the plaintiff for violations of Title VII of the Civil Rights Act of 1964 and the Family and Medical Leave Act would arise if and when the court entered judgment on the claims. The plaintiff’s allegations of discrimination spanned from August 2009 until September 2011. The corporation forfeited its privileges on February 8, 2008, and revived its privileges on October 24, 2011. The plaintiff thus sought to hold two individuals who were directors and officers of the corporation liable under Section 171.255 for the corporation’s discrimination. The court likened a judgment debt more to an administrative penalty than to a contract, and the court stated that administrative penalties have been

found to be created or incurred when assessed, whereas contractual debts are incurred when the parties enter into the contract regardless of the date of eventual default or judgment. Thus, the court dismissed the claims against the individual officers and directors and stated that the plaintiff could sue them to hold them personally liable under Section 171.255 if he obtained a judgment against the corporation and the corporation's privileges were forfeited at that time. *See also Lucky Dawg Movers, Inc. v. Wee Haul, Inc.*, No. 05-10-00222-CV, 2011 WL 5009792 (Tex.App.—Dallas Oct. 21, 2011, no pet.) (addressing whether a judgment rendered after corporate privileges were reinstated based on conduct that occurred while the privileges were forfeited could constitute a “debt” (under the repealed definition of “debt” that was in effect at the time of the suit) for which a director could be personally liable and concluding that the damages sustained as a result of the corporation's deceptive acts were assessed only when the jury returned its verdict, not at the time of the acts).

In *Anderson Petro-Equipment, Inc. v. State*, No. 03-13-00176-CV, 2013 WL 5858010 (Tex.App.—Austin Oct. 22, 2013, pet. denied), the State of Texas sought to impose liability on a corporate officer for money spent by the state to plug a well drilled by the corporation. The corporation ceased production on the well in 2002, and the corporation became noncompliant with Texas law when it failed to plug the well within 12 months of ceasing production. The corporation's charter was forfeited for failure to pay its franchise taxes in 2005. In 2006, the Texas Railroad Commission sent notice to the corporation to plug the well, and the Commission spent state funds to plug the well in 2009. Later in 2009, the state sued the corporation and an individual officer to recover the money spent to plug the well. The state relied on Section 171.255 to impose liability on the officer. The officer argued that his liability was extinguished when the corporation forfeited its charter. (The court noted that the officer did not contend that Section 171.255 can never be used to impose individual liability for plugging costs, but limited his contention to whether his liability was extinguished when the corporation's charter was forfeited assuming such potential liability exists.) The officer conceded that, for purposes of Section 171.255, the debt was created or incurred long after the corporation's taxes were due and its privileges were forfeited, but the officer argued that his liability, if any, ceased to exist once the corporation's charter was forfeited. The court understood the officer's argument to be that because a corporation could not be liable for a post-dissolution claim under Article 7.12 of the TBCA, neither could an individual officer of the corporation. (The court of appeals concluded earlier in the opinion that the state's claim in this case, though not ripe at the time the corporation's charter was forfeited, was nevertheless an “existing claim” as defined in Article 7.12 at the time of the corporation's dissolution because the facts giving rise to the cause of action occurred before the charter was forfeited. See further discussion *infra* of the interaction between the provisions of the TBCA/BOC with the Tax Code.) The court stated that the officer's argument seemed to conflate the requirements for corporate liability contained in Article 7.12 of the TBCA, which addresses the corporation's liability for “existing claims,” with the Tax Code requirements for an officer's individual liability for corporate “debts.” The court pointed out that the Tax Code does not make any reference to forfeiture of the corporate charter, and the court found no language in the statute suggesting that an officer is liable only for debts incurred during the window of time after the corporation has failed to pay its franchise taxes but before it has forfeited its charter. The court stated that Section 171.255(a) clearly and unambiguously states that an officer is liable for debts incurred during the time period after the relevant tax was due (for which the privileges are later forfeited) and before the privileges are revived. Because the corporate debt for which the officer was liable in this case was created or incurred after the tax was due and the privileges were never revived, the officer was personally liable.

A bankruptcy court has held that claims against directors and officers arising under Section 171.255 of the Tax Code based on forfeiture of corporate privileges are direct claims belonging to the holders of claims rather than derivative claims of the debtor. *In re University General Hosp. Sys., Inc.*, No. 15-31086-H3-11, 2016 WL 1620219 (Bankr. S.D. Tex. Apr. 20, 2016). Thus, the assertion of such claims did not violate the provision of a chapter 11 plan that enjoined the assertion of “derivative claims, including claims of third parties asserting alter ego claims, fraudulent transfer claims, guaranty claims, or any type of successor liability based on acts or omissions of the Debtors.”

Some courts have concluded that “debts” for which directors and officers may have personal liability under Section 171.255 do not include tort liability based on negligence. *Williams v. Adams*, 74 S.W.3d 437 (Tex.App.–Corpus Christi 2002, pet. denied); *Suntide Sandpit, Inc. v. H & H Sand and Gravel, Inc.*, No. 13-11-00323-0CV, 2012 WL 2929605 (Tex.App.–Corpus Christi July 19, 2012, pet. denied).

Under Section 171.255(c), a director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred over the director’s objection or without the director’s knowledge and that the exercise of reasonable diligence to become acquainted with the corporation’s affairs would not have revealed the intention to create the debt. Courts have concluded that a director relying on an exception to liability under this provision has the burden of proof, i.e., that the exceptions are affirmative defenses. *See Priddy v. Rawson*, 282 S.W.3d 588 (Tex.App.–Houston [14th Dist.] 2009, pet. denied); *In re Trammell*, 246 S.W.3d 815 (Tex.App.–Dallas 2008, no pet.); *PACCAR Fin. Corp. v. Potter*, 239 S.W.3d 879 (Tex.App.–Dallas 2007, no pet.); *see also Surber v. Woy*, No. 02-12-00452-CV, 2014 WL 1704258 (Tex.App.–Fort Worth Apr. 30, 2014, no pet.).

B. Specific Effects of Involuntary Termination of Filing Entity Under Chapter 11 of Business Organizations Code

Sec. 11.252. CERTIFICATE OF TERMINATION.

...

(c) Except as otherwise provided by this chapter, the existence of a filing entity is terminated on the issuance of the certificate of termination by the secretary of state.

C. Specific Effects of Forfeiture and Involuntary Termination of Limited Partnership Under Chapter 153 of Business Organizations Code

Sec. 153.309. EFFECT OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS.

(a) Unless the right of the limited partnership to transact business is revived in accordance with Section 153.310:

(1) the limited partnership may not maintain an action, suit, or proceeding in a court of this state; and

(2) a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the transaction of business by the limited partnership in this state.

(b) The forfeiture of the right to transact business in this state does not:

(1) impair the validity of a contract or act of the limited partnership; or

- (2) prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.
- (c) This section and Sections 153.307 and 153.308 do not affect the liability of a limited partner.

Sec. 153.311. TERMINATION OF CERTIFICATE OR REVOCATION OF REGISTRATION AFTER FORFEITURE. (a) The secretary of state may terminate the certificate of formation of a domestic limited partnership, or revoke the registration of a foreign limited partnership, if the limited partnership:

- (1) forfeits its right to transact business in this state under Section 153.307; and
- (2) fails to revive that right under Section 153.310.
- (b) Termination of the certificate or revocation of registration takes effect without judicial ascertainment.
- (c) The secretary of state shall note the termination or revocation and the date on the record kept in the secretary's office relating to the limited partnership.
- (d) On termination or revocation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner.

In *Collin County v. Hixon Family Partnership, Ltd.*, 365 S.W.3d 860 (Tex.App.—Dallas 2012, pet. denied), the court of appeals held that the forfeiture of a limited partnership's right to transact business and cancellation of its certificate did not prevent it from litigating in a condemnation proceeding initiated by the county because the partnership was the defendant, and Section 153.309(b)(2) does not prevent a limited partnership from defending an action, suit, or proceeding in a Texas court. See also *RK Fin. Grp., L.P. v. Allstate Sec. Indus.*, No. 07-12-00063-CV, 2013 WL 2475561 (Tex.App.—Amarillo June 6, 2013, no pet.) (stating that forfeiture of a limited partnership's right to do business prevents the limited partnership from maintaining an action, suit, or proceeding in Texas but does not prevent the limited partnership from defending an action, suit, or proceeding, and rejecting the contention that the ability to defend applies only when the forfeiture is remedied within 120 days). In *In re Kilroy*, 357 B.R. 411 (Bankr. S.D. Tex. 2006), the court noted that limited partners would not be able to bring a derivative suit on behalf of a limited partnership whose right to transact business had been forfeited due to its failure to file its periodic report, but the court in *In re Immobiliere Jeuness Etablissement*, 422 S.W.3d 909 (Tex.App.—Houston [14th Dist.] 2014, no pet.) concluded that Section 153.309 did not preclude a limited partner from maintaining a derivative suit on behalf of a limited partnership whose right to transact business had been forfeited.

D. Specific Effects of Forfeiture and Involuntary Termination of Nonprofit Corporation Under Chapter 22 of Business Organizations Code

Sec. 22.362. EFFECT OF FORFEITURE. (a) Unless the right of the corporation to conduct affairs in this state is revived under Section 22.363:

- (1) the corporation may not maintain an action, suit, or proceeding in a court of this state; and
- (2) a successor or assignee of the corporation may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the conduct of affairs by the corporation in this state.
- (b) This section does not affect the right of an assignee of the corporation as:

- (1) the holder in due course of a negotiable promissory note, check, or bill of exchange; or
- (2) the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument negotiable by law.
- (c) The forfeiture of the right to conduct affairs in this state does not:
 - (1) impair the validity of a contract or act of the corporation; or
 - (2) prevent the corporation from defending an action, suit, or proceeding in a court of this state.

Sec. 22.364. FAILURE TO REVIVE; TERMINATION OR REVOCATION. (a) The failure of a corporation that has forfeited its right to conduct affairs in this state to revive that right under Section 22.363 is grounds for:

- (1) the involuntary termination of the domestic corporation; or
- (2) the revocation of the foreign corporation's registration to transact business in this state.
- (b) The termination or revocation takes effect, without judicial action, when the secretary of state enters on the record of the corporation filed in the office of the secretary of state the word "forfeited" and the date of forfeiture and cites this chapter as authority for that forfeiture.

IV. Some Significant Provisions of Chapter 11 of Business Organizations Code Applicable to "Terminated Filing Entities" (Including Post-Termination Survival and Extinguishment of Claims)

Sec. 11.001. DEFINITIONS. In this chapter:

- (1) "Claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

...

- (3) "Existing claim" with respect to an entity means:

- (A) a claim that existed before the entity's termination and is not barred by limitations; or
- (B) a contractual obligation incurred after termination.

- (4) "Terminated entity" means a domestic entity the existence of which has been:

- (A) terminated in a manner authorized or required by this code, unless the entity has been reinstated in the manner provided by this code; or
- (B) forfeited pursuant to the Tax Code, unless the forfeiture has been set aside.

- (5) "Terminated filing entity" means a terminated entity that is a filing entity. ["Filing entity" includes a domestic corporation, limited partnership, limited liability company, and professional association. BOC § 1.002(22).]

...

Sec. 11.351. LIABILITY OF TERMINATED FILING ENTITY. A terminated filing entity is liable only for an existing claim.

Sec. 11.356. LIMITED SURVIVAL AFTER TERMINATION. (a) Notwithstanding the termination of a domestic filing entity under this chapter, the terminated filing

entity continues in existence until the third anniversary of the effective date of the entity's termination only for purposes of:

- (1) prosecuting or defending in the terminated filing entity's name an action or proceeding brought by or against the terminated entity;
- (2) permitting the survival of an existing claim by or against the terminated filing entity;
- (3) holding title to and liquidating property that remained with the terminated filing entity at the time of termination or property that is collected by the terminated filing entity after termination;
- (4) applying or distributing property, or its proceeds, as provided by Section 11.053; and
- (5) settling affairs not completed before termination.

(b) A terminated filing entity may not continue its existence for the purpose of continuing the business or affairs for which the terminated filing entity was formed unless the terminated filing entity is reinstated under Subchapter E.

(c) If an action on an existing claim by or against a terminated filing entity has been brought before the expiration of the three-year period after the date of the entity's termination and the claim was not extinguished under Section 11.359, the terminated filing entity continues to survive for purposes of:

- (1) the action until all judgments, orders, and decrees have been fully executed; and
- (2) the application or distribution of any property of the terminated filing entity as provided by Section 11.053 until the property has been applied or distributed.

Sec. 11.359. EXTINGUISHMENT OF EXISTING CLAIM. (a) Except as provided by Subsection (b), an existing claim by or against a terminated filing entity is extinguished unless an action or proceeding is brought on the claim not later than the third anniversary of the date of termination of the entity.

...

In *Texas Clinical Labs, Inc. v. Leavitt*, 535 F.3d 397, 404-05 (5th Cir. 2008), the court pointed out that a Texas corporation that was involuntarily dissolved under the TBCA for failure to maintain a registered agent in Texas had three years in which to bring a cause of action on an existing claim under Article 7.12 of the TBCA. The involuntarily dissolved corporation's claim arose two months before the corporation was dissolved, and an administrative action on the claim was initiated within three years after the dissolution. Thus, the dissolved corporation had the right to prosecute the proceedings to conclusion.

The relationship between the above provisions in Chapter 11 and provisions outside of Chapter 11 relating to involuntary terminations is not entirely clear. For example, references in Section 11.356 to "termination of a domestic filing entity under this chapter" and reinstatement "under Subchapter E" imply the provisions contemplate entities terminated or reinstated under those provisions, but other provisions that simply refer to a "terminated filing entity" along with the broad definition of "terminated entity" suggest application of these provisions to entities involuntarily terminated under provisions outside of Chapter 11. As is further discussed below, whether the reinstatement of an entity relates back or has any retroactive effect is a matter that is not addressed by statute in situations other than the reinstatement of a voluntarily or involuntarily terminated entity within three years of its termination under BOC Section 11.206 or 11.253(d). Provisos in the

definition of a “terminated entity” (i.e., “unless the entity has been reinstated in the manner provided in this code” and “unless the forfeiture has been set aside”) might be read to avoid the operation of some of the provisions applicable to a “terminated entity” in the case of an entity that has been reinstated.

In 1993, the Texas Business Corporation Act (TBCA) was amended to include a corporation whose charter was forfeited pursuant to the Tax Code in the definition of a “dissolved corporation” for purposes of Article 7.12 of the TBCA. The provisions of Article 7.12 of the TBCA have been carried forward in Sections 11.001, 11.351, and 11.356-11.359 of the BOC and apply to all filing entities. Before 1993, a corporation whose charter was forfeited under the Tax Code was not considered a dissolved corporation, and TBCA Article 7.12 thus did not apply to a forfeited corporation. *Benham v. Benham*, 726 S.W.2d 618 (Tex.App.—Amarillo 1987, writ ref’d n.r.e.). Although a forfeited corporation was denied the right to do business and to sue in any court in Texas, its legal existence was not extinguished because it had a statutory right to be reinstated. *See Damico v. Mountain River Owners’ Ass’n, Inc.*, No. 11-98-00044-CV, 1999 WL 33747845 (Tex.App.—Eastland July 29, 1999, no pet.) (not designated for publication) (holding amendment to TBCA Article 7.12 did not apply to 1978 forfeiture of corporation and 1984 assignment of forfeited corporation’s rights because the events predated the amendment and discussing and applying pre-amendment law regarding forfeiture); *see also Texas Clinical Labs, Inc. v. Leavitt*, 535 F.3d 397, 405 n. 13 (5th Cir. 2008) (pointing out that before TBCA Article 7.12 was amended in 1993, a forfeited corporation was not considered to be a “dissolved corporation” and was not entitled to the benefit of three-year survival statute). With the amendment of the definition of a “dissolved corporation” in TBCA Article 7.12 in 1993, Article 7.12 became applicable to a corporation whose charter was forfeited under the Tax Code, unless the forfeiture was set aside. This amendment also applied to LLCs by virtue of Article 8.12 of the Texas Limited Liability Company Act, which made TBCA Article 7.12 applicable to LLCs. The scope of the successor provisions in Chapter 11 of the BOC was further broadened to apply to all filing entities. *See* BOC §§11.001, 11.351, 11.356-11.359.

Since the 1993 amendments, courts in a number of cases have applied the rules in TBCA Article 7.12 or BOC Sections 11.351-11.359 regarding the corporate existence and viability of claims by and against corporations whose charters have been forfeited under the Tax Code. *See, e.g., Atcco Mortg., Inc. v. Beasley*, No. 11-14-0006-CV, 2016 WL 1274129 (Tex.App.—Eastland Mar. 31, 2016, no pet.) (corporation could not assert claim based on default judgment obtained by it before forfeiture because claim was extinguished under BOC Section 11.359 three years after forfeiture); *Cohen Acquisition Corp. v. EEPB, P.C.*, No. 14-14-00330-CV, 2015 WL 2404869 (Tex.App.—Houston [14th Dist.] May 19, 2015, pet. denied) (claim against forfeited corporation was extinguished under BOC Section 11.359 three years after forfeiture); *Anderson Petro- Equip., Inc. v. State*, No. 03-13-00176-CV, 2013 WL 5858010 (Tex.App.—Austin 2013, pet. denied) (state’s claim to recover funds spent to plug well drilled by corporation was “existing claim” under Article 7.12 of the TBCA even though claim was not ripe when corporation’s charter was forfeited under Tax Code because actions giving rise to state’s claim (failure to plug well within 12 months after ceasing production) occurred before corporation’s dissolution); *Endsley Elec., Inc. v. Altech, Inc.*, 378 S.W.3d 15 (Tex.App.—Texarkana 2012, no pet.) (corporation whose charter was forfeited under Tax Code in January 2011 continued to exist under Section 11.356 of the BOC for purposes of defending suit brought against it in April 2010); *Anderson Petro-Equip., Inc. v. State*, 317 S.W.3d 812 (Tex.App.—Austin 2010, pet. denied) (state’s claims against forfeited corporation to enforce

orders issued after forfeiture and collect clean-up costs incurred in plugging wells after forfeiture were “existing claims,” albeit in contingent and unmaturing form, prior to forfeiture, and thus could be asserted within three years after forfeiture); *First Trust Corp. TTEE FBO v. Edwards*, 172 S.W.3d 230 (Tex.App.–Dallas 2005, pet. denied) (forfeited corporation continued to exist for three years for limited purposes under TBCA Article 7.12 and its assets remained vested in corporation so that corporate form could not be disregarded based only on forfeiture of corporate charter); *Emmett Props, Inc. v. Halliburton Energy Servs., Inc.*, 167 S.W.3d 365 (Tex.App.–Houston [14th Dist.] 2005, pet. denied) (corporation could not sue on claim that existed before forfeiture and was not asserted within three years after forfeiture because claim was barred by TBCA Article 7.12); *Landrum v. Thunderbird Speedway*, 97 S.W.3d 756 (Tex.App.–Dallas 2003, no pet.) (corporation could not be held liable on wrongful death claim based on accident occurring sixteen months after tax forfeiture of corporation because claim was not “existing claim” that could be asserted against dissolved corporation pursuant to TBCA Article 7.12); *Sun Packing, Inc. v. XenaCare Holdings, Inc.*, 924 F.Supp.2d 749 (S.D. Tex. 2012) (Section 171.251 of Tax Code (barring corporation from suing in court of this state) rather than TBCA Article 7.12A (permitting dissolved corporation to bring suit during three years following dissolution) controlled where corporation filed suit after its privileges had been forfeited by the Comptroller and before its charter was forfeited by the Secretary of State); *In re Am. Heartland Sagebrush Sec. Invs., Inc.*, 334 B.R.848 (Bankr. N.D. Tex. 2005) (corporation that had been forfeited under Tax Code more than ten years earlier could not file Chapter 7 bankruptcy because its existence as a dissolved corporation for winding up purposes only continued for three years following its dissolution); *In re ABZ Ins. Servs., Inc.*, 245 B.R. 255 (Bankr. N.D. Tex. 2000) (corporation that had been forfeited under Tax Code was eligible for bankruptcy relief under Chapter 7 where proceeding was filed within three years of dissolution because TBCA Article 7.12 provides that dissolved corporation continues its existence for three years following dissolution for limited purposes of liquidation and distribution of assets); *Construtodo, S.A. de C.V. v. Conficasa Holdings, Inc.*, Civil Action No. H-12-3026, 2014 WL 427114 (S.D. Tex. Jan. 31, 2014) (relying on Tax Code and three-year survival provision of BOC Section 11.356 and dismissing corporation’s suit because corporation’s foreign registration was forfeited more than three years before suit was filed (it apparently not having been raised that the definition of a “terminated entity” includes only domestic entities)); *Guardian Life Ins. Co. of Am. v. Kinder*, Civil Action No. H-06-1745, 2008 WL 243707 (S.D. Tex. Jan. 29, 2008) (forfeited corporation’s right to defend itself and bring counterclaims in suit brought within three-year period under TBCA Article 7.12 controlled over denial of forfeited corporation’s right to sue or defend under Tax Code). In most of these cases, the forfeited corporations had not been reinstated so that the question of the effect of a reinstatement did not arise.

As noted below, TBCA Article 7.12, as amended in 1993, and the successor provisions of the BOC have been applied to preclude a corporation that was reinstated under the Tax Code after the expiration of the three-year survival period from suing on pre-forfeiture claims that were not brought within the three-year survival period. *Emmett Props., Inc. v. Halliburton Energy Servs., Inc.*, 167 S.W.3d 365 (Tex.App.–Houston [14th Dist.] 2005, pet. denied); *Atcco Mortg., Inc. v. Beasley*, No. 11-14-0006-CV, 2016 WL 1274129 (Tex.App.–Eastland Mar. 31, 2016, no pet.). Similarly, pre-forfeiture claims against a reinstated entity have been held to be barred where the reinstatement did not occur within three years after its forfeiture. *Cohen Acquisition Corp. v. EEPB, P.C.*, No. 14-14-00330-CV, 2015 WL 2404869 (Tex.App.–Houston [14th Dist.] May 19, 2015, pet. denied).

V. Reinstatement After Involuntary Termination

A. Reinstatement of Taxable Entity After Forfeiture Under Tax Code

The BOC specifies that “a filing entity whose certificate of formation has been forfeited under the provisions of the Tax Code must follow the procedures of the Tax Code to reinstate the certificate of formation.” BOC § 11.254. Thus, the reinstatement provisions of the Tax Code rather than the provisions of Chapter 11 of the BOC govern reinstatement after a tax forfeiture. *See* Tex. Att’y Gen. Op. M-600 (1970).

An entity whose certificate of formation has been forfeited under the Tax Code for failure to file a report or pay franchise tax may be reinstated upon request of a “stockholder, director, or officer of the corporation at the time of the forfeiture” (see SOS Form 801 for the equivalent persons in non-corporate taxable entities) if each delinquent report has been filed and any delinquent tax, penalty, and interest has been paid. Tax Code §§ 171.312-171.313. There is no deadline or time limit for a reinstatement under the Tax Code.

B. Specific Effects of Reinstatement of Taxable Entity Under Tax Code

Sec. 171.255. LIABILITY OF DIRECTOR AND OFFICERS.

...

(d) If a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this chapter, the liability under this section of a director or officer of the corporation is not affected by the revival of the charter or certificate and the corporate privileges.

Sec. 171.314. CORPORATE PRIVILEGES AFTER FORFEITURE BY SECRETARY OF STATE IS SET ASIDE. If the secretary of state sets aside under this chapter the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation.

A number of cases have held that reinstatement after forfeiture under the Tax Code “relates back” to the date of the forfeiture. *E.g., Hinkle v. Adams*, 74 S.W.3d 189 (Tex.App.–Texarkana 2002, no pet.); *Mello v. A.M.F. Inc.*, 7 S.W.3d 329 (Tex.App.–Beaumont 1999, pet. denied); *G. Richard Goins Const. Co., Inc. v. S.B. McLaughlin Assocs., Inc.*, 930 S.W.2d 124 (Tex.App.–Tyler 1996, writ denied); *M & M Const. Co. v. Great Am. Ins. Co.*, 747 S.W.2d 552 (Tex.App.–Corpus Christi 1988, no writ); *Bluebonnet Farms, Inc. v. Gibraltar Savings Ass’n*, 618 S.W.2d 81 (Tex.Civ.App.–Houston [1st Dist.] 1980, writ ref’d n.r.e.).

As discussed above, in 1993, Article 7.12F of the TBCA was amended to provide that the term “dissolved corporation” in Article 7.12 includes, in addition to corporations voluntarily or involuntarily dissolved under the TBCA, a corporation whose charter has been forfeited pursuant to the Tax Code, unless the forfeiture has been set aside. This approach has been carried forward in Section 11.001(4) of the BOC, which defines a “terminated entity” to include not only a domestic entity terminated under the BOC, but a domestic entity that has been forfeited pursuant to the Tax Code, unless the forfeiture has been set aside. Article 7.12 of the TBCA provided for the survival of a dissolved corporation for a period of three years for purposes of taking various actions, including

suing on and defending “existing claims” as that term was defined by the statute. The provisions of Article 7.12 of the TBCA have been carried forward in Sections 11.001, 11.351, and 11.356-11.359 of the BOC and apply to all filing entities.

In cases decided after the 1993 amendment, courts have generally continued to pronounce that reinstatement after forfeiture of a corporation’s charter under the Tax Code relates back and operates retroactively without discussion of the 1993 amendment. *Marshall Feature Recognition, LLC v. Pepsi-Cola Co.*, No. 6:12-cv-00956-JRG-RSP, 2015 WL 5912672 (E.D. Tex. Sep. 27, 2015); *Ocrum, Inc. v. Bartosh*, No. 01-11-00793-CV, 2012 WL 4740859 (Tex.App.–Houston [1st Dist.] Oct. 4, 2012, no pet.); *Parker County’s Squaw Creek Downs, L.P. v. Watson*, Nos. 2-08-255-CV, 2-08-354-CV, 2009 WL 885941 (Tex.App.–Fort Worth Apr. 2, 2009, pet. denied); *Phillips Staffing Servs., Inc. v. Spherion Atlantic Workforce, L.L.C.*, No. 4:05-CV-407, 2007 WL 922149 (E.D. Tex. March 23, 2007); *Hinkle v. Adams*, 74 S.W.3d 189 (Tex.App.–Texarkana 2002, no pet.); *Mello v. A.M.F. Inc.*, 7 S.W.3d 329 (Tex.App.–Beaumont 1999, pet. denied); *see also Sun Packing, Inc. v. XenaCare Holdings, Inc.*, 924 F.Supp.2d 749 (S.D. Tex. 2012) (acknowledging that reinstatement and revival of corporate privileges related back for purposes of state law, but concluding diversity of citizenship must be analyzed as of date suit was filed without regard to post-filing reinstatement).

In *Emmett Properties, Inc. v. Halliburton Energy Services, Inc.*, 167 S.W.3d 365 (Tex. App.–Houston [14th Dist.] 2005, pet. denied), the court of appeals held that Article 7.12, as amended in 1993, precluded a corporation that was reinstated under the Tax Code four and one-half years after its forfeiture from suing on pre-forfeiture claims that were not brought within the three-year survival period. Thus, the court did not give the reinstatement retroactive effect in that respect. *See also Atcco Mortg., Inc. v. Beasley*, No. 11-14-0006-CV, 2016 WL 1274129 (Tex. App.–Eastland Mar. 31, 2016, no pet.) (holding default judgment obtained against individual in 1988 was “claim” within meaning of BOC Section 11.001(1); judgment was extinguished pursuant to BOC Section 11.359(a) in 2009, three years after forfeiture of judgment creditor’s corporate charter in 2006; reinstatement of corporate charter in 2013, seven years after forfeiture, did not revive extinguished judgment; and trial court thus did not err in dismissing judgment creditor’s claim against deceased judgment debtor’s estate even though judgment debtor had reinstated its corporate charter in order to assert claim in probate proceeding); *Cohen Acquisition Corp. v. EEPB, P.C.*, No. 14-14-00330-CV, 2015 WL 2404869 (Tex. App.–Houston [14th Dist.] 2015, pet. denied) (relying on *Emmett Properties* and holding plaintiff’s claims for malpractice and breach of contract brought against plaintiff’s accounting firm in 2013 were extinguished in February of 2011 under BOC Section 11.359(a) because accounting firm’s charter was forfeited in February of 2008 and reinstatement of accounting firm’s charter in March of 2011 did not revive plaintiff’s extinguished claims against firm). *Cf. Hourani v. Katzen*, 305 S.W.3d 239, 250-51 (Tex.App.–Houston [1st Dist.] 2009, pet. denied) (referring to retroactive nature of reinstatement, noting that forfeited corporation generally has three years from dissolution to cure its corporate status before it begins to lose certain rights, but concluding there was no need to determine effect of any retroactive reinstatement of property owners’ association that was forfeited in 1989 and reinstated in 2006 because property owner who sought to construct driveway in 2004 could not have complied with restriction that required written approval of association since association did not exist at time and Property Code provides that authority of property owners’ association such as that here expires when it ceases to exist); *Cognata v. Down Hole Injection, Inc.*, 375 S.W.3d 370, 376 n. 1 (Tex.App.–Houston [14th Dist.] 2012, pet. denied) (discussing Tax Code forfeiture and reinstatement provisions and holding appellant waived issue of forfeited corporation’s capacity to sue by failing to file plea in abatement and noting that

appellant also waived its argument that claim brought by defunct corporation is extinguished unless it is brought within three years of dissolution because argument was not raised until reply brief on appeal).

C. Reinstatement of Filing Entity After Involuntary Termination by Secretary of State Under Chapter 11 of Business Organizations Code

An entity that has been involuntarily terminated by the Secretary of State under BOC Section 11.251 may reinstate by curing the circumstances that led to the involuntary termination (and any other existing circumstances identified in Section 11.251) and filing a certificate of reinstatement (and tax clearance letter unless the entity is a nonprofit corporation). There is no longer any deadline or time limit for reinstatement after an involuntary termination by the Secretary of State in these circumstances (in contrast to the predecessor provision in Article 7.01E of the TBCA, which required reinstatement to occur within 36 months after termination), but the relation-back effect is only explicitly provided for reinstatements that occur within three years of termination. BOC §§ 11.253(d).

As noted above in the discussion of involuntary termination under Chapter 11 of the BOC, there has in the past often been confusion about whether an entity's existence was terminated under the Tax Code or Article 7.01 of the TBCA. This confusion in turn led to confusion as to whether reinstatement of the entity was governed by the Tax Code or the TBCA. Even though Article 7.01 of the TBCA specified failure to pay franchise taxes as a ground for involuntary dissolution by the Secretary of State under that provision, it has long been the practice of the Secretary of State to proceed against a corporation that failed to pay its franchise tax by forfeiting the corporation's charter as provided under the Tax Code (after notification by the Comptroller that the corporation's privileges had been forfeited) rather than involuntarily dissolving the corporation under Article 7.01. *Graywest, LLC v. Neely*, No. 2-06-197-CV, 2007 WL 614036 (Tex.App.—Fort Worth Mar. 1, 2007, no pet.) is an example of a case reflecting the confusion in this area. In that case, Gray and Neely entered into a contract for the sale of Neely's homestead in June 2005. One month later Gray assigned his rights in the contract to Graywest, LLC, which the court referred to as a "limited liability corporation." Neely attempted to avoid the contract for sale, and the LLC filed suit to enforce it. Neely filed a motion to abate and alternatively to dismiss the suit arguing that the LLC did not have the capacity to sue because it had forfeited its corporate status by failing to pay franchise taxes. The parties agreed that the LLC had been involuntarily dissolved in March of 2001 for not paying its franchise taxes. The trial court ruled that the LLC lacked the capacity to file suit on the contract at issue because its charter had not been revived within the 36-month window for reinstatement allowed by Article 7.01E of the TBCA, and the three-year survival period under Article 7.12 of the TBCA had expired. Although TBCA Articles 7.01E and 7.12 were applicable to LLCs under Article 8.12 of the Texas Limited Liability Company Act, and Article 7.01B permitted the Secretary of State to involuntarily dissolve an LLC for failure to pay its franchise taxes, Article 7.01E was not applicable in this case because, consistent with its long-standing practice, the Secretary of State actually effectuated the tax forfeiture of the LLC in question under the Tax Code provisions, which have their own reinstatement provisions and do not contain a time limitation on reinstatement. *See also Sun Packing, Inc. v. XenaCare Holdings, Inc.*, 924 F.Supp.2d 749 (S.D. Tex. 2012) in which the court cited both Article 7.01 of the TBCA and Section 171.309 of the Tax Code in describing the action taken by the Secretary of State against a corporation whose privileges and charter were forfeited for failure to pay franchise taxes. There should be less confusion under current law in this

regard since, unlike Article 7.01 of the TBCA, Section 11.251 of the BOC does not specify failure to pay franchise taxes as a ground for involuntary termination under the BOC.

D. Specific Effects of Reinstatement of Filing Entity After Involuntary Termination Under Chapter 11 of Business Organizations Code

Sec. 11.253. REINSTATEMENT BY SECRETARY OF STATE AFTER INVOLUNTARY TERMINATION.

...

(d) If a filing entity is reinstated before the third anniversary of the date of its involuntary termination, the entity is considered to have continued in existence without interruption from the date of termination. The reinstatement shall have no effect on any issue of personal liability of the governing persons, officers, or agents of the filing entity during the period between termination and reinstatement.

E. Reinstatement After Involuntary Termination of Limited Partnership for Failure to File Periodic Report Under Chapter 153 of Business Organizations Code

A limited partnership whose certificate of formation has been terminated for failure to file a periodic report may be reinstated by filing the report accompanied by the required filing fees and a tax clearance letter. BOC § 153.312. There is no deadline or time limit for a reinstatement under these provisions.

The statute does not address the effect of a reinstatement of a limited partnership after involuntary termination for failure to file a periodic report other than the change in status of the limited partnership to active, and there is a dearth of case law addressing the effect of a reinstatement with respect to the time period between forfeiture or termination and reinstatement. In one of the few reported cases addressing the forfeiture and reinstatement provisions of Chapter 153, the court of appeals analogized the statutes regarding forfeiture and revival of a limited partnership's right to transact business to the provisions of the Tax Code addressing forfeiture and revival of a corporation's privileges. *Manning v. Enbridge Pipelines (East Texas) L.P.*, 345 S.W.3d 718, 723 (Tex.App.—Beaumont 2011, pet. denied). The court of appeals stated that revival of a corporation's privileges under the Tax Code relates back to the point of delinquency “as if the disability had never existed.” *Id.* The court applied this principle to the limited partnership in this case, which had forfeited and revived its right to transact business during the pendency of a condemnation action filed by the limited partnership. Relying on case law in the tax forfeiture context, the court of appeals held that the limited partnership's temporary lack of capacity was moot because its right to transact business had been restored. *Id.*

F. Reinstatement After Involuntary Termination of Nonprofit Corporation for Failure to File Periodic Report Under Chapter 22 of Business Organizations Code

A nonprofit corporation that has been involuntarily terminated for failure to file a periodic report may be reinstated by filing the report accompanied by the filing fee (and tax clearance letter if the corporation is not exempt from franchise taxes). BOC § 22.365. There is no deadline or time

limit for a reinstatement under these provisions. The statute does not specify the effect of reinstatement other than the cancellation of the nonprofit corporation's "forfeited" status, and there does not appear to be any case law addressing the effect of the reinstatement with respect to the period during which the corporation was forfeited.

G. Court Revocation of Fraudulent Termination

The BOC authorizes a court to order the revocation of termination of an entity's existence that was terminated as a result of "actual or constructive fraud." Any limitation period provided by law is tolled in accordance with the discovery rule under this provision. The Secretary of State is required to take any action necessary to implement an order under this provision. BOC § 11.153.

The BOC provision on court revocation of a fraudulent termination was derived from TBCA Article 6.08, which was added to the TBCA in 2003. There does not appear to be any case law applying or interpreting the TBCA provision or its successor in the BOC other than a brief reference to TBCA Article 6.08 in *Gomez v. Pasadena Health Care Management, Inc.*, 246 S.W.3d 306, 312 n. 4 (Tex.App.–Houston [14th Dist.] 2008, no pet.), in which a minor plaintiff sought to assert a medical malpractice claim against a dissolved hospital (based on injuries sustained by the plaintiff during prenatal care and delivery at the hospital before its dissolution) more than three years after dissolution. The plaintiff made numerous arguments in an attempt to avoid the effect of Article 7.12, under which the claim was extinguished when the three-year survival period elapsed. In response to the plaintiff's argument that application of Article 7.12 to bar the plaintiff's claim would allow healthcare corporations to avoid liability after negligently injuring minor patients by dissolving and disposing of all the corporation's assets before the minor reaches majority, the court countered that TBCA Article 6.08 provides a mechanism by which the court can order revocation of dissolution of a corporation upon a finding of actual or constructive fraud. The court commented that this provision (now found in Section 11.153 of the BOC) would allow a court to prevent healthcare corporations from taking fraudulent actions.

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
Winding Up Statutory References	11.051-11.055, 11.059, 11.101-11.103, 11.405, 11.412, 11.414, 11.351-11.359, 21.364, 21.501-21.504, 303.001, 301.008(e)	11.051-11.056, 11.101-11.103, 11.314, 11.405, 11.412, 11.414, 11.351-11.359, 101.551-101.552, 304.001, 301.008(e)	11.051-11.055, 11.058, 11.101- 11.103, 11.314, 11.405, 11.412, 11.414, 11.351- 11.359, 153.502- 153.504, 153.003, 153.152	11.051-11.055, 11.057, 11.314, 11.405, 11.412, 152.701-152.708	11.051-11.055, 11.101-11.103, 11.405, 11.412, 11.414, 11.351- 11.359, 21.501- 21.504, 302.001, 302.013, 301.008(e), 302.002(2)(A)	11.051-11.055, 11.101-11.103, 11.405, 11.412- 11.414, 11.351- 11.359, 22.164, 22.301-22.307
Causes or Events	Written consent of all shareholders or board approval and vote of holders of 2/3 shares entitled to vote; or, if corporation has not commenced business and issued shares, approval of a majority of organizers or board; event specified in governing documents; expiration of period of duration; appointment of liquidating receiver after failed rehabilitating receiver.	Vote of majority of members; event specified in governing documents; expiration of period of duration; termination of membership of last member (unless certain conditions met within 90 days); judicial decree on application of member on specified grounds; appointment of	Written consent of all partners; event specified in governing documents; expiration of period of duration; withdrawal of general partner (unless otherwise provided by partnership agreement); no remaining limited partners; judicial decree on application of partner on specified	Vote of majority- in-interest of partners in at will partnership; vote of all partners in partnership with specified duration, undertaking, or event; occurrence of event specified in governing documents; completion of specified undertaking; expiration of duration; illegality of	2/3 vote of members; expiration of period of duration; appointment of liquidating receiver after failed rehabilitating receiver.	Board approval and 2/3 votes of members present (or majority of board if no members with voting rights); expiration of period of duration; appointment of liquidating receiver after failed rehabilitating receiver.

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
		liquidating receiver after failed rehabilitating receiver.	grounds.	business; sale of substantially all property outside ordinary course of business; request by partner in at will partnership unless declined by majority-in-interest.		
Winding Up Process	Send notice to known claimants; wind up and terminate; file certificate of termination (SOS Form 651) with tax certificate.	Send notice to known claimants; wind up and terminate; file certificate of termination (SOS Form 651) with tax certificate.	Send notice to known claimants; wind up and terminate; file certificate of termination (SOS Form 651) with tax certificate.	Wind up and terminate.	Send notice to known claimants; wind up and terminate; file certificate of termination (SOS Form 651) with tax certificate.	Send notice to known claimants; wind up and terminate; file certificate of termination (SOS Form 652).
Effect	Terminates existence except for three-year post-termination survival for unfinished winding up including suits on "existing claims."	Terminates existence except for three-year post-termination survival for unfinished winding up including suits on "existing claims."	Terminates existence except for three-year post-termination survival for unfinished winding up including suits on "existing claims."	Terminates on completion of winding up.	Terminates existence except for three-year post-termination survival for unfinished winding up including suits on "existing claims."	Terminates existence except for three-year post-termination survival for unfinished winding up including assertion of "existing claims."

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
REVOCATION OR CANCELLATION OF WINDING UP AND CONTINUATION OF ENTITY BEFORE TERMINATION TAKES EFFECT						
Statutory References	11.151-11.152, 21.364, 21.501, 303.001	11.151-11.152, 101.552, 304.001	11.151-11.152, 153.501	11.151-11.152, 152.709	11.151-11.152, 21.364, 21.501, 302.001	11.151-11.152, 22.302
Voluntary Winding Up	Revocation of vote to wind up by written consent of all shareholders or board approval and vote of holders of 2/3 shares entitled to vote any time before effectiveness of termination of existence.	Revocation of vote to wind up by vote of majority of members (or managers if no members) any time before effectiveness of termination of existence.	Revocation of vote to wind up by written consent of all partners any time before effectiveness of termination of existence.	Revocation of decision of all partners to wind up under 11.057(b) by written agreement of all partners prior to completion of winding up. Revocation of decision of majority-in- interest in an at will partnership by written agreement of majority-in- interest.	Revocation of vote to wind up by written consent of all shareholders or board approval and vote of holders of 2/3 shares entitled to vote any time before effectiveness of termination of existence;	Revocation of vote to wind up by approval of board and vote of 2/3 votes of members present (or majority of board if no members with voting rights) any time before effectiveness of termination.
Event Specified in Governing Documents	Event cancelled by written consent of all shareholders or board approval and vote of holders of 2/3 shares entitled to vote within	Event cancelled with consent of all members within one year of event.	Event cancelled by written consent of all partners within one year of event.	Revocation of decision of all partners to wind up under 11.057(b) by written	Event cancelled by written consent of all shareholders or board approval and vote of	Event cancelled by approval of board and 2/3 votes of members present (or

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
	one year of event.			agreement of all partners prior to completion of winding up.	holders of 2/3 shares entitled to vote within one year of event.	majority of board if no members with voting rights) within one year of event.
Expiration of Period of Duration	Amend governing documents and file certificate of amendment within three years of expiration.	Amend governing documents with consent of all members and file certificate of amendment within three years of expiration.	Amend governing documents within one year of expiration.	Cancellation of expiration of period of duration within three years of expiration by written agreement of all partners.	Amend governing documents and file certificate of amendment within three years of expiration.	Amend governing documents and file certificate of amendment within three years of expiration.
Other Event Specified in BOC		Cancellation of winding up from termination of membership of last member by agreement of legal representative or successor of last member to become member or designation of another to become member	Cancellation of winding up by withdrawal of general partner within one year of withdrawal if there is remaining general partner who continues and partnership agreement permits continuation or	Revocation of occurrence of specified event within one year of event by agreement of all partners. Cancellation of winding up by completion of undertaking, sale of substantially all assets, or request of		

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
		within one year of termination of membership of last remaining member.	all partners agree in writing to continue and appoint successor general partner. Cancellation of winding up from no remaining limited partners within one year if legal rep or successor of last limited partner agrees to continue and become limited partner or designates another to become limited partner.	partner in at will partnership by agreement of all partners (must be within one year per 11.152(a)).		
REINSTATEMENT AFTER FILING ENTITY'S FILING OF CERTIFICATE OF TERMINATION OR GENERAL PARTNERSHIP'S COMPLETION OF WINDING UP						
Statutory References	11.201-11.206, 21.364, 21.501, 303.001	11.201-11.206, 101.552, 304.001	11.201-11.206, 153.505	11.201-11.206, 152.710	11.201-11.206, 302.001, 21.364, 21.501, 302.001	11.201-11.206, 22.302
Grounds	Termination was by mistake or inadvertent; occurred	Termination was by mistake or inadvertent;	Termination was by mistake or inadvertent;	Termination was by mistake or inadvertent;	Termination was by mistake or inadvertent;	Termination was by mistake or inadvertent;

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
	without required approval of governing persons; winding up not completed prior to termination; or legal existence necessary to take certain actions. ¹ Reinstatement not permitted if termination resulted from order of court or secretary of state, event specified by BOC and BOC prohibits, or tax forfeiture.	occurred without required approval of governing persons; winding up not completed prior to termination; or legal existence necessary to take certain actions. Reinstatement not permitted if termination resulted from order of court or secretary of state, event specified by BOC and BOC prohibits, or tax forfeiture.	occurred without required approval of governing persons; winding up not completed prior to termination; or legal existence necessary to take certain actions. Reinstatement not permitted if termination resulted from order of court or secretary of state, event specified by BOC and BOC prohibits, or tax forfeiture.	occurred without required approval of governing persons; winding up not completed prior to termination; or legal existence necessary to take certain actions. Reinstatement not permitted if termination resulted from order of court or secretary of state, event specified by BOC and BOC prohibits, or tax forfeiture.	occurred without required approval of governing persons; winding up not completed prior to termination; or legal existence necessary to take certain actions. Reinstatement not permitted if termination resulted from order of court or secretary of state, event specified by BOC and BOC prohibits, or tax forfeiture.	occurred without required approval of governing persons; winding up not completed prior to termination; or legal existence necessary to take certain actions. Reinstatement not permitted if termination resulted from order of court or secretary of state, event specified by BOC and BOC prohibits, or tax forfeiture.
Process	Written consent of all shareholders or approval of board and holders of 2/3 shares	Vote of majority of members (or managers if no members). Must	Written agreement of all remaining partners. Must	Written agreement of all remaining partners prior to	Written consent of all shareholders or approval of board	Approval of board and vote of 2/3 votes of members

¹ A court may order the revocation of a fraudulent termination when an action is brought pursuant to Section 11.153 of the BOC. The entity's termination of existence must have been the result of actual or constructive fraud. Any limitation period provided by law is tolled in accordance with the discovery rule.

VOLUNTARY AND INVOLUNTARY WINDING UP AND TERMINATION BY ACT OF ENTITY OR OWNER

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
	entitled to vote. Must file certificate of reinstatement (SOS Form 811) and tax clearance prior to third anniversary of termination.	file certificate of reinstatement (SOS Form 811) and tax clearance prior to third anniversary of termination.	file certificate of reinstatement (SOS Form 811) and tax clearance prior to third anniversary of termination.	third anniversary of termination.	and holders of 2/3 shares entitled to vote, file certificate of reinstatement (SOS Form 811) and tax clearance prior to third anniversary of termination.	present (or majority of board if no members with voting rights). Must file certificate of reinstatement (SOS Form 811) prior to third anniversary of termination.
Effect	Reinstatement effective on filing certificate of reinstatement as if termination had not occurred.	Reinstatement effective on filing certificate of reinstatement as if termination had not occurred.	Reinstatement effective on filing certificate of reinstatement as if termination had not occurred.	Reinstatement effective on approval of partners as if termination had not occurred.	Reinstatement effective on filing certificate of reinstatement as if termination had not occurred.	Reinstatement effective on filing certificate of reinstatement as if termination had not occurred.

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
INVOLUNTARY TERMINATIONS UNDER CHAPTER 11 OF THE BUSINESS ORGANIZATIONS CODE (BOC)						
Statutory References	11.251-11.252, 11.351-11.359	11.251-11.252, 11.351-11.359	11.251-11.252, 11.351-11.359	N/A	11.251-11.252, 11.351-11.359	11.251-11.252, 11.351-11.359
Grounds	Failure to file required report, pay fee or penalty, maintain registered agent or registered office; failure to pay or dishonor of formation filing fee.	Failure to file required report, pay fee or penalty, maintain registered agent or registered office; failure to pay or dishonor of formation filing fee.	Failure to file required report, pay fee or penalty, maintain registered agent or registered office; failure to pay or dishonor of formation filing fee.		Failure to file required report (i.e., PA annual statement due in June), pay fee or penalty, maintain registered agent or registered office; failure to pay or dishonor of formation filing fee.	Failure to file required report, pay fee or penalty, maintain registered agent or registered office; failure to pay or dishonor of formation filing fee.
Process	Notice sent by secretary of state, issuance of certificate of involuntary termination.	Notice sent by secretary of state, issuance of certificate of involuntary termination.	Notice sent by secretary of state, issuance of certificate of involuntary termination.		Notice sent by secretary of state, issuance of certificate of involuntary termination.	Notice sent by secretary of state, issuance of certificate of involuntary termination.
Effect	Existence terminates except for three-year survival for purposes of winding up including suits on "existing claims."	Existence terminates except for three-year survival for purposes of winding up including suits on "existing claims."	Existence terminates except for three-year survival for purposes of winding up including suits on "existing claims."		Existence terminates except for three-year survival for purposes of winding up including suits on "existing claims."	Existence terminates except for three-year survival for purposes of winding up including suits on "existing claims."

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
FORFEITURES OF RIGHT TO DO BUSINESS & INVOLUNTARY TERMINATIONS UNDER CHAPTERS 22 AND 153 OF THE BOC						
Statutory References			153.301-153.311.			22.357-22.364
Grounds			Failure to file periodic report when notified by secretary of state			Failure to file periodic report when notified by secretary of state
Process-Phase I			Entity notified by secretary of state to file report within 30 days of notice; notice sent to registered agent. Failure to file report when due results in “forfeiture of right to transact business.” Notice of forfeiture sent by secretary of state to registered agent.			Entity notified by secretary of state to file report within 30 days of notice; notice sent to registered agent. Failure to file report when due results in “forfeiture of right to conduct affairs.” Notice of forfeiture sent by secretary of state to registered agent.
Effect			Limited partnership in “forfeited rights” status may not maintain an action in court in Texas; does not impair			Nonprofit corporation in “forfeited rights” status may not maintain an action in court in Texas; does not

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
			contract of limited partnership or prevent partnership from defending action; does not affect liability of limited partner.			impair contract of corporation or prevent corporation from defending action.
Process-Phase II			Certificate of formation is terminated by secretary of state if entity fails to file report and revive its right to transact business within 120 days of mailing of notice of forfeited rights.			Certificate of involuntary termination issued by secretary of state if entity fails to file report and revive its right to transact business within 120 days of mailing of notice of forfeited rights.
Effect			Limited partnership's status is changed to inactive (i.e., involuntarily terminated); change does not affect liability of limited partner.			Nonprofit corporation status is changed to inactive (i.e., involuntarily terminated).

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

REINSTATEMENT FOLLOWING INVOLUNTARY TERMINATION UNDER CHAPTER 11 OF THE BOC						
	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
Statutory References	11.253	11.253	11.253		11.253	11.253
Grounds	Filing of certificate of reinstatement and correction of circumstances that led to termination and any other grounds under 11.251(b) or secretary of state finds that circumstances that led to termination did not exist.	Filing of certificate of reinstatement and correction of circumstances that led to termination and any other grounds under 11.251(b) or secretary of state finds that circumstances that led to termination did not exist.	Filing of certificate of reinstatement and correction of circumstances that led to termination and any other grounds under 11.251(b) or secretary of state finds that circumstances that led to termination did not exist.		Filing of certificate of reinstatement and correction of circumstances that led to termination and any other grounds under 11.251(b) or secretary of state finds that circumstances that led to termination did not exist.	Filing of certificate of reinstatement and correction of circumstances that led to termination and any other grounds under 11.251(b) or secretary of state finds that circumstances that led to termination did not exist.
Process	File certificate of reinstatement (Form 811) with tax clearance. Entity name must still be available; if not, simultaneously submit consent or certificate of amendment.	File certificate of reinstatement (Form 811) with tax clearance. Entity name must still be available; if not, simultaneously submit consent or certificate of amendment.	File certificate of reinstatement (Form 811) with tax clearance. Entity name must still be available; if not, simultaneously submit consent or certificate of amendment.		File certificate of reinstatement (Form 811) with tax clearance. If involuntarily terminated for failure to file annual statement, file all delinquent statements (Form 803). Entity name	File certificate of reinstatement (Form 811). Entity name must still be available; if not, simultaneously submit consent or certificate of amendment.

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
					must still be available; if not, simultaneously submit consent or certificate of amendment.	
Effect	Entity is considered to have continued without interruption if reinstatement within three years of termination, but reinstatement has no effect on personal liability of governing persons, officers, or agents of entity during period between termination and reinstatement.	Entity is considered to have continued without interruption if reinstatement within three years of termination, but reinstatement has no effect on personal liability of governing persons, officers, or agents of entity during period between termination and reinstatement.	Entity is considered to have continued without interruption if reinstatement within three years of termination, but reinstatement has no effect on personal liability of governing persons, officers, or agents of entity during period between termination and reinstatement.		Entity is considered to have continued without interruption if reinstatement within three years of termination, but reinstatement has no effect on personal liability of governing persons, officers, or agents of entity during period between termination and reinstatement.	Entity is considered to have continued without interruption if reinstatement within three years of termination, but reinstatement has no effect on personal liability of governing persons, officers, or agents of entity during period between termination and reinstatement.
REVIVAL OF RIGHT TO CONDUCT BUSINESS FOR FAILURE TO FILE REPORT (CHAPTERS 22 AND 153 OF THE BOC)						
Statutory References			153.310			22.363
Grounds & Process			File report (Form 804), pay filing fee, and late fee,			File report (Form 802), pay filing fee, and late fee,

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
			within 120 days after mailing of notice of forfeiture. Secretary of state revives right to transact business; cancels notation on record regarding forfeiture. Status changed to “in existence.”			within 120 days after mailing of notice of forfeiture. Secretary of state revives right to conduct affairs; cancels notation on record regarding forfeiture. Status changed to “in existence.”
REINSTATEMENT AFTER INVOLUNTARY TERMINATION FOR FAILURE TO FILE PERIODIC REPORT (CHAPTERS 22 AND 153 OF THE BOC)						
Statutory References			153.312			22.365
Grounds & Process			File report accompanied by tax clearance letter and filing fees (\$225); secretary of state reinstates certificate and changes status to active and notes reinstatement on record. Entity name must still be available; if not,			File report accompanied by filing fee (\$25); secretary of state reinstates certificate of formation and changes status of entity to “in existence.” Entity name must still be available; if not, simultaneously

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
			simultaneously submit consent or certificate of amendment.			submit consent or certificate of amendment.
ADMINISTRATIVE FORFEITURES UNDER CHAPTER 171 TAX CODE						
FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES UNDER CHAPTER 171 TAX CODE						
Statutory References	171.251-171.257	171.251-171.257	171.251-171.257	171.251-171.257	171.251-171.257	171.251-171.257
Grounds & Process	Failure to file report or pay tax or penalty within 45 days after comptroller mails notice of forfeiture.	Failure to file report or pay tax or penalty within 45 days after comptroller mails notice of forfeiture.	Failure to file report or pay tax or penalty within 45 days after comptroller mails notice of forfeiture.	Failure to file report or pay tax or penalty within 45 days after comptroller mails notice of forfeiture. (General partnership is not taxable entity subject to these provisions if 100% of partners are individuals and partnership is not LLP.)	Failure to file report or pay tax or penalty within 45 days after comptroller mails notice of forfeiture.	Failure to file report or pay tax or penalty within 45 days after comptroller mails notice of forfeiture.
Effect	Corporation may not sue or defend in court in Texas; each director and officer has	Taxable entity may not sue or defend in court in Texas; each “director and	Taxable entity may not sue or defend in court in Texas; each “director and	Taxable entity may not sue or defend in court in Texas; each “director and	Taxable entity may not sue or defend in court in Texas; each “director and	Corporation may not sue or defend in court in Texas; each director and officer has

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
	personal liability for debts of corporation incurred after report, tax, or penalty was due as provided by 171.255; in suit against corporation on cause of action arising before forfeiture, affirmative relief may not be granted to corporation unless privileges revived.	officer" has personal liability for debts of the entity incurred after report, tax, or penalty was due as provided by 171.255; in suit against entity on cause of action arising before forfeiture, affirmative relief may not be granted to entity unless privileges revived.	officer" has personal liability for debts of the entity incurred after report, tax, or penalty was due as provided by 171.255; in suit against entity on cause of action arising before forfeiture, affirmative relief may not be granted to entity unless privileges revived.	officer" has personal liability for debts of the entity incurred after report, tax, or penalty was due as provided by 171.255; in suit against entity on cause of action arising before forfeiture, affirmative relief may not be granted to entity unless privileges revived.	officer" has personal liability for debts of the entity incurred after report, tax, or penalty was due as provided by 171.255; in suit against entity on cause of action arising before forfeiture, affirmative relief may not be granted to entity unless privileges revived.	personal liability for debts of corporation incurred after report, tax, or penalty was due as provided by 171.255; in suit against corporation on cause of action arising before forfeiture, affirmative relief may not be granted to corporation unless privileges revived.
FORFEITURE OF CERTIFICATE OF FORMATION BY SECRETARY OF STATE UNDER CHAPTER 171 TAX CODE						
Statutory References	171.301-171.302, 171.309-171.311	171.301-171.302, 171.309-171.311	171.301-171.302, 171.309-171.311		171.301-171.302, 171.309-171.311	171.301-171.302, 171.309-171.311
Grounds & Process	Comptroller certifies to secretary of state that corporation has not revived its corporate privileges within 120 days of	Comptroller certifies to secretary of state that taxable entity has not revived its business privileges within 120 days of forfeiture;	Comptroller certifies to secretary of state that taxable entity has not revived its business privileges within 120 days of forfeiture;		Comptroller certifies to secretary of state that taxable entity has not revived its business privileges within 120 days of	Comptroller certifies to secretary of state that corporation has not revived its corporate privileges within 120 days of

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
	forfeiture; secretary of state forfeits charter by inscribing record to change entity status to “forfeited existence.”	secretary of state forfeits certificate by inscribing record to change entity status to “forfeited existence.”	secretary of state forfeits certificate by inscribing record to change entity status to “forfeited existence.”		forfeiture; secretary of state forfeits certificate by inscribing record to change entity status to “forfeited existence.”	forfeiture; secretary of state forfeits charter by inscribing record to change entity status to “forfeited existence.”
Effect	Forfeited corporation is terminated entity for purposes of BOC Chapter 11 and thus survives for three-year post-termination survival period for winding up including suits on “existing claims.”	Forfeited LLC is terminated entity for purposes of BOC Chapter 11 and thus survives for three-year post-termination survival period for winding up including suits on “existing claims.”	Forfeited limited partnership is terminated entity for purposes of BOC Chapter 11 and thus survives for three-year post-termination survival period for winding up including suits on “existing claims.”		Forfeited PA is terminated entity for purposes of BOC Chapter 11 and thus survives for three-year post-termination survival period for winding up including suits on “existing claims.”	Forfeited corporation is terminated entity for purposes of BOC Chapter 11 and thus survives for three-year post-termination survival period for winding up including suits on “existing claims.”
REVIVAL OF CORPORATE AND BUSINESS PRIVILEGES BEFORE FORFEITURE OF EXISTENCE UNDER CHAPTER 171 TAX CODE						
Statutory References	171.257-171.258	171.257-171.258, 171.2515	171.257-171.258, 171.2515	171.257-171.258, 171.2515	171.257-171.258, 171.2515	171.257-171.258
Grounds & Process	Comptroller revives privileges if corporation pays tax, penalty, or interest before forfeiture of charter.	Comptroller revives privileges if entity pays tax, penalty, or interest before forfeiture of certificate.	Comptroller revives privileges if entity pays tax, penalty, or interest before forfeiture of certificate.	Comptroller revives privileges if entity pays tax, penalty, or interest before forfeiture of certificate.	Comptroller revives privileges if entity pays tax, penalty, or interest before forfeiture of certificate.	Comptroller revives privileges if entity pays tax, penalty, or interest before forfeiture of certificate.

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
REINSTATEMENT AFTER TAX FORFEITURE UNDER CHAPTER 171 TAX CODE						
Statutory References	171.312-171.315	171.312-171.315	171.312-171.315		171.312-171.315	171.312-171.315
Grounds & Process	Corporation files each report and pays tax, penalty, and interest due; stockholder, director, or officer at time of forfeiture requests in name of corporation that secretary of state set aside forfeiture (Form 801); and secretary of state determines each delinquent report and payment has been made by entity's provision of tax clearance from comptroller. (Statutes do not specify deadline for reinstatement). Entity name must	Entity files each report and pays tax, penalty, and interest due; member or manager at time of forfeiture requests in name of entity that secretary of state set aside forfeiture (Form 801); and secretary of state determines each delinquent report and payment has been made by entity's provision of tax clearance from comptroller. (Statutes do not specify deadline for reinstatement). Entity name must still be available; if	Entity files each report and pays tax, penalty, and interest due; partner at time of forfeiture requests in name of entity that secretary of state set aside forfeiture (Form 801); and secretary of state determines each delinquent report and payment has been made by entity's provision of tax clearance from comptroller. (Statutes do not specify deadline for reinstatement). Entity name must still be available; if not,		Entity files each report and pays tax, penalty, and interest due; stockholder, member, director, or officer at time of forfeiture requests in name of entity that secretary of state set aside forfeiture (Form 801); and secretary of state determines each delinquent report and payment has been made by entity's provision of tax clearance from comptroller. (Statutes do not specify deadline for reinstatement). Entity name must	Corporation files each report and pays tax, penalty, and interest due; member, director, or officer at time of forfeiture requests in name of entity that secretary of state set aside forfeiture (Form 801); and secretary of state determines each delinquent report and payment has been made by entity's provision of tax clearance from comptroller. (Statutes do not specify deadline for reinstatement). Entity name must

INVOLUNTARY TERMINATION AND ADMINISTRATIVE FORFEITURE BY SECRETARY OF STATE

	Corporations (including Professional Corporations)	Limited Liability Companies (including Professional LLCs)	Limited Partnerships	General Partnerships	Professional Associations	Nonprofit Corporations
	still be available; if not, simultaneously submit consent or certificate of amendment.	not, simultaneously submit consent or certificate of amendment.	simultaneously submit consent or certificate of amendment.		still be available; if not, simultaneously submit consent or certificate of amendment.	still be available; if not, simultaneously submit consent or certificate of amendment.
Effect	Secretary of state sets aside forfeiture of charter, and comptroller revives corporate privileges.	Secretary of state sets aside forfeiture of certificate, and comptroller revives business privileges.	Secretary of state sets aside forfeiture of certificate, and comptroller revives business privileges.		Secretary of state sets aside forfeiture of certificate, and comptroller revives business privileges.	Secretary of state sets aside forfeiture of charter, and comptroller revives corporate privileges.

Form 801—General Information (Application for Reinstatement and Request to Set Aside Tax Forfeiture)

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

This form may be used to complete the final step for reinstating a domestic or foreign filing entity that has been forfeited or revoked by the secretary of state under chapter 171, Tax Code. Before submitting this form, an entity seeking reinstatement must: (1) file with the comptroller of public accounts each delinquent report that is required by chapter 171; and (2) pay the tax, penalty, and interest imposed by the Tax Code and due at the time the request to set aside forfeiture is made.

Do Not Use This Form If:

- The entity was voluntarily terminated. See Form 811.
- The existence or registration was terminated or revoked by the secretary of state for a reason other than tax forfeiture. See Forms 811, 814.
- The entity was terminated or revoked by court order.

⌚ Time Frame for Reinstatement ⌚

The request to set aside forfeiture may be submitted at any time after forfeiture so long as the entity would otherwise have continued to exist.

Persons Authorized to Submit Application for Reinstatement

- For-profit or professional corporation: shareholder, director, or officer at the time of forfeiture.
- Professional association: shareholder, member, director, or officer at the time of forfeiture.
- Nonprofit corporation: director, officer, or member at the time of forfeiture.
- Limited liability company: member or manager at the time of forfeiture.
- Limited partnership: partner at the time of forfeiture.
- Statutory or business trust: trustee or beneficial owner at the time of forfeiture.

Registered Agent & Office Updates

Filing entities must maintain accurate registered agent and office information on file with the secretary of state. Neither tax filings nor this application for reinstatement can be used to update the registered agent and office information; rather updates to the registered agent and office require an additional filing. See Form 401.

Instructions for Form

- **Item 1—Entity Name:** Set forth the legal name of the entity as stated in its certificate of formation or registration. 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.
- **Entity Name Availability:** The reinstatement cannot be filed if the name of the entity 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. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, [subchapter C](#)) may be viewed at <http://www.sos.state.tx.us/tac/index.shtml>.

If the entity name is no longer available, the application for reinstatement must be accompanied by a letter of consent or an amendment to the entity's formation document or registration, as applicable.


- **Item 2—Secretary of State File Number:** It is recommended that the file number assigned by the secretary of state be provided to facilitate processing and ensure that the correct entity is reinstated.
- **Item 3—Date of Forfeiture/Revocation:** Provide the date of the forfeiture or revocation. If unsure, verification of the date may be obtained by calling the secretary of state at (512) 463-5555, by dialing 7-1-1 for relay services, or by sending an e-mail to corpinfo@sos.state.tx.us.
- **Item 4—Certified Statements:** Although an application for reinstatement need not be notarized, by signing the application for reinstatement, a person certifies to the statements contained in item 4 of the application. Prior to signing, please read the statements on this form carefully. In addition to the penalties imposed by law for the submission of a false or fraudulent document, a person commits an offense under section 171.363 of the Tax Code if the person is an employee, officer, or agent of a taxable entity and the person knowingly enters or provides false information on any report, return, or other document filed by the taxable entity under the provisions of chapter 171, including an application for reinstatement. An offense under section 171.363 is a felony of the third degree.
- **Tax Clearance:** A certificate of reinstatement must be accompanied by a tax clearance letter from the Texas Comptroller of Public Accounts stating that the 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:** The application must be signed by a person who is authorized to apply for and request a reinstatement of the forfeited entity. (See "Persons Authorized to Apply" on page 1 of these instructions.)
- **Payment and Delivery Instructions:** The filing fee for an application for reinstatement is **\$75**, unless the entity is a nonprofit corporation. There is no fee for filing the reinstatement of a nonprofit corporation following a tax forfeiture. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa 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 filing that may be required as a condition for reinstatement (such as an amendment to change the entity's name) must be submitted together with the appropriate filing.

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.

Form 801 (Revised 05/11)	 <p style="text-align: right;">This space reserved for office use.</p>
Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512 463-5709 Filing Fee: See instructions	<p style="text-align: center;">Application for Reinstatement And Request to Set Aside Tax Forfeiture</p>

1. The entity name is: _____

The entity is a foreign entity that was required to obtain its registration under a name that differs from the legal name stated above. The name under which the entity is registered is:

2. The file number issued to the entity by the secretary of state is: _____

3. The entity was forfeited or revoked under the provisions of the Tax Code on: _____
mm/dd/yyyy

4. The undersigned requests that the forfeiture or revocation of the entity be set aside, and certifies that:

a. The entity has filed each delinquent report that is required by chapter 171 of the Tax Code and has made payment for the tax, penalty, and interest imposed and that is due at the time of this application as evidenced by the attached tax clearance letter; and

b. On the date of forfeiture or revocation, the undersigned person was:

- an officer, director or shareholder of the above-named for-profit or professional corporation; or
- an officer, director, shareholder or member of the above-named professional association; or
- an officer, director, or member of the above-named nonprofit corporation; or
- a member or manager of the above-named limited liability company; or
- a partner of the above-named limited partnership; or
- a trustee or beneficial owner of the above-named statutory or business trust.

Additional Required Documentation or Filings

☐ Comptroller of Public Accounts Tax Clearance Letter

☐ Letter of Consent or Amendment to Certificate of Formation or Registration (Required when entity name is no longer available.)

Execution

The undersigned declares under penalty of perjury, and the penalties imposed by law for the submission of a materially false or fraudulent instrument, that the undersigned is authorized to make this request; that the statements contained herein are true and correct, and that tax clearance was not obtained by providing false or fraudulent information.

Date: _____

BY: _____

 Signature of authorized person (see instructions)

 Printed or typed name of authorized person

**Form 802—General Information
(Periodic Report – Nonprofit Corporation)**

The attached form is drafted 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

A nonprofit corporation is required by Section 22.357 of the Texas Business Organizations Code (BOC) to file a periodic report that lists the names and addresses of all directors and officers of the corporation. The Office of the Secretary of State may require a domestic nonprofit corporation or a foreign nonprofit corporation registered to transact business in this state to file a report not more than once every four years. The failure to file the report when due will result, after notice, in the involuntary termination of the domestic corporation or the revocation of the registration of the foreign corporation.

Please note that a document on file with the Secretary of State is a public record that is subject to public access and disclosure. When providing address information for a director or officer, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Instructions for Form

- **File Number:** It is recommended that the file number assigned by the Secretary of State be provided to facilitate processing of the document.
- **1—Corporation Name:** Provide the legal name of the corporation. Changes to the name of the corporation require an amendment to the certificate or registration of the corporation. See **Additional Documentation** instructions below.
- **2—Jurisdictional Information:** Provide the state or other jurisdiction under the laws of which the corporation is formed.
- **3—Registered Agent:** 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 corporation cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: 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 periodic report. *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)

- **4—Registered Office Address:** 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) A post office box is not sufficient as a registered office address unless the registered office is located in a town with a population of less than 5,000.

- **5—Principal Office Address:** Provide the street or mailing address of the principal office of the corporation in the state or country under the laws of which the corporation is incorporated if the corporation is a foreign corporation.
- **6—Directors:** Provide the name and address of each member of the board of directors. A corporation is generally managed by a board of directors. However, a corporation that has members may be managed by its members or by a board of directors. A minimum of three directors is required. If the space provided is insufficient, include the information as an attachment to this form for item 6.
- **7—Officers:** Provide the name, address, and title of each officer. The officers of a corporation must include a president and a secretary and may also consist of one or more vice-presidents, a treasurer, and such other officers and assistant officers as may be deemed necessary. Any one person may serve in more than one office, except the offices of president and secretary. If the space provided is insufficient, include the information as an attachment to this form for item 7.
- **Execution:** Pursuant to Section 4.001 of the BOC, the periodic report must be signed by a person authorized by the BOC 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 periodic report need not be notarized; however, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer or managerial official is an affirmation by the organizer or managerial official that the person named in the instrument as registered agent has consented to serve in that capacity. (BOC § 5.2011)

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.

- **Filing Fees:** The filing fee for a periodic report for a nonprofit corporation is **\$5**. If the corporation has forfeited its right to conduct affairs for failure to file the periodic report within thirty (30) days of the first notification, the fee is the original **\$5** plus a late fee of **\$1** per month or part of a month for one hundred twenty (120) days following the forfeiture, but not less than **\$5** nor more than **\$25**.
- **Additional Documentation:**
 - Name Change** (optional): To change the name of the corporation at the same time of filing the required periodic report, an amendment (Form 424 or 412, as appropriate) and filing fee of **\$25** and Form 802 and filing fee (as stated in **Filing Fees**), must be submitted at the same time to the Reports Unit for filing.

Reinstatement: If the report is not filed within the one hundred twenty (120) day period from the date of the second notification, the domestic corporation will be involuntarily terminated or the registration of the foreign corporation will be revoked. The corporation may be relieved of the involuntary termination or revocation and reinstated by filing the required periodic report (Form 802) and filing fee of **\$25**.

Tax Clearance from Comptroller of Public Accounts: If the corporation is not tax exempt, 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 is required to be filed with Form 802 and filing fee of **\$25**. Form 811 is not required when reinstating. Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter by email at: tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.


Amendment to Certificate of Formation or Registration: The name of the corporation must be available at the time of reinstatement. The administrative rules adopted for determining entity name availability (Texas Administrative Code, Title 1, Part 4, Chapter 79, subchapter C) may be viewed at: <http://www.sos.state.tx.us/tac/index.shtml> A preliminary determination on “name availability” may be obtained by calling (512) 463-5555 or e-mail to: corpinfo@sos.state.tx.us

At the time of reinstating, if the corporation name is no longer available, or if written consent is required but cannot be obtained for the use of the name, simultaneously submit: (A) a certificate of amendment to the certificate of formation to change the name of the domestic entity as a condition of reinstatement; or (B) an amended registration to state the assumed name under which the foreign entity shall transact business. The amendment (Form 424 or 412, as appropriate) and filing fee of **\$25 and** Form 802 and filing fee of **\$25, and** the tax clearance letter, must be submitted at the same time to the Reports Unit for filing. Forms 424 and 412 are available at: http://www.sos.state.tx.us/corp/forms_boc.shtml

Upon completing the reinstatement process of submitting all required forms, paying all applicable filing fees, and meeting all filing requirements, the status of the nonprofit corporation will be changed to in existence.

- **Payment Instructions:** Accepted methods of payment are: (1) a check or money order payable through a U.S. bank or financial institution made payable to the **Secretary of State**; (2) a valid American Express, Discover, MasterCard, or Visa credit card (subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred); (3) a funded LegalEase account; or (4) a prefunded Secretary of State client account. Use Form 815 at: http://www.sos.state.tx.us/corp/forms_reports.shtml to pay by credit card, LegalEase, or client account.
- **Delivery Instructions:** Submit the completed form(s), with the filing fees, in duplicate to the Secretary of State. Mail to: Secretary of State, Reports Unit, P.O. Box 12028, Austin, Texas 78711-2028; deliver to: James Earl Rudder Office Building, Reports Unit, 1019 Brazos, Suite 505, Austin, Texas 78701; or fax to: (512) 463-1423 (requires Form 815 for payment). On filing the document(s), 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. If you require additional assistance, you may contact the Reports Unit at: (512) 475-2705.

Revised 08/12

Form 802 (Revised 08/12)		This space reserved for filing office use.
Submit in duplicate to: Secretary of State Reports Unit P.O. Box 12028 Austin, TX 78711-2028 Phone: (512) 475-2705 FAX: (512) 463-1423 Dial: 7-1-1 for Relay Services Filing Fee: See Instructions		

**Periodic Report
of a
Nonprofit Corporation**

File Number: _____

1. The name of the corporation is: *(A name change requires an amendment; see Instructions)*

2. It is incorporated under the laws of: *(Set forth state or foreign country)* _____

3. The name of the registered agent is:

☐ A. The registered agent is a corporation (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
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4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(Only use street or building address; see Instructions)

<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>
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5. If the corporation is a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated is:

<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
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6. The names and addresses of all directors of the corporation are: *(A minimum of three directors is required.)*
(If additional space is needed, include the information as an attachment to this form for item 6.)

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
<i>Street or Mailing Address</i>			
<i>City</i>		<i>State</i>	<i>Zip Code</i>

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
<i>Street or Mailing Address</i>			
<i>City</i>		<i>State</i>	<i>Zip Code</i>

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
<i>Street or Mailing Address</i>			
<i>City</i>		<i>State</i>	<i>Zip Code</i>

7. The names, addresses, and titles of all officers of the corporation are: (The offices of president and secretary must be filled, but both may not be held by the same officer.)

(If additional space is needed, include the information as an attachment to this form for item 7.)

					Officer Title
					President
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

					Officer Title
					Secretary
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

					Officer Title
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Execution:

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized officer

**Form 803—General Information
(Annual Statement – Professional Association)**

The attached form is drafted 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

A professional association is required by Section 302.012 of the Texas Business Organizations Code (BOC) to file with the Office of the Secretary of State by **June 30th** of each year an annual statement regarding licensure that lists the names and addresses of all members, officers, and directors of the association. The due date of the annual statement is not dependent upon the date of formation of the professional association. The failure to file the annual statement when due will result, after notice, in the termination of the existence of the domestic professional association or the revocation of the registration of the foreign professional association.

Please note that a document on file with the Secretary of State is a public record that is subject to public access and disclosure. When providing address information for a director, executive committee member, or officer, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Instructions for Form

- **File Number:** It is recommended that the file number assigned by the Secretary of State be provided to facilitate processing of the document.
- **Report Year:** Provide the report year in the space provided.
- **1—Association Name:** Provide the legal name of the professional association. Changes to the name of the professional association require an amendment to the certificate or registration of the association. See **Additional Documentation** instructions below.
- **2—Jurisdictional Information:** Provide the state or other jurisdiction under the laws of which the professional association is formed.
- **3—Registered Agent:** 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 association cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: 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 annual statement. *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)

- **4—Registered Office Address:** 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 a telephone answering service. (BOC § 5.201)

When completing items 5 through 7, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

- **5—Members:** Each member must be an individual licensed to render the professional service of the association. Provide the name and address of each member of the professional association. If the space provided is insufficient, include the information as an attachment to this form for item 5.
- **6—Directors or Executive Committee Members:** A professional association is governed and managed either by a board of directors or an executive committee. Each director or committee member must be a member of the association whose name appears in item 5. Provide the name and address of each member of the board of directors or executive committee. If the space provided is insufficient, include the information as an attachment to this form for item 6.
- **7—Officers:** The officers of a professional association must include a president and secretary. Any one person may serve in more than one office. Each officer must be a member of the association whose name appears in item 5. The president of a professional association must also be a member of the board of directors or executive committee whose name appears in item 6. Provide the name, address, and title of each officer. If the space provided is insufficient, include the information as an attachment to this form for item 7.
- **8—Statement of Licensure:** The annual statement must include a statement that all members are licensed to perform the type of service for which the association is formed, or, in the case of a multi-practice professional association, that each member is licensed to perform professional services falling within the scope of practice of the practitioner.
- **Execution:** Pursuant to Section 302.012(b) of the BOC, the annual statement must be signed by an authorized officer. Generally a governing person or managerial official of the entity signs a filing instrument. The annual statement need not be notarized; however, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer or managerial official is an affirmation by the organizer or managerial official that the person named in the instrument as registered agent has consented to serve in that capacity. (BOC § 5.2011)

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.

- **Filing Fees:** The filing fee for an annual statement for a professional association is **\$35**. The professional association becomes delinquent for failure to file the annual statement by June 30th. If the professional association has become delinquent for failure to file the annual statement by June 30th, the filing fee is the original **\$35** for ninety (90) days following the delinquency notice.
- **Additional Documentation:**
Name Change (optional): To change the name of the professional association at the same time of filing the required annual statement, an amendment (Form 424 or 406, as appropriate) and filing fee of **\$150 and** Form 804 and filing fee (as stated in **Filing Fees**), must be submitted at the same time to the Reports Unit for filing.

Reinstatement: If the annual statement is not filed within the ninety (90) day period following the second notification, the existence of the domestic professional association will be terminated or the registration of the foreign professional association will be revoked. The professional association may be relieved of the

involuntary termination or revocation and reinstated by filing: (A) the required certificate of reinstatement (Form 814) and filing fee of **\$75**, and (B) the required annual statement(s) (Form 803) and filing fee of **\$35** for each required annual statement. Form 814 is available at:

http://www.sos.state.tx.us/corp/forms_reports.shtml

Tax Clearance from Comptroller of Public Accounts: A Certificate of Reinstatement (Form 814) 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 by email at: tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.

Amendment to Certificate of Formation or Registration: The name of the association must be available at the time of reinstatement. The administrative rules adopted for determining entity name availability (Texas Administrative Code, Title 1, Part 4, Chapter 79, subchapter C) may be viewed at: <http://www.sos.state.tx.us/tac/index.shtml> A preliminary determination on “name availability” may be obtained by calling (512) 463-5555 or e-mail to: corpinfo@sos.state.tx.us

At the time of filing the reinstatement, if the professional association name is no longer available, or if written consent is required but cannot be obtained for the use of the name, simultaneously submit (A) a certificate of amendment to the certificate of formation to change the name of the domestic entity as a condition of reinstatement; or (B) an amended registration to state the assumed name under which the foreign entity shall transact business. The amendment (Form 424 or 406, as appropriate) and filing fee of **\$150** must be submitted at the same time as the certificate of reinstatement and annual statement(s). Forms 424 and 406 are available at: http://www.sos.state.tx.us/corp/forms_boc.shtml

Upon completing the reinstatement process of submitting all required forms, paying all applicable filing fees, and meeting all filing requirements, the status of the professional association will be changed to in existence.

- **Payment Instructions:** Accepted methods of payment are: (1) a check or money order payable through a U.S. bank or financial institution made payable to the **Secretary of State**; (2) a valid American Express, Discover, MasterCard, or Visa credit card (subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred); (3) a funded LegalEase account; or (4) a prefunded Secretary of State client account. Use Form 815 at: http://www.sos.state.tx.us/corp/forms_reports.shtml to pay by credit card, LegalEase, or client account.
- **Delivery Instructions:** Submit the completed form(s), with the filing fees, in duplicate to the Secretary of State. Mail to: Secretary of State, Reports Unit, P.O. Box 12028, Austin, Texas 78711-2028; deliver to: James Earl Rudder Office Building, Reports Unit, 1019 Brazos, Suite 505, Austin, Texas 78701; or fax to: (512) 463-1423 (requires Form 815 for payment). On filing the document(s), 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. If you require additional assistance, you may contact the Reports Unit at: (512) 475-2705.

Revised 07/13

Form 803
(revised 11/12)

Submit in duplicate to:
 Secretary of State
 Reports Unit
 P.O. Box 12028
 Austin, TX 78711-2028
 Phone: (512) 475-2705
 Fax: (512) 463-1423
 Dial: 7-1-1 for Relay Services
Filing Fee: See Instructions



Annual Statement
of a
Professional Association

This space reserved for filing office use.

File Number: _____ **Year:** _____

1. The name of the professional association is: *(A name change requires an amendment; see Instructions)*

2. It is organized under the laws of: *(Set forth state or foreign country)* _____

3. The name of the registered agent is:

☐ A. The registered agent is an organization *(cannot be entity named above)* by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name *MI* *Last Name* *Suffix*

4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(Only use street or building address; see Instructions)

TX

Street Address *City* *State* *Zip Code*

5. The names and addresses of all members of the association are: *(required)*

(If additional space is needed, include the information as an attachment to this form for item 5.)

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

6. The names and addresses of all directors or executive committee members of the association are: (required)

(Each must be a licensed member named in item 5.)

(If additional space is needed, include the information as an attachment to this form for item 6.)

					<input type="checkbox"/> Director <input type="checkbox"/> Exec. Comm. Member
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

					<input type="checkbox"/> Director <input type="checkbox"/> Exec. Comm. Member
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

					<input type="checkbox"/> Director <input type="checkbox"/> Exec. Comm. Member
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

7. The names, addresses, and titles of all officers of the association are: (required)

(Each must be a licensed member named in item 5. The offices of president and secretary must be filled, but both may be held by the same member.)

(If additional space is needed, include the information as an attachment to this form for item 7.)

					Officer Title
					President
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

					Officer Title
					Secretary
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

					Officer Title
					Vice-President
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

					Officer Title
					Treasurer
First Name	MI	Last Name	Suffix		
Street or Mailing Address		City	State	Zip Code	Country

8. All members are licensed to perform the type of service for which the association is formed; or, in the case of a multi-practice professional association, that each member is licensed to perform professional services falling within the scope of practice of the practitioner.

Execution: The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized officer

Printed or typed name of officer and title

**Form 804—General Information
(Periodic Report – Limited Partnership)**

The attached form is drafted 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

A limited partnership is required by Section 153.301 of the Texas Business Organizations Code (BOC) to file a periodic report that lists the names and addresses of each general partner of the limited partnership. The Office of the Secretary of State may require a domestic limited partnership or a foreign limited partnership registered to transact business in this state to file a periodic report not more than once every four years. The failure to file the report when due will result, after notice, in the termination of the certificate of formation of the domestic limited partnership or the revocation of registration of the foreign limited partnership.

Please note that a document on file with the Secretary of State is a public record that is subject to public access and disclosure. When providing address information for a general partner, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Instructions for Form

- **File Number:** It is recommended that the file number assigned by the Secretary of State be provided to facilitate processing of the document.
- **1—Limited Partnership Name:** Provide the legal name of the limited partnership. Changes to the name of the limited partnership require an amendment to the certificate or registration of the limited partnership. See **Additional Documentation** instructions below.
- **2—Jurisdictional Information:** Provide the state or other jurisdiction under the laws of which the limited partnership is formed.
- **3—Registered Agent:** 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 limited partnership cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: 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 periodic report. *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)

- **4—Registered Office Address:** 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) A post office box is not sufficient as a registered office address unless the registered office is located in a town with a population of less than 5,000.

- **5—Principal Office Address:** The address of the principal office in the United States where records are to be kept or made available must include the street or building address, including apartment or suite number, city, state, zip code, and country.
- **6—General Partner:** Provide the name and address of each general partner on record with the Secretary of State for the limited partnership. If the space provided is insufficient, include the information as an attachment to this form for item 6. Address changes for existing general partners are allowed. Additions or deletions of general partners, or changing the name of an existing general partner require an amendment to the certificate or registration of the limited partnership. See **Additional Documentation** instructions below.
- **Execution:** Pursuant to Section 153.302(3) of the BOC, the periodic report must be signed by at least one general partner. If the general partner is a legal entity such as a corporation, a person authorized to execute documents on behalf of such entity must sign the periodic report. For example: Jane Esquire, President of ABC Incorporators, Inc. In this case, please print the entity name on the “Signed on behalf of the limited partnership” line, followed by the signature of an officer on the “By (general partner)” line. If the general partner is an individual, please print the individual’s name on the “Signed on behalf of the limited partnership” line, followed by the individual’s signature on the “By (general partner)” line. The periodic report need not be notarized; however, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer or managerial official is an affirmation by the organizer or managerial official that the person named in the instrument as registered agent has consented to serve in that capacity. (BOC § 5.2011)

A person commits an offense under Section 4.008 of the BOC if the person signs or directs the filing of a filing instrument that the person knows is materially false with 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.

- **Filing Fees:** The filing fee for a periodic report for a limited partnership is **\$50**. If the limited partnership has forfeited its right to conduct affairs for failure to file the periodic report within thirty (30) days of the first notification, the fee is the original **\$50** plus a late fee of **\$25** per month or part of a month for one hundred twenty (120) days following the forfeiture (maximum late fee **\$100**).
- **Additional Documentation:**
 - Name Change** (optional): To change the name of the limited partnership at the same time of filing the required periodic report, an amendment (Form 424 or 412, as appropriate) and filing fee of **\$150 and** Form 804 and filing fee (as stated in **Filing Fees**), must be submitted at the same time to the Reports Unit for filing.
 - General Partner Change:** To add, delete, or change the name of an existing general partner at the same time of filing the required periodic report, an amendment (Form 424 or 412, as appropriate) and filing fee of **\$150 and** Form 804 and filing fee (as stated in **Filing Fees**), must be submitted at the same time to the Reports Unit for filing.

Reinstatement: If the report is not filed within the one hundred twenty (120) day period from the date of the second notification, the certificate of formation of the domestic limited partnership will be terminated or the registration of the foreign limited partnership will be revoked. The limited partnership may be relieved of the termination or revocation and reinstated by submitting the required periodic report (Form 804) and filing fee which totals **\$225** (**\$50** filing fee for the report, **\$100** late fee, and a **\$75** reinstatement fee).

Tax Clearance from Comptroller of Public Accounts: 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 is required to be filed with Form 804 and filing fee of **\$225**. Form 811 is not required

when reinstating. Contact the Comptroller for assistance in complying with franchise tax filing requirements and obtaining the necessary tax clearance letter by email at: tax.help@cpa.state.tx.us or by calling (800) 252-1381 or (512) 463-4600.

Amendment to Certificate of Formation or Registration: The name of the partnership must be available at the time of reinstatement. The administrative rules adopted for determining entity name availability (Texas Administrative Code, Title 1, Part 4, Chapter 79, subchapter C) may be viewed at: <http://www.sos.state.tx.us/tac/index.shtml> A preliminary determination on “name availability” may be obtained by calling (512) 463-5555 or e-mail to: corpinfo@sos.state.tx.us

At the time of reinstating, if the limited partnership name is no longer available, or if written consent is required but cannot be obtained for the use of the name, simultaneously submit: (A) a certificate of amendment to the certificate of formation to change the name of the domestic entity as a condition of reinstatement; or (B) an amended registration to state the assumed name under which the foreign entity shall transact business. The amendment (Form 424 or 412, as appropriate) and filing fee of **\$150 and** Form 804 and filing fee of **\$225, and** the tax clearance letter, must be submitted at the same time to the Reports Unit for filing. Forms 424 and 412 are available at: http://www.sos.state.tx.us/corp/forms_boc.shtml

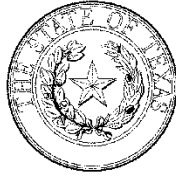
Upon completing the reinstatement process of submitting all required forms, paying all applicable filing fees, and meeting all filing requirements, the status of the limited partnership will be changed to in existence.

- **Payment Instructions:** Accepted methods of payment are: (1) a check or money order payable through a U.S. bank or financial institution made payable to the **Secretary of State**; (2) a valid American Express, Discover, MasterCard, or Visa credit card (subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred); (3) a funded LegalEase account; or (4) a prefunded Secretary of State client account. Use Form 815 at: http://www.sos.state.tx.us/corp/forms_reports.shtml to pay by credit card, LegalEase, or client account.
- **Delivery Instructions:** Submit the completed form(s), with the filing fees, in duplicate to the Secretary of State. Mail to: Secretary of State, Reports Unit, P.O. Box 12028, Austin, Texas 78711-2028; deliver to: James Earl Rudder Office Building, Reports Unit, 1019 Brazos, Suite 505, Austin, Texas 78701; or fax to: (512) 463-1423 (requires Form 815 for payment). On filing the document(s), 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. If you require additional assistance, you may contact the Reports Unit at: (512) 475-2705.

Revised 11/12

Form 804**(Revised 11/12)**

Submit in duplicate to:
 Secretary of State
 Reports Unit
 P.O. Box 12028
 Austin, TX 78711-2028
 Phone: (512) 475-2705
 FAX: (512) 463-1423
 Dial: 7-1-1 for Relay Services
Filing Fee: See Instructions



**Periodic Report
 of a
 Limited Partnership**

This space reserved for filing office use.

File Number: _____1. The name of the limited partnership is: *(A name change requires an amendment; see Instructions)*2. It is organized under the laws of: *(Set forth state or foreign country)* _____

3. The name of the registered agent is:

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:**OR**☐ B. The registered agent is an individual resident of the state whose name is:

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>
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4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(Only use street or building address; see Instructions)

<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>
		TX	

5. The address of the principal office in the United States where the records are to be kept or made available is: *(Only use street or building address; see Instructions)*

<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
				USA

6. The names and addresses of all general partners of the limited partnership are: *(Address changes are allowed; additions or deletions of general partners, or a name change of an existing general partner require an amendment; see Instruction 6.)*

NAME AND ADDRESS OF GENERAL PARTNER <small>(Enter the name of either an individual or an organization, but not both.)</small>				
IF INDIVIDUAL				
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

NAME AND ADDRESS OF GENERAL PARTNER (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i> <i>Country</i>

NAME AND ADDRESS OF GENERAL PARTNER (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i> <i>Country</i>

Execution:

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signed on behalf of the limited partnership

By (general partner)

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

This form may be used to reinstate: (1) the existence of a domestic filing entity that has been voluntarily terminated; (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 registration has been revoked by action of the secretary of state.

Do Not Use This Form If:

- The entity's existence or registration was forfeited under the Tax Code. See Form 801.
- The entity is a professional association that was terminated or revoked for failure to timely file an annual statement. See Form 814.
- The entity was terminated or revoked by court order.

Time Frames for Reinstatement

- **Voluntarily Terminated Domestic Entity:** Certificate of reinstatement must be filed no later than the third (3rd) anniversary of the effective date of the termination. (See part 4A of the form.)
- **Involuntarily Terminated Domestic Entity:** Certificate of reinstatement may be filed at any time so long as the entity would otherwise have continued to exist. However, the entity is considered to have continued in existence without interruption from the date of termination only if the entity is reinstated before the third (3rd) anniversary of the date of involuntary termination. (See 4B.)
- **Revoked Foreign Entity Registration:** Certificate of reinstatement must be filed no later than the third (3rd) anniversary of the effective date of the revocation. (See 4C.)

Instructions for Form

- **Item 1—Entity Name and File Number:** Set forth the legal name of the entity and the secretary of state file number. For a foreign filing entity that was registered to transact business in Texas under a different name, also set forth the assumed name under which the entity was registered.
- **Item 2—Jurisdictional Information:** To ensure that the correct entity is reinstated, the jurisdiction of organization and the entity's date of organization or registration in Texas should be provided.
- **Item 3—Date of Termination or Revocation:** Provide the effective date of the termination or revocation. 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:** Select the grounds or conditions for reinstatement. Do not check more than one box. If unsure, verify the reason for inactive status by contacting the secretary of state at (512) 463-5555, 7-1-1 for relay services, corpinfo@sos.state.tx.us or on-line through SOSDirect. (Visit <http://www.sos.state.tx.us/corp/sosda/index.shtml> for SOSDirect information.)

4A. Reinstatement of a Texas Entity Following Voluntary Termination: Sections [11.201](#) and [11.202](#) of the BOC permit reinstatement no later than the third anniversary of the effective date of termination if the owners, members, governing persons, or other persons specified by the BOC approve the reinstatement in the manner provided by the title of the BOC governing the entity and:

- (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.

4B. Reinstatement of a Texas Entity Following Involuntary Termination: Section [11.251](#) of the BOC authorizes the secretary of state to involuntarily terminate 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 termination and any other circumstances of the type described above, including paying any fees, interest or penalties.

4C. Reinstatement of a Foreign Entity Following Revocation: Section [9.101](#) of the BOC authorizes the secretary of state to revoke the 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 revocation and any other circumstances of the type described above, including paying any fees, interest or penalties.

- **Item 5—Registered Agent and Registered Office:** An entity requesting reinstatement must 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 entity cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

An entity that was involuntarily terminated or that had its registration revoked for failure to maintain a registered agent or registered office in Texas need not submit an additional filing to change the registered agent or registered office.

Consent: 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 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. The administrative rules for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, [subchapter C](#)) may be viewed at <http://www.sos.state.tx.us/tac/index.shtml>.

If the entity name is no longer available or written consent for the use of the name is required but cannot be obtained, the entity must amend its certificate of formation or application for registration, as appropriate, to state an available name. The amendment must be submitted at the same time as the certificate of reinstatement.

- **Tax Clearance:** Unless the 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 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:** The reinstatement 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)

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:** Unless the entity is a nonprofit corporation or cooperative association, the filing fee for reinstatement following an involuntary termination or revocation is **\$75**, and the filing fee for reinstatement following a voluntary termination is **\$15**. The filing fee for reinstating a nonprofit corporation or a cooperative association is **\$5**.

Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa 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.

**Form 811
(Revised 05/11)**

Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709

Filing Fee: See instructions**Certificate of
Reinstatement**

This space reserved for office use.

1. The name of the entity is:

The entity is a foreign entity that was required to obtain its registration under a name that differs from the legal name stated above. The name under which the entity is registered is:

The file number issued to the filing entity by the secretary of state is: _____

2. The jurisdiction of organization of the entity is: _____
 (state or country)

The entity was organized or obtained its certificate of registration on: _____
 mm/dd/yyyy

3. The effective date of the entity's termination or revocation is: _____
 mm/dd/yyyy

4. The condition giving rise to the termination of the entity's existence or the revocation of its registration is described below. The entity requests reinstatement under the following code provision:
 (Select the appropriate box below. Do not check more than one box.)

4A. Reinstatement of a Texas Entity Following a Voluntary Termination (3 year limit)

☐ The domestic filing entity requests reinstatement under section 11.202 of the BOC following the filing of a certificate of termination. The undersigned certifies that the conditions for reinstatement of the entity's certificate of formation are met and that the reinstatement of the filing entity has been approved in the manner provided by the Texas Business Organizations Code.

4B. Reinstatement of a Texas Entity Following an Involuntary Termination

☐ The domestic filing entity requests reinstatement of its certificate of formation after the involuntary termination of its existence by the secretary of state pursuant to subchapter F of chapter 11 of the Code. The entity has corrected the circumstances giving rise to its involuntary termination and has taken any other action required for its reinstatement, including the payment of any fees, interest, or penalties. The undersigned certifies that the reinstatement of the filing entity has been approved in the manner required by the Texas Business Organizations Code.

4C. Reinstatement Following Revocation of Registration of a Foreign Entity (3 year limit)

☐ The foreign filing entity requests the reinstatement of its certificate of registration after its revocation by the secretary of state pursuant to subchapter C of chapter 9 of the BOC. The entity has corrected the circumstances giving rise to its revocation and has taken any other action required for its reinstatement, including the payment of any fees, interest, or penalties.

5. The name of the entity's registered agent and the address of the entity's registered office are as follows: (Select and complete either A or B and complete C)

☐ A. The registered agent is an organization (cannot be the entity seeking reinstatement) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is set forth below:

First Name

M.I.

Last Name

Suffix

C. The business address of the registered agent and the registered office address is:

TX

Street Address

City

State

Zip Code

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

Additional Documentation or Filings

☐ Comptroller of Public Accounts Tax Clearance Letter (Required, unless entity is a nonprofit corporation.)

☐ Amendment to Certificate of Formation or Registration (Required if entity name is no longer available.)

☐ Other

(A certificate of reinstatement may be conditioned on the submission of additional filings. See instructions.)

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person (see instructions)

Printed or typed name of authorized person

Form 814—General Information
(Certificate of Reinstatement of a Professional Association After Failure to File Annual Statement)

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

A professional association may be terminated or revoked if the association fails to file the annual statement required by section 302.012 of the Texas Business Organizations Code (BOC). This form may be used to reinstate the existence of a Texas professional association or the registration of a foreign professional association that has been terminated or revoked, respectively, for failing to timely file the annual statement.

Do Not Use This Form If:

- The professional association's existence or registration was forfeited under the Tax Code. See Form 801 at: http://www.sos.state.tx.us/corp/forms_reports.shtml
- The professional association was terminated or revoked by the Secretary of State for a reason other than failure to file an annual statement. See Form 811 at: http://www.sos.state.tx.us/corp/forms_reports.shtml

🕒 Time Frames for Reinstatement 🕒

- **Domestic Professional Association:** A certificate of reinstatement after involuntary termination for failing to file an annual statement may be filed at any time so long as the association would otherwise have continued to exist. The association is considered to have continued in existence without interruption from the date of termination; however, only if the association is reinstated before the third (3rd) anniversary of the date of involuntary termination.
- **Foreign Professional Association:** An application for reinstatement after revocation for failing to file an annual statement must be filed no later than the third (3rd) anniversary of the date of revocation.

Instructions for Form

- **Item 1—Association Name and File Number:** Provide the legal name of the association and the Secretary of State file number. For a foreign professional association that was registered to transact business in Texas under a different name, also provide the assumed name under which the association was registered.
- **Item 2—Jurisdictional Information:** It is recommended that the jurisdiction of organization and the association's date of formation or registration in Texas be provided to ensure that the correct professional association is reinstated.
- **Item 3—Date of Involuntary Termination or Revocation:** Provide the effective date of the involuntary termination or revocation of the association's existence or registration.
- **Item 4—Conditions for Reinstatement:** The certificate of reinstatement must include a statement that the circumstances giving rise to the involuntary termination or revocation have been corrected. To correct the circumstances, the association must submit each delinquent annual statement (Form 803) due at the time of submission of the reinstatement. *If the reinstatement is not accompanied by each delinquent annual statement, the reinstatement must be rejected.* To verify the number of statements due, contact the Reports Unit at (512) 475-2705.

- **Item 5—Registered Agent:** A professional association that requests reinstatement is required to provide the Secretary of State with current registered agent and registered office information. *This information is required even if the information is also included in each annual statement that accompanies the reinstatement.* 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 association cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: 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)

- **Item 6—Registered Office Address:** 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) A post office box is not sufficient as a registered office address unless the registered office is located in a town with a population of less than 5,000.
- **Additional Documentation and Filings:**
 - Tax Clearance from Comptroller of Public Accounts:** 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 by email at: tax.help@cpa.state.tx.us by calling (800) 252-1381 or (512) 463-4600.

Annual Statement: An annual statement (Form 803) and applicable filing fee are due at the time of reinstatement for each delinquent year. Form 803 is at: http://www.sos.state.tx.us/corp/forms_reports.shtml

Amendment to Certificate of Formation or Registration: A Certificate of Reinstatement must be accompanied by an amendment to the certificate of formation or registration if the professional association name is the same as or deceptively similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the Secretary of State. Amendment would also be required for a similar name if consent could not be obtained. The administrative rules adopted for determining entity name availability (Texas Administrative Code, Title 1, Part 4, Chapter 79, subchapter C) may be viewed at: <http://www.sos.state.tx.us/tac/index.shtml> A preliminary determination on "name availability" may be obtained by calling (512) 463-5555 or e-mail to: corpinfo@sos.state.tx.us

At the time of filing the reinstatement, if the professional association name is no longer available, or if written consent is required but cannot be obtained for the use of the name, simultaneously submit (A) a certificate of amendment to the certificate of formation to change the name of the domestic entity as a condition of reinstatement; or (B) an amended registration to state the assumed name under which the foreign entity shall transact business. The amendment (Form 424 or 406, as appropriate) and applicable filing fee (\$150) must be submitted at the same time as the certificate of reinstatement and annual statement(s). Forms 424 and 406 are available at: http://www.sos.state.tx.us/corp/forms_boc.shtml

Upon completing the reinstatement process of submitting all required forms, paying all applicable filing fees, and meeting all filing requirements, the status of the professional association will be changed to in existence.

- **Execution:** The reinstatement must be signed by an officer of the professional association. The 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)

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.

- **Filing Fees:** The filing fee for the reinstatement (Form 814) is **(\$75)** and for each delinquent annual statement (Form 803) that must be submitted with the reinstatement is **(\$35)**. The filing fee for an amendment (Form 424 or 406) if required as a condition of reinstatement is **(\$150)**.
- **Payment Instructions:** Accepted methods of payment are: (1) a check or money order payable to the **Secretary of State**; (2) a valid American Express, Discover, MasterCard, or Visa credit card; (3) a funded LegalEase account; or (4) a prefunded Secretary of State client account. Checks and money orders must be payable through a U.S. bank or financial institution; credit card transactions are subject to a statutorily authorized convenience fee of 2.7% of the total fees incurred, if applicable. Use Form 815 at: http://www.sos.state.tx.us/corp/forms_reports.shtml to pay by credit card, LegalEase, or client account.
- **Delivery Instructions:** Submit the completed form(s) in duplicate, along with payment of the applicable filing fees, to the Secretary of State. Mail to: Secretary of State, Reports Unit, P.O. Box 12028, Austin, Texas 78711-2028; deliver to: James Earl Rudder Office Building, Reports Unit, 1019 Brazos, Suite 505, Austin, Texas 78701; or fax to: (512) 463-1423. 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.

Revised 06/11

Form 814**(Revised 06/11)**

Submit in duplicate to:
 Secretary of State
 Reports Unit
 P.O. Box 12028
 Austin, TX 78711-2028
 Phone: (512) 475-2705
 Fax: (512) 463-1423
 Dial: 7-1-1 for Relay Services
Filing Fee: \$75



**Certificate of Reinstatement
 of a Professional Association
 After Failure to File
 Annual Statement**

This space reserved for office use.

1. The name of the professional association is: _____

The association was required to register in Texas under the following assumed name: (if applicable) _____

The file number issued to the association by the secretary of state is: _____

2. The jurisdiction of organization of the association is: _____
 (state or country)

The association was organized or obtained its registration on: _____
 mm/dd/yyyy

3. The effective date of the association's involuntary termination or revocation is: _____
 mm/dd/yyyy

4. The association certifies that the circumstances giving rise to its involuntary termination or revocation have been corrected by the submission of each annual statement due, and, further, that the association has satisfied its obligations under the Tax Code and all conditions for reinstatement have been met.

5. ☐ A. The registered agent is an organization (cannot be the entity seeking reinstatement) by the name of: _____

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name

M.I. Last Name

Suffix

6. The registered office address, which is identical to the business address of the registered agent in Texas, is:
 (use street or building address; see Instructions)

Street Address

City

TX

State Zip Code

Additional Documentation and Filings

- ☐ Comptroller of Public Accounts Tax Clearance Letter (Required)
☐ Annual Statement(s) (Include each annual statement (Form 803) and applicable filing fee(s) due at time of reinstatement.)
☐ Amendment to Certificate of Formation or Registration (Required only if entity name is no longer available and include applicable fee.)

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____
 Signature of authorized officer

 Printed or typed name of officer and title

Request for Certificate of Account Status to Terminate a Taxable Entity's Existence in Texas or Registration

An entity that intends to terminate its legal existence or registration must satisfy filing requirements for all taxes administered by the Comptroller under Title 2 of the Texas Tax Code. In addition, all accounts for those taxes must be closed. To determine if the entity is current in tax requirements, or to close any open tax accounts, call us at 1-800-252-1381 or 512-463-4600. More information about this process is available online at www.comptroller.texas.gov/taxes/franchise/.

Section A - Entity Information

Entity's legal name	Taxpayer number	File number (from the Texas Secretary of State)
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1. Is the entity a member of an affiliated group that will be required to file a combined report? ☐ YES ☐ NO
If "YES," enter the following information for the entity that will report on your behalf. If "NO," skip to Section B.
 Legal name of reporting entity _____ Texas taxpayer number / FEI number _____

2. Is the entity's accounting year begin date on or after the combined group's accounting year begin date on its franchise tax report? ☐ YES ☐ NO
If "YES," this entity's information must be included in the combined group report. If "NO," enter the following information:
 This entity's accounting year begin date _____ month _____ day _____ year _____
 The day before the combined group's accounting year begin date _____ month _____ day _____ year _____

Section B - Texas Entity - If the entity was formed in Texas, indicate the filing for which the certificate is required.

<input type="checkbox"/> Termination	<input type="checkbox"/> Merger	<input type="checkbox"/> Entity conversion
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Section C - Non-Texas Entity - If the entity was formed outside of Texas, please complete the following information.

1. Is the entity still conducting business in Texas? ☐ YES ☐ NO
 month _____ day _____ year _____

2. If "NO," enter the entity's last day of business in Texas _____ month _____ day _____ year _____

3. Does the entity currently have an active charter in its home state? ☐ YES ☐ NO

4. If "NO," indicate the type and date of termination:
☐ Termination effective date _____ month _____ day _____ year _____
☐ Merger effective date _____ month _____ day _____ year _____ Name of survivor _____
☐ Entity conversion effective date _____ month _____ day _____ year _____

Note: If the home state charter has been terminated, home state documentation must be included. The home state documentation must bear the seal of the appropriate filing agency and the effective date of the filing.

Section D - Receiving Your Certificate

Does this entity have a forfeited certificate or registration that needs to be reinstated before ending its existence or registration in Texas? ☐ YES ☐ NO

Please indicate how you would like to receive your certificate:

☐ FAX FAX number (area code and number) _____ Telephone number (area code and number) _____

☐ .PDF Email address _____

☐ Mail Mailing address _____ City _____ State _____ ZIP code _____

You can file documents online with the Secretary of State using SOSDirect at www.sos.state.tx.us/corp/sosda/index.shtml.

Your account will be reviewed to determine eligibility. If eligible, a certificate will be sent using the format selected. If not eligible, we will notify you in writing what is required to be eligible. All requests are processed in the order they are received regardless of the format you select. Assistance is also available at your local field office. Field office locations are available online at www.comptroller.texas.gov/about/contact/locations.php.

Your name (Please type or print)	Phone number and extension
<div style="display: flex; align-items: center;"> <div style="text-align: center; width: 50px;"> sign here </div> <div> Authorized agent </div> </div>	
Visit us online at www.comptroller.texas.gov/taxes/franchise/ or call 1-800-252-1381 or 512-463-4600.	Mail to: Comptroller of Public Accounts P.O. Box 149348 Austin, TX 78714-9348

Tax Clearance Letter Request for Reinstatement

In order to reinstate an entity, the Texas Secretary of State requires evidence that the entity has met certain franchise tax requirements. To provide this evidence, the Comptroller's office issues a Tax Clearance Letter, Form 05-377. This letter must be included as part of the reinstatement filing with the Secretary of State.

Information about other filing requirements with the Secretary of State is online at www.sos.state.tx.us.

Obtaining a Tax Clearance Letter

All franchise tax reports and signed Information Reports through the reinstatement date must be filed. All franchise tax, penalty and interest must be paid.

- If all required reports and payments are already on file, complete and return this request.

OR

- If all required reports and payments are not on file, send any missing reports and payments along with this request.

Taxpayer name	11-digit Texas taxpayer number <div style="border-bottom: 1px solid black; width: 100%;"></div>
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Select how the Tax Clearance Letter should be sent. Please note that requests are processed in the order received, regardless of the format you select.

Please select only one:


☐ Mail Recipient: _____
 Street: _____
 City, state and ZIP code: _____

☐ PDF Email address: _____

☐ FAX FAX number (Area code and number): _____

Mail this request and all missing reports and/or payments to:

Comptroller of Public Accounts
 P.O. Box 149348
 Austin, TX 78714-9348

Requestor name (Type or print.)	Telephone number and extension	
		Date

FOR ASSISTANCE: Franchise tax information is available online at www.comptroller.texas.gov/taxes/franchise/. For additional assistance, call 1-800-252-1381.

You have certain rights under Chapters 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at the address or phone number listed on this form.

