Navigating Withdrawal Procedures in Multiple Jurisdictions

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If a corporation or LLC stops doing business in a state in which it was registered to do business as a "foreign" company, just walking away does not end its responsibilities in that state. State statutes apply different terms to the process of no longer doing business in the state. Some commonly used terms are "termination," "withdrawal," or "surrendering." In addition, each term may have a different meaning from one state to another. It is critical to check the withdrawal requirements for each particular state in which the company is ceasing to do business.

Most jurisdictions will, at least eventually, terminate a corporation's existence for failure to file the annual report or pay the annual franchise tax. However, this involuntary termination has different consequences in different jurisdictions. Without filing withdrawal forms and following the state's statutory procedures, your entity could remain subject to requirements to pay annual fees, franchise taxes, and other fees required by the state. In addition, many state statutes go further and hold the directors and officers personally liable for such payments.

Often the process of withdrawing from a state is more time-consuming, and more costly, than qualifying to do business in a state in the first place. For example, consider the following requirements from just a few jurisdictions below:

Louisiana: "*Application for Withdrawal.*" A tax clearance letter must be obtained from the Department of Labor, which takes approximately six to eight weeks, and also from the Department of Revenue, which can take up to two years. The corporation files an Application for Withdrawal with the Secretary of State. The Secretary of State then starts the withdrawal process which is not complete until all tax clearance letters are provided.

New York: "*Certificate of Surrender of Authority.*" This requires tax consent from the Department of Taxation and Finance. If the entity is dissolved in the home state, a Certificate Reciting Termination from the home state may be filed in New York, unless the entity is a California domestic entity, in which case a Certificate of Status must be ordered. Obtaining consent from the Department of Taxation and Finance can take up to a few months. If a third-party registered agent is involved in the withdrawal process, a power of attorney for it must be filed.

PROFESSIONALS

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Indiana: "*Statement of Withdrawal of a Foreign Entity.*" Even though a tax clearance letter is not required, personal liability may attach to the corporation's officers and directors if the Department of Revenue and the Department of Employment and Training Services are not properly notified within thirty days after the adoption of the resolution to withdraw. In addition, the entity must be in good standing in order to withdraw.

West Virginia: "*Application for Certificate of Withdrawal.*" Tax Clearance is required and is initiated by the Secretary of State upon filing the application. Clearances must be obtained from three agencies: Tax and Revenue, Department of Insurance (Insurance Commissioner's Office-Workers Compensation), and Unemployment Security.

New Jersey: "*Certificate of Withdrawal.*" The entity is required to submit a Withdrawal Application with an Estimated Final Return or Final CBT Return, Request for Tax Clearance Certificate. Any past due annual reports must be filed and paid online. The turn-around time to obtain Tax Clearance is six to eight months.

Pennsylvania: "*Statement of Withdrawal of Foreign Registration Corporation.*" Tax Clearance is required from the Department of Revenue and An Unemployment Clearance Certificate must be obtained from the Department of Labor and Industry, Bureau of Employment Security and the foreign corporation must publish its intention to withdraw in a newspaper of general circulation in the county where the business is/was located and also in a legal newspaper in the same county.

Here are other important considerations:

Contact the Registered Agent. After withdrawal, the corporation must remember to terminate the services of the registered agent. Otherwise, the account may remain active and the entity may continue to be responsible for paying for services.

Corporate Resolution. A corporate resolution by the shareholders (or members/managers, as the case may be) authorizing the withdrawal from doing business in a jurisdiction should be prepared and approved in accordance to the corporation's governing documents and relevant state statute.

Certificate of Payment. Although several states do not require a tax clearance letter, most states require a certification in the withdrawal application that the company is current with all state tax payments and report filings. In addition, most states require payment of all fees and taxes due, as well as filing all previous annual reports prior to filing a withdrawal application.

Closing out Accounts and Permits. If the corporation maintained a sales and use tax account, withholding tax account, and/or business tax account, these accounts must be properly closed. This involves filing a final sales and use tax return and/or final business tax return in accordance with individual state filing procedures and requirements.

The process of withdrawing from a state is complex and time consuming, but if it is not done properly, the company will continue to be subject to annual filing requirements of the states in which it is registered.