

Form 308—General Information
(Application for Renewal of Registration of a Foreign Limited Liability 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

To transact business in Texas, a foreign limited liability partnership must register with the secretary of state under chapters 9 and 152 of the Texas Business Organizations Code (BOC). A registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date unless renewed under section 152.908 of the BOC (BOC § 152.905(e)). This form may be used to renew the registration of a foreign limited liability partnership prior to its expiration. When the renewal application is filed by the secretary of state, the registration is continued for one year after the date the registration would otherwise expire. Renewal applications submitted after expiration will not be accepted for filing and the foreign limited liability partnership will be required to submit a new application for registration. Renewals should not be submitted earlier than 90 days prior to expiration.

Instructions for Form

- **Item 1—Entity Name:** Provide the full legal name of the foreign entity as stated in the entity's formation document. The name of the foreign entity must comply with chapter 5 of the BOC. Chapter 5 requires that the name of a foreign limited liability partnership contain a recognized term of organization as listed in sections 5.055 and 5.063 of the BOC.
- **Item 2—Assumed Name:** If the entity name fails to contain an appropriate organizational designation for the entity type, a recognized organizational designation should be added to the legal name and set forth in item 2. Accepted organizational designations for a foreign limited liability partnership are "limited liability partnership" or an abbreviation of that phrase. The name of a foreign limited partnership that is a limited liability partnership may contain the words "limited liability limited partnership," an abbreviation of that phrase, or the organization terms permitted by section 5.063 (BOC § 5.055(b)).

In addition, the foreign entity is required to file an assumed name certificate in compliance with chapter 71 of the Texas Business & Commerce Code. The promulgated form for filing the assumed name with the secretary of state is **Form 503**. This form is not acceptable for filing with the county clerk.

- **Item 3—Most Recent Date of Registration:** Enter partnership's most recent date of registration or renewal of registration. Provide the file number of the registration being renewed.
- **Item 4—Federal Employer Identification Number:** Enter the entity's federal employer identification number (FEIN) in the space provided. The FEIN is a 9-digit number (e.g., 12-3456789) that is issued by the Internal Revenue Service (IRS). If the entity has not received its FEIN at the time of submission, this should be noted in item 4 on the application form.

- **Item 5—Jurisdictional Information:** The application must state the foreign entity's jurisdiction of formation and the date of its initial registration as a limited liability partnership under the laws of its jurisdiction in the format shown in the application.
- **Item 6—Certification of Existence:** The application also must contain a statement that the entity exists as a valid foreign limited liability partnership under the laws of the entity's jurisdiction of formation.
- **Item 7—Number of Partners:** Provide the number of partners in Texas as of the date of the renewal application. In the context of the provisions of chapter 152, subchapter K, the term "partners" refers to general partners only in a limited partnership registering as a limited liability partnership (BOC § 4.155(12)). For the purpose of determining the number of partners in Texas, the secretary of state has adopted administrative rules providing that a partner is considered to be in Texas if:
 - (1) the partner is a resident of the state;
 - (2) the partner is domiciled or located in the state;
 - (3) the partner is licensed or otherwise legally authorized to perform the services of the partnership in this state; or
 - (4) the partner, or a representative of the partnership working under the direct supervision or control of the partner, will be providing services or otherwise transacting the business of the partnership within the state for a period of more than 30 days.

The filing fee will be calculated by multiplying the number of partners listed in item 7 of the application by **\$200**. The fee shall be not less than **\$200** nor exceed **\$750**.

- **Item 8—Principal Office Address:** Provide the street or mailing address of the principal office of the foreign entity.
- **Item 9—Registered Agent and Registered Office:** A 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 foreign partnership cannot act as its own registered agent; do not enter the entity name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the application for registration. *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).

- **Item 10—Appointment of Secretary of State:** By signing the application for renewal of registration, the foreign entity consents to the appointment of the secretary of state as an agent of the foreign limited liability partnership for service of process under the circumstances described by section 5.251 of the BOC (BOC § 9.007(b)(11)).

- **Item 11—Business or Activity to be Pursued in Texas:** Set forth a brief statement of the partnership's business or activity only if the business or activity of the partnership as stated in its initial registration or most recent renewal of registration has changed. The business or activity to be pursued in Texas may be stated to be "any lawful business or activity under the law of this state."
- **Effectiveness of Filing:** The application for renewal of registration of a limited liability partnership becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052, 4.053, and 152.905(c) of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed provided that the effective date is within the current term of registration (option B). In either case, the filing of the application for renewal will extend the registration for one year after the date the existing registration would expire.
- **Execution:** Pursuant to section 152.905 of the BOC, the application for renewal of registration must be signed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

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

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

- **Payment and Delivery Instructions:** The filing fee for an application for renewal of registration of a foreign limited liability partnership is **\$200 per general partner not to exceed \$750**. 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.

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.

- **FYI:** A foreign limited liability partnership is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the application for registration. Failure to maintain a registered agent and registered office may result in the revocation of the entity's registration.

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