

Form 641—General Information
(Certificate of Conversion of a Limited Partnership Converting to a General Partnership)

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 limited partnership may convert into a general partnership by adopting a plan of conversion in accordance with section 10.101 of the Texas Business Organizations Code (BOC) and filing a certificate of conversion with the secretary of state in accordance with sections 10.154 and 10.155 of the BOC. As defined in section 1.002 of the BOC, conversion means the continuance of a Texas entity as a foreign entity of any type, the continuance of a foreign entity as a Texas entity of any type, or the continuance of a Texas entity of one type as a Texas entity of another type. As used in the BOC and in this form, “converting entity” means the entity that existed before the conversion; “converted entity” means the entity resulting from a conversion. This form should be used when a domestic limited partnership is the converting entity and a foreign or domestic general partnership will be the converted entity.

Formation of the Partnership: If a Texas general partnership is formed under a plan of conversion, the existence of the partnership as a partnership begins when the conversion takes effect. The owners or members designated to become the partners under the plan of conversion become partners when the conversion takes effect (BOC § 10.107).

Withdrawal of Registration as a Limited Liability Partnership: On conversion, a limited partnership that has registered as a limited liability partnership should file a withdrawal notice to terminate the status of the partnership as a limited liability partnership (BOC § 152.802(f)).

Registration as a Limited Liability Partnership: A Texas general partnership created by conversion may file for registration to become a limited liability partnership by complying with sections 152.803 and 152.804 of the BOC and filing an application for registration with the secretary of state in accordance with section 152.802.

Instructions for Form

- **Converting Entity Information:** The certificate of conversion is filed by the converting entity and should set forth the legal name of the converting entity, its organizational form, and jurisdiction of formation as part of the certificate. It is recommended that the date of its formation and the file number assigned by the secretary of state be provided in order to facilitate processing of the document.
- **Converted Entity Information:** The entity following the conversion is the converted entity. The certificate of conversion should set forth the legal name of the converted entity and its jurisdiction of formation.
- **Plan of Conversion:** Unless the converting entity opts to complete the Alternative Statements section of this form, a plan of conversion conforming to the requirements of section 10.103 of the BOC should be attached to the certificate of conversion.

- **Alternative Statements in Lieu of Plan:** As an alternative to attaching the complete plan of conversion, the converting entity may opt to certify and complete the alternative statements in the form.
- **Approval of the Plan of Conversion:** The certificate of conversion must include a statement that the plan of conversion has been approved as required by (1) the laws of the jurisdiction of formation and (2) the governing documents of the converting entity. A domestic limited partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement (BOC § 10.107(c)).
- **Effectiveness of Filing:** A certificate of conversion becomes effective when accepted and filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 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 (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of a converting Texas filing entity will be shown as “conversion” on the records of the secretary of state.

- **Tax Certificate:** The secretary of state may not accept a certificate of conversion for filing if the required franchise taxes have not been paid (BOC § 10.156). The certificate of conversion must be accompanied by a certificate of account status from the Texas Comptroller of Public Accounts indicating that the converting entity is in good standing having no franchise tax reports or payments due. The certificate of account status must be valid through the effective date of filing of the conversion. Please note that the Comptroller issues many different types of certificates of account status. *A certificate of account status for purposes of conversion obtained from the Comptroller's web site will be accepted only when the converted entity is subject to franchise tax under Texas law.*

A general partnership, other than a limited liability partnership, comprised solely of individuals is not liable for franchise tax. *If the converted entity will not be liable for franchise tax you will need to attach form #05-329, which is obtained directly from a Comptroller of Public Accounts representative.*

Requests for certificates or questions on tax status should be directed to the Tax Assistance Section of the Comptroller of Public Accounts, Austin, Texas 78744-0100; (512) 463-4600 or toll-free (800) 252-1381. You also may contact tax.help@cpa.state.tx.us.

In lieu of a tax certificate, the certificate of conversion may provide that the converted entity is liable for the payment of the required franchise taxes.

- **Execution:** Pursuant to section 4.001 of the BOC, the certificate of conversion must be signed by a person authorized by the BOC to act on behalf of the converting entity in regard to the filing

instrument. Generally, a governing person or managerial official of the entity signs a filing instrument.

A certificate of conversion filed by a limited partnership should be signed by a general partner of the partnership, but it does not need to be notarized.

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

- **Payment and Delivery Instructions:** The filing fee for a certificate of conversion converting a Texas limited partnership to a general partnership is **\$300**.

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.

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