

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by action of the secretary of state; or (3) the registration of a foreign filing entity whose registration has been revoked by action of the secretary of state.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 may be filed at any time so long as the entity would otherwise have continued to exist. (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 part 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 part 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 fictitious name under which the entity obtained its registration.
- **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.texas.gov, or online through SOSDirect. (Visit <https://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 Texas Business Organizations Code (BOC) permit reinstatement 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 or authorized 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 not distinguishable in the records of the secretary of state from the name of any existing domestic or foreign filing entity, any fictitious name under which a foreign filing entity is registered to transact business in this state, any name reservation or registration, or the name of any existing registered series of a domestic limited liability company 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 <https://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 met all franchise tax requirements and is eligible for reinstatement (Comptroller Form 05-377). The tax clearance letter must be valid through the date of filing of the reinstatement with the secretary of state.

Contact the Comptroller for assistance in obtaining the necessary tax clearance letter by e-mail at tax.help@cpa.texas.gov or by phone at (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 a voluntary termination is **\$15**, and the filing fee for reinstatement following an involuntary termination or revocation is **\$75**. The filing fee for reinstating a nonprofit corporation or a cooperative association is **\$5**.

Fees may be paid by: (1) a personal check or money order payable through a U.S. bank or financial institution and made payable to the secretary of state; (2) a funded LegalEase account; or (3) a prefunded secretary of state client account. 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. Please include a payment form (Form 807) with a paper submission.

Submit the completed form(s) in duplicate along with the filing fee. The form(s) may be: (1) mailed to P.O. Box 13697, Austin, Texas 78711-3697; (2) faxed to (512) 463-5709; or (3) delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, Form 807 must accompany the transmission. 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.