

Authorization for Foreign Corporations to Do Business in New York

General Information

The Business Corporation Law provides that a foreign corporation may not do business in New York until it has been authorized by the New York State Department of State.

An authorized foreign corporation may do any kind of business a domestic corporation may lawfully do, provided the foreign corporation is authorized to do the business in the state or country where it is incorporated. (NYS BCL, Article 13, section 1301(a)). Once a foreign corporation is authorized, its name is protected and the corporation may use New York State courts.

The Tax Law requires that all authorized foreign corporations must pay an annual maintenance fee of \$300 to the Department of Taxation and Finance. An authorized foreign corporation that is doing business may apply the maintenance fee against its franchise taxes. (NYS Tax Law, Article 9, section 181.2).

For tax purposes *doing business* generally means doing business in a corporate form, employing capital, owning or leasing property or maintaining an office in New York State. (For an expanded definition of *doing business*, see the Business Corporation Franchise Tax Regulations, Part I.) (20 NYCRR).

The Tax Law provides that a foreign corporation that is doing business in New York State must pay all state and local taxes even if it is not authorized.

An authorized foreign corporation that is disclaiming tax liability must file Form CT-245, *Maintenance Fee and Activities Return for a Foreign Corporation Disclaiming Tax Liability*, and pay the \$300 maintenance fee.

In general, foreign banking corporations and insurance corporations are not required to pay the \$300 maintenance fee. Foreign banking corporations described in section 1452(a)(9) of the Tax Law are required to pay the maintenance fee. See Form CT-245 for details.

How to Apply for Authority to Do Business

All foreign corporations must apply for authority to do business by presenting an application entitled *Application for authority of . . . (name of corporation) . . . under section 1304 of the Business Corporation Law*. An officer or attorney-in-fact for the corporation must sign and verify the application.

Contents of the Application for Authority

The application must contain the following information:

- (1) The name of the foreign corporation.
- (2) The fictitious name the corporation agrees to use in this state pursuant to section 1301 of the BCL, if applicable.
- (3) The jurisdiction and date of its incorporation.
- (4) The purposes for which it is formed. It is sufficient to state that the purpose of the corporation is to engage in any lawful activity for which corporations may be organized under Chapter 4 of the New York State Consolidated Laws, and that the corporation is not formed to engage in any activity requiring the consent of any state official, department, board, agency or other body without having first obtained that consent. By this statement, all lawful activities will be within the purposes of the corporation except for any limitations contained in the statement or in Chapter 4.
- (5) The New York State county where its office will be located.
- (6) A designation of the secretary of state as its agent upon whom process against the corporation may be served and the address where the secretary of the state shall mail a copy of any process against the corporation served upon him or her.

- (7) If it is to have a registered agent, the agent's name and address in New York and a statement that the registered agent is to be its agent upon whom process against it may be served.
- (8) A statement that the foreign corporation has not since its incorporation or since the date its authority to do business in New York was last surrendered engaged in any activity in this state, except as set forth in paragraph (b) of section 1301 (authorization of foreign corporations). The consent of the tax commissioner (PR-3031) to the filing of the application may be substituted for this statement (attach the consent to the application).

Attach to the application for authority a certificate by an authorized officer of the jurisdiction of its incorporation that the foreign corporation is an existing corporation. If the certificate is in a foreign language, attach a translation under oath of the translator.

Foreign Corporations That Are New to New York State

A foreign corporation that has never done business in New York must provide the New York State Department of State with the following:

- ___ Application for authority containing all information listed in this publication under *Contents of the Application for Authority*. Legal stationery stores may have blank forms that you can use.
- ___ A check for the filing fee of \$225 made payable to the *New York State Department of State*.

Mail the application and filing fee to:

NYS Department of State
Bureau of Corporations
Albany, NY 12231

Foreign Corporations Doing Business in New York (currently or previously)

A foreign corporation that is currently doing business or that has previously done business in New York State must

obtain the tax commissioner's consent to the filing of the application in addition to the other requirements below. The consent of the tax commissioner is a statement verifying that all tax returns due have been filed and all taxes due have been paid.

To obtain this consent, you must provide the Tax Department with the following:

- ___ A separate affidavit indicating the date the corporation began to do business in New York State and the reporting period (calendar or fiscal) the corporation uses.
- ___ Franchise tax returns and certified checks for any taxes due New York State.
- ___ Application for authority containing all the information listed in this publication under Contents of Application for Authority. Legal stationery stores may have blank forms that you can use.
- ___ A check for the filing fee of \$225 made payable to the *New York State Department of State*.

Mail the application, filing fee and affidavit to:

NYS Department of Taxation and Finance
Corporation Tax Dissolution Unit
Bldg 8, Room 358
W A Harriman Campus
Albany, NY 12227

When the completed application for authority, the affidavit and certified check are received, the Dissolution Unit will review the tax record of the corporation. If all returns have been filed and all taxes paid, the tax commissioner's consent will be issued. The application for authority, the filing fee and the consent of the tax commissioner will be forwarded to the Department of State.

If the Dissolution Unit cannot issue the consent of the tax commissioner, the corporation will be notified.

When the Department of State has approved and recorded the application, a filing receipt will be mailed to the filer indicated on the application.

If you need help, call toll-free 1 800 972-1233. From areas outside the U.S. and Canada, call (518) 485-6800.