

Worker Cooperatives

General

Chapter 805 and 806 of the Laws of 1985 were enacted on August 2, 1985. The chapters add a new Article 5-A to the Cooperative Corporations Law (CCL) to establish a legal structure for the creation and operation of worker cooperative corporations. Under these acts, any corporation organized under the Business Corporation Law (BCL) may elect to be a worker cooperative, if it otherwise qualifies. As such, the worker cooperative would be governed by the provisions of the new Article 5-A which incorporates most of the provisions of the CCL and BCL.

Corporations governed by the new Article 5-A operate on a "for profit" basis and are allowed to issue "membership shares". The new Article 5-A specifies which provisions of the CCL and BCL do not apply to worker cooperatives. It also contains rules regarding the rights, responsibilities and qualifications of member shareholders, directors and officers as well as the treatment of patronage allocations, that is, the distribution and payment of amounts representing work performed as a member of the cooperative.

Election

Section 82 of Article 5-A of the CCL provides that any Corporation organized under the BCL may elect to be governed as a worker cooperative under the provisions of Article 5-A, by so stating in its certificate of incorporation filed in accordance with Article 4 of the BCL or amendments to its certificate of incorporation filed in accordance with Article 8 of the BCL.

Revocation

Section 86 of Article 5-A of the CCL provides that a worker cooperative may revoke its election under section 82 of Article 5-A by a vote of two-thirds of the members and through a certificate of amendment filed in accordance with Article 8 of the Business Corporation Law. It should be noted that worker cooperative corporations may only merge or consolidate with other worker cooperative corporations unless they revoke their election to be treated as a worker cooperative corporation.

Terminology

A "worker cooperative" is a corporation which has elected to be governed by the provisions of Article 5-A.

A "member" is natural person who has been accepted in and owns a membership share issued by a worker cooperative.

"Patronage" is the amount of work performed as a member of a worker cooperative, measured in accordance with the Certificate of Incorporation and by-laws.

"Written notice of allocation" is a written instrument which discloses to a member the stated dollar amount of the member's patronage allocation and the terms for payment of the amount by the worker cooperative.

"Paid in Capital" is money or other property, exclusive of the membership fee, contributed by a member to a worker cooperative.

Taxability

Most worker cooperatives, being stock corporations operating for profit, will be subject to the Franchise Tax on Business Corporations imposed by Article 9-A of the Tax Law. However, other franchise taxes may be applicable, rather than the franchise tax imposed by Article 9-A. Worker cooperatives must file reports and pay taxes according to the article of the Tax Law that applies to their principal business activities. For example, if a worker cooperative is in the transportation or transmission business, it would be subject to the tax measured by capital stock imposed by section 183 of the Tax Law, as well as the tax measured by gross earnings imposed by section 184 of the Tax Law. Moreover, the individual members of the cooperative would be subject to the Personal Income Tax imposed by Article 22 of the Tax Law, and, in certain cases to the New York City income tax.

No worker cooperative will be classed as a non-profit or not for profit corporation.