

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-86 (5)C Revised
Corporation Tax
September 15, 1986

This memorandum supercedes TSB-M-86(5)C, dated May 12, 1986, which should be destroyed.

Dissolution and Reinstatement of a Corporation Dissolved By Proclamation

INTRODUCTION

Taxpayers have asked whether payment of the corporation franchise tax can be avoided by allowing a corporation to be dissolved by proclamation and whether a corporation so dissolved can be made fully active again simply by paying all past-due franchise taxes or, if not, what the requirements are.

DISSOLUTION BY PROCLAMATION

A domestic (formed in New York State) corporation which has failed to file required franchise tax reports or pay franchise taxes due for two consecutive years may be dissolved by the Secretary of State upon recommendation by the State Tax Commission. A corporation is not automatically dissolved after two or more years of delinquency. The dissolution by proclamation procedure is not a substitute for voluntary dissolution and will result in substantial penalties against the corporation. Once the corporation is dissolved, its name may no longer be used legally, and the benefits of incorporation are lost. Any assets of the corporation remain subject to tax liens.

Taxes, interest and additional charges of up to 47½% continue to accrue on unfiled reports. In addition, under the Omnibus and Tax Equity Act of 1985, several new penalty provisions could substantially increase the taxpayer's liability.

Further, if assets are transferred before or during dissolution to an officer, stockholder, partnership or unincorporated business, all accrued taxes, additional charges and interest may be assessed and collected from the transferee.

REINSTATEMENT

A New York corporation dissolved by the Secretary of State pursuant to the provisions of Article 9 Section 203-a of the New York State Tax Law, may be reinstated by filing with the Secretary of State a Certificate of Payment of Taxes issued by the Department of Taxation and Finance. This Certificate annuls the dissolution, and the corporation reacquires the same corporate powers, rights, duties and obligations it had on the date it was dissolved.

The fee of the Secretary of State for filing the Certificate is \$50 if the certificate is filed not later than three months after the date of dissolution by proclamation. If filed later than three months, an additional amount is required which must be equal to one-fortieth of one percent of all shares of

stock with par value on the date of dissolution plus two and one-half cents for every share of stock with no par value which the corporation was authorized to have on the date of publication of the dissolution.

To obtain a Certificate of Payment of Taxes, the Tax Commission requires that franchise tax reports be filed for all periods, including any periods subsequent to the dissolution by proclamation. All taxes, additional charges and interest due on such returns subsequent to dissolution must be paid. In addition, all unpaid tax, additional charges and interest previously assessed must also be paid.

For the corporation to be reinstated under its same name, the Department of Taxation and Finance must verify that the name is available and is not similar to the name of another domestic or authorized foreign corporation formed after the corporation was dissolved. If the corporate name is not available, the Department of Taxation and Finance will notify the taxpayer who must then select another name and verify its availability with the Department of State. A fee of (\$5) five dollars must accompany each name submitted.

After verifying the availability of a new name, if needed, a taxpayer must then prepare a Certificate of Amendment in accordance with Section 805 of the Business Corporation Law. The Certificate of Amendment will not be approved by the Department of State unless it is accurate in all respects and accompanied by a filing fee of \$60.