

Business Credit News

CREDIT REPORTS 210-225-7106
COLLECTION 210-225-7106
E-MAIL: bcms@bcmstx.com
FAX SERVICES 210-225-1777
WEB SITE: www.bcmstx.com

Business Credit and Management
Services Co of Texas
4407 Walzem Rd #205
San Antonio, TX 78218

MAY 2018

“Why Foreign Entities Must Register In Texas”

By: David Balovich

Have you ever considered why companies incorporated in another state must register with Texas Secretary of State Corporations office if they are going to transact business in Texas even when they are headquartered in Texas? There are unique issues when businesses operate across state lines. One of the most important is registering with the state in which the business operates. States differ on what contact is required to trigger the foreign entity registration requirement but every state requires some sort of registration for foreign entities to conduct business in their state.

The reason for the registration requirement is largely based on the state’s interest in protecting its citizens. Domestic entities file certificates of formation that describe the nature of the business and any limitations on the business’s liability. Consumers and other businesses can search the [Secretary of State’s database](#) to learn the details of any company they wish to do business with. In the case of foreign entities, there is no information available with the Secretary of State if the business is a foreign entity. Absent a foreign entity registration, there is a risk that one of the state’s citizens might transact with that foreign entity without realizing its true nature.

Texas Foreign Entity Registration Requirement

In Texas, a foreign entity is required to register with the [Secretary of State’s Office](#) to “transact business in this state,” if it is one of several types of entities: a foreign corporation, foreign limited partnership, foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in this state, would require the filing of a certificate of formation.

This means there are two questions to determine whether a foreign entity is requirement to register in Texas: (1) is it a specified type of entity; and (2) is the entity transacting business in this state. The first requirement is easy enough to determine. Usually it is the determination of whether or not an entity is transacting business in Texas that is more difficult.

Fortunately, the law and the Attorney General’s office provide some guidance on that determination. The Texas Business & Commerce Code lists specific activities that do not constitute business transactions in Texas, they include:

1. maintaining or defending an action or suit or administrative or arbitration proceeding;
2. holding a meeting of managerial officials, owners, or members or carrying on another activity concerning the entity’s internal affairs;
3. maintaining a bank account
4. maintaining an office or agency for: transferring or registering securities the entity issues; or appointing or maintaining a trustee related to the entity’s securities;
5. voting the interest of an entity the foreign entity has acquired;
6. effecting a sale through an independent contractor;

7. creating or acquiring indebtedness or a mortgage or other security interest in real or personal property;
8. securing or collecting a debt due the entity or enforcing a right in property that secures a debt due the entity;
9. transacting business in interstate commerce;
10. conducting an isolated transaction that is completed within a period of 30 days and is not a number of repeated similar transactions;
11. investing in or acquiring in a transaction outside of this state, a royalty or other non-operating mineral interest;
12. executing a division order, contract of sale, or other instrument incidental to ownership of a non-operating mineral interest; or
13. owning, without more, real or personal property in this state.

Effect of Failing to Register a Foreign Entity in Texas

So what happens if a foreign entity that was required to register under the Texas Business Organizations Code fails to do so? There are several consequences that could affect a business’s relationship with both the State and any relationships it has with domestic businesses.

First, the Attorney General is empowered to enjoin the foreign entity from transacting business in the State if the entity is not registered or the registration was obtained through false or misleading information.

Second, and perhaps the most important consequence, a foreign entity that fails to register may not maintain an action, suit, or proceeding in a Texas court on a cause of action that arises out of the transaction of business in Texas. While this sounds quite punitive, the failure to register does NOT: affect the validity of any contract; prevent the entity from defending an action, suit, or proceeding; or cause any owner, member, or manager to become personally liable for the debts, obligations, or liabilities, but it would prevent them from filing a counter-suit to a lawsuit filed against them in a Texas court.

Third, there is a civil penalty for failing to register. The penalty is the amount of all fees and taxes that should have been imposed from the time the entity first should have registered plus whatever penalties and interest imposed by law.

I wish you well.

***** **MAY 2018** *****

Day	Date	Group	Location	Time
Tues	8	Austin Construction	Tres Amigos Restaurant, 7535 E Highway 290, Austin, TX	11:30
Tues	9	Corpus/Victoria/La/RI	Conference Call	2:30
Thurs	10	SW Food Credit Group	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:00
Wed	17	Fuel & Lube/Heavy Eq.	Phone Conference Meeting 1-800-791-2345	2:30
Thurs	17	Austin Ad Media	Phone Conference Meeting 1-800-791-2345	2:00
Thurs	17	HVAC Credit Group	Texas Air Products, San Antonio TX	11:30
Fri	18	SW Electrical Group	The Onion Creek Country Club, Austin TX	11:30
Tues	22	Austin Construction	Tres Amigos Restaurant, 7535 E Highway 290, Austin, TX	11:30
Tues	22	SA Construction	Las Palapas, 4802 Walzem Rd, San Antonio TX	11:30

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