

Instructions for Form D-5

As used throughout form D-5 and these instructions:

- ◆ A *domestic corporation* is either (1) a corporation organized under laws of Ohio or (2) a bank, savings bank, or savings and loan association chartered under the laws of the United States, the main office of which is located in Ohio.
- ◆ A *foreign corporation* is (1) a corporation organized under the laws of a state other than Ohio, (2) a corporation organized under the laws of the District of Columbia or another country or (3) a bank, savings bank, or savings and loan association chartered under the laws of the United States, the main office of which is located in another state.
- ◆ A *nonprofit or not-for-profit corporation* is a domestic or foreign corporation that is formed for reasons other than gain or profit and whose net earnings or any part of them is not distributable to its members, directors, officers, or other private persons, except that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution as permitted by section 1702.49 of the Ohio Revised Code is not gain or profit or distribution of net earnings.

Each domestic corporation, whether organized for-profit or not-for-profit, seeking to dissolve its Ohio charter and each foreign corporation, whether organized for-profit or not-for-profit, seeking to surrender its Ohio license is required to file with the **Ohio Secretary of State** either a certificate of dissolution or a certificate of surrender of license. The certificate must be accompanied by certain affidavits, guarantees, releases or other documents obtained from various governmental agencies including the Ohio Department of Taxation, the Ohio Department of Job and Family Services, the Ohio Bureau of Workers' Compensation and the county treasurer of each county in which the corporation has personal property or, if the applicant pays personal property tax to the Ohio Treasurer of State, from that official. These documents evidence either (1) that the corporation has paid or adequately guaranteed various taxes, unemployment compensation contributions and workers' compensation premiums or (2) the corporation has notified each of these agencies of the impending dissolution or surrender and made certain acknowledgments regarding those taxes, contributions and premiums.

This form and these instructions apply only to the releases or affidavit requirements as they pertain to the Ohio Department of Taxation. These instructions do not address the requirements for releases and affidavits from the Ohio Department of Job and Family Services, the Ohio Bureau of Workers' Compensation, and the county treasurers or, if applicable, the Ohio Treasurer of State. It is the

applicant's responsibility to obtain separate releases from each of those agencies and officials.

The Ohio Revised Code provides two alternative methods to fulfill the applicant's requirements with the Ohio Department of Taxation: the certificate method and the affidavit method.

A. Certificate Method

If the corporation chooses the certificate method, the corporation must obtain from the **Ohio Department of Taxation** a D-2 certificate showing that all sales and use tax, fuel use tax and franchise tax applicable to the corporation have been paid or adequately guaranteed through the date of filing the certificate. The corporation must then file with the **Ohio Secretary of State** the certificate of dissolution or certificate of surrender accompanied by the D-2 certificate and similar documents from the other state and county agencies mentioned above.

The above requirements are set forth in the Ohio Revised Code (ORC) sections listed below:

- ◆ Domestic for-profit corporations: 1701.86(H)(2).
- ◆ Foreign for-profit corporations: 1703.55(C)(1).
- ◆ Domestic nonprofit agricultural cooperatives: 1729.55(G)(2).
- ◆ Foreign nonprofit agricultural cooperatives organized under a provision similar to ORC Chapter 1729: 1729.76 and 1703.17(C)(1).
- ◆ Domestic nonprofit corporations other than agricultural cooperatives: 1702.47(G)(4).
- ◆ Foreign nonprofit corporations other than agricultural cooperatives: 1703.27(G) and 1703.17(C)(1).

To apply for a D-2 certificate, please complete Parts I and II of this form D-5 and file the form with the Ohio Department of Taxation at least thirty days prior to the date such certificate is desired. To avoid delay, any delinquent sales, use, fuel use, and franchise tax returns or reports should accompany this form together with separate certified checks or money orders in payment of each of the taxes due thereon. Failure to do so may necessitate audits and will delay issuance of the desired certificate.

For purposes of guaranteeing payment of any franchise tax, sales and use tax, and fuel use tax that may be due, a cash bond or surety bond issued by a bonding agency licensed to do business in Ohio may be posted with the Tax Commissioner. The Tax Commissioner will determine the amount of such bond. The bond will remain in force until all taxes have been paid; where it is written, the Tax Commissioner will provide notice to that effect.

Upon determining that all sales and use, fuel use, and franchise taxes have been paid or adequately guaranteed, the Tax Commissioner will issue a combined certificate (Form D-2) to the applicant.

Franchise tax and exit tax. The mere termination of business activities or voluntary dissolution does not exempt a corporation from the franchise tax. A corporation that on January 1 of the tax year holds an Ohio charter or a license to transact business in Ohio is subject to the Ohio franchise tax for such calendar year, even if prior to January 1 the corporation ceased all business activities in Ohio and applied for certificates verifying the payment or adequate guarantee of all required taxes.

Furthermore, an “exiting corporation” may be subject to an exit tax on its unreported Ohio net income that was earned in the two calendar years prior to the tax year to the extent that such income was not previously included on a franchise tax report (see Ohio Revised Code section 5733.06(H)). An exiting corporation is a corporation which previously had nexus with Ohio but is not a franchise taxpayer for the tax year (for example, the corporation dissolved, merged out of existence or surrendered its license to conduct business in Ohio prior to January 1 of the tax year). The exit tax does not apply to an exiting financial institution. The exit tax also does not apply if ORC section 5733.053 applies to a “transfer” corporation. For further information see Ohio Revised Code section 5733.06(H).

B. Affidavit Method

If a corporation chooses the affidavit method to dissolve its Ohio charter or surrender its Ohio license, the corporation may submit to the Ohio Secretary of State its certificate of dissolution or certificate of surrender accompanied by an affidavit. (The affidavit is in lieu of the receipts, certificates and other evidence required under the “Certificate Method.”) The affidavit must contain a statement of the dates on which the various departments, agencies, or authorities, from whom receipts, certificates or other evidence would otherwise be required under the certificate method, were advised in writing of the following:

- ◆ The scheduled date of filing the corporation’s certificate of dissolution or certificate of surrender; **and**
- ◆ The corporation’s acknowledgment of one of the following:

1. In the case of a **domestic for-profit corporation or a nonprofit agricultural cooperative corporation organized under Chapter 1729 of the Ohio Revised Code**, the corporation’s acknowledgment of the applicability of the provisions of ORC section 1701.95 (or, in the case

of a nonprofit agricultural cooperative, of the corporation’s acknowledgment of the applicability of the provisions of ORC section 1729.25). ORC sections 1701.95 and 1729.25 provide that the directors who vote for or assent to a distribution of assets during the winding up of the affairs of the corporation without payment of all known obligations of the corporation, or without making adequate provisions thereof, are jointly and severally liable to the corporation to the extent that such obligations are not paid or adequately guaranteed.

2. In the case of a **foreign for-profit corporation or a foreign nonprofit agricultural cooperative organized in the same or similar manner as an ORC Chapter 1729 cooperative**, the corporation’s acknowledgment that the surrender of its license does not relieve it of liability, if any, for payment of any franchise tax, sales and use tax or fuel use tax due through the date of the surrender.
3. In the case of a **domestic nonprofit corporation, other than a nonprofit agricultural cooperative organized under ORC Chapter 1729**, the corporation’s acknowledgment of the applicability of the provisions of section 1702.55 of the Ohio Revised Code provides that the directors who vote for or assent to a distribution of assets during the winding up of the affairs of the corporation without payment of all known obligations of the corporation, or without making adequate provisions thereof, are jointly and severally liable to the corporation to the extent that such obligations are not paid or adequately guaranteed.
4. In the case of a **foreign nonprofit corporation other than a nonprofit agricultural cooperative organized in the same or similar manner as an ORC Chapter 1729 cooperative**, the corporation’s acknowledgment that the surrender of its license does not relieve it of liability, if any, for payment of any sales and use tax or fuel use tax due through the date of the surrender.

An officer of the corporation or one or more of the persons executing the certificate of dissolution or surrender must sign the above-discussed acknowledgment.

Please Note: Receipt by the Department of Taxation of completed parts I and III of this form D-5 fulfills only the applicant’s responsibility for notifying the Ohio Department of Taxation of the necessary information and acknowledgment. It is the applicant’s responsibility to furnish in writing to all other applicable agencies the information required under the affidavit method.