

VIII. COMPLIANCE
UNDER DELAWARE LAW

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LLCs: ADVISING SMALL BUSINESS START-UPS
AND LARGER COMPANIES IN DELAWARE

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VIII. COMPLIANCE UNDER DELAWARE LAW

Limited liability companies are governed by the Delaware Limited Liability Company Act, Del. Code. tit. 6, § 18-101 et seq. (the “Act”).

A. Formation

A Delaware limited liability company is formed by filing a Certificate of Formation with the Secretary of State.¹ Only of minimum of information must be included in the certificate.² Thus, it is left to the limited liability company agreement, supplemented by the Act’s default provisions, if necessary, to define the relationship between the various company constituencies. Issues of economic, operating and management rights are largely a matter of contract, a fact the Act acknowledges.³

¹ Act § 18-201(b).

² See Act § 18-201(a).

³ A policy of the Act is to “give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.” Act § 18-1101(b).

1. Certificate of Formation

A limited liability company does not exist until it files a certificate of formation with the Secretary of State.⁴ The certificate must set forth:⁵

- The name of the company;
- The address of the company's registered office and the name and address of its registered agent for service of process in Delaware; and
- Any other matters the members want to include in the Certificate of Formation.

A form of Certificate of Formation from the Secretary of State's web site appears at the end of these materials.⁶

Company Name

Company names join the growing pool of centrally registered business names and each must be distinguished from the name of any other entity in the Secretary of State's records.⁷ The company must disclose its status by including the words "Limited

⁴ Act § 18-201(b).

⁵ Act § 18-201(a).

⁶ <http://www.state.de.us/corp/llcform.pdf>.

⁷ Act § 18-102(3). The entity with the conflicting name may consent to the company's use of a similar name. *Id.*

Liability Company” or the abbreviation “L.L.C.” or the designation “LLC” in its name.⁸

The name may contain “Company,” “Association,” “Club,” “Foundation,” “Fund,” “Institute,” “Society,” “Union,” “Syndicate,” “Limited,” or “Trust,” or abbreviations of these words.⁹ The name may include the name of a member or manager.¹⁰

If the members anticipate engaging in interstate business, consider the varying states’ name requirements. To the extent possible, the name should meet the statutory requirements in every state in which the company wishes to qualify as a foreign limited liability company.

Names may be reserved with the Secretary of State by filing an application.¹¹ The filing fee is \$75.00.¹² After 120 days, the reservation will expire unless the applicant again reserves the name.¹³

⁸ Act §18-102(1).

⁹ Act §18-102(4). Use of the word “Trust” is restricted by Titles 5 and 8 of the Delaware Code. Reportedly, the Attorney General has issued an opinion that a limited liability company doing business in Delaware cannot use the word “Trust” in its name. It is within the Bank Commissioner’s discretion to permit the use of “Trust” in a name if it not used in Delaware.

¹⁰ Act §18-102(2).

¹¹ Act § 18-103(b).

¹² Act § 18-1105(a)(1).

¹³ Act §18-103(b). The filing fee must be paid for each extension. Act § 18-103(c).

Registered Office and Registered Agent

A limited liability company must maintain a registered office in Delaware.¹⁴ For the purpose of service of process on the company, it must have a registered agent at that address.¹⁵ The registered agent may be a resident individual whose business address is identical with the registered office, a domestic or authorized foreign corporation, a domestic or authorized foreign limited partnership, a domestic or authorized limited liability company, or a domestic business trust having a business office identical with the registered office, or the company itself.¹⁶ An entity, other than the limited liability company itself, acting as a registered agent must have a business office “generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent.”¹⁷

Filing Fees

Normal filing fees for a Delaware limited liability company total \$50.00.¹⁸ The Secretary of State’s fee for certifying a copy of the certificate is \$20.00.¹⁹ Expedited

¹⁴ Act §18-104(a)(1).

¹⁵ Act §18-104(a)(2).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Act § 1105(a)(2). The Secretary of State’s filing fees for all entities and services are expected to be increased during the current legislative session.

¹⁹ Act § 18-1105(a)(4).

service is also available for an additional fee.

Filing Procedures

The Division of Corporations (the “Division”) has adopted mandatory filing cover sheets for all filings with the Secretary of State.²⁰ The Document Filing Sheet is to be used for all entity filings. The Division’s web site is confusing, referring to the Document Filing Sheet as the Filing Memo and stating that it is to be used on “corporate filings only.” Thus, limited liability company filings must be submitted with the Document Filing Sheet/Filing Memo. The Certification Sheet/Certification Memo is used for obtaining copies of documents, whether certified or plain.

Filing Date

Historically, the Division honored requests for filing dates,²¹ usually for timely mailed filings. Under this practice, a filing that was delivered to the Division after the requested filing date would receive the requested filing date if the filer mailed the filing in sufficient time to reach the Division under normal circumstances. The Division’s position was that the filer should not suffer from delayed delivery outside the filer’s control. For example, an attorney in Wilmington could mail a Certificate of

²⁰ E.g., <http://www.state.de.us/corp/forms.htm>. The forms appear at the end of these materials.

²¹ *Liebermann v. Frangiosa*, 2002 Del. Ch. LEXIS 142, *45 (Del. Ch. 2002).

Incorporation on January 25, with a cover letter requesting that it be filed on February 1. If inclement weather delayed delivery to the Division until February 2, the Division would give the filing an effective date of February 1. Moreover, the Division's practice was to give all filings on a particular date a filing time of 9:00 a.m.

This practice was extended to filings by registered agents directly connected to the Division of Corporation's computer system and to filings delivered to registered agents after the requested filing date.²² In *Liebermann v. Frangiosa*, the Court of Chancery held that "[a]lthough the Secretary of State undoubtedly has well-intentioned reasons for its current practice (which is of venerable origins), the practice conflicts with the plain language of the statute and creates the potential for abuse,"²³

In light of the *Liebermann* litigation, the Division, as predicted by the Court,²⁴ reviewed its filing practices. At the time these materials were prepared, the General Assembly was considering amendments to the Act to provide date of filing rules,

²² *Id.* In *Liebermann*, the Certificate in issue was delivered to CSC at 3:43 p.m. on July 31, 2002, with a request for ordinary service, but a July 31, 2002 date. 2002 Del. Ch. LEXIS 142, *25. CSC filed the Certificate at 8:42 a.m. on August 1, 2002. *Id.* The copy of the filed Certificate issued by the Division of Corporations bore a filing time and date of 9:00 a.m., July 31, 2002. 2002 Del. Ch. LEXIS 142, *45.

²³ 2002 Del. Ch. LEXIS 142, *46.

²⁴ 2002 Del. Ch. LEXIS 142, n. 49 *47.

including limited circumstances under which the Division would provide a filing date prior the time of actual delivery of the document to the Division.²⁵

As amended, the Act's general rule is that the date and time of delivery is the date and time of filing.²⁶ The Secretary of State is record the date and time of delivery of each certificate.²⁷ In the event of an "extraordinary condition" indicating that a filer was prevented from filing any certificate at the desired time, the Secretary of State may establish an earlier filing date and time.²⁸ The actual delivery date can be no later than two business days following the end of the extraordinary condition.²⁹

An extraordinary condition is "any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection, or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other

²⁵ S.B. 128, §§ 3, 4, 6-8. Senate Bill 128 appears following these materials.

²⁶ Act § 18-206(a)(1), as amended by S.B. 128, § 4.

²⁷ Act § 18-206(a), as amended by S.B. 128, § 3.

²⁸ Act § 18-206(a)(6)(C), as added by S.B. 128, § 8.

²⁹ *Id.*

condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort.”³⁰

In addition, the 2003 amendments would provide statutory authority for the Secretary of State's long-standing practice of granting direct access to the Delaware Corporation Information System by registered agents.³¹

Understanding the Secretary of State's Filing Stamp

The Division has recently revised the Secretary of State's stamp on filed documents to take the new filing date rules into account. The stamp appears as follows:

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:38 PM 05/07/2003
FILED 03:38 PM 05/07/2003
SRV 123456789 - 1234567 FILE

The delivered time is the time the Division receives the filing, whether a hard copy received by mail or other form of hand delivery or by fax. If there is no future effective date or special circumstances, the delivered date and time will be the filed date and time. The nine-digit “SRV” number is the service request number, which identifies

³⁰ *Id.*

³¹ Act § 18-206(a)(4), as amended by S.B. 128, § 7.

the particular request for service. The seven-digit “FILED” number is the entity number, which identifies the particular entity that is the subject of the filing.

2. Limited Liability Company Agreement

The limited liability company agreement is the chief operating agreement among the members and managers. Originally required to be written, a reflection of the statute’s roots in the limited partnership act, the limited liability company agreement may be oral or written.³² To avoid disputes over the agreement of the members and issues of proof, the better practice is to reduce the members’ agreement to writing.

Historically, the trend was to pattern limited liability company agreements after limited partnership agreements. Shadowing partnership documents resulted in a limited liability company that looked and acted like a partnership, reducing the chance of a classification challenge during an audit by the Internal Revenue Service. However, many drafters now use a corporate model.

Capital Contributions

Capital contributions may be in cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to

³² Act § 18-101(7).

perform services.³³ A member may be admitted without a capital contribution, even if that member is the sole member.³⁴ Additionally, a person may become a member without acquiring a limited liability company interest.³⁵ Non-interest holding members are frequently required by lenders in structuring bankruptcy remote vehicles. An employee of the lender may be appointed a “special member,” whose consent is required before the limited liability company can file a voluntary petition in bankruptcy.

Freedom of Contract and Fiduciary Duties

Some thought should be given to the duty of care and other fiduciary duties of managers and members. The Act does not establish standards, although it is to be expected that the Court of Chancery will apply those standards of conduct long-established in Delaware (the business judgment rule, for example).

Thus, it is left to the drafter of the agreement to define those duties owed to the company. Act Section 18-1101(c) invites the members to do so, by authorizing the

³³ Act § 18-501. The promise or obligation to contribute to the company capital is usually referred to as the “capital contribution obligation.” A “capital contribution agreement” refers to an agreement, either separate or within the limited liability company agreement, setting forth the fair market value of the property on the date of contribution, the contributing member’s adjusted basis in the property for federal income tax purposes and the status of liens, if any, against the contributed property.

³⁴ Act § 18-301(d).

³⁵ *Id.*

agreement to expand or restrict duties and liabilities and absolving liability for good faith reliance on the terms of the agreement. Contrary to the opinion of some commentators, the limited liability company agreement may not eliminate fiduciary duties, however.³⁶ Further, the agreement may impose sanctions for violations of the agreement by members and managers.³⁷

Contractual Appraisal Rights

The Act does not provide default appraisal rights in the event an amendment, merger, consolidation or conversion eliminates the interest of any member, or on the sale of all or substantially all of the limited liability company's assets. Section 18-210 of the Act provides that a limited liability company agreement may provide contractual appraisal rights.

Internal Management and Regulation

Unless the limited liability company agreement provides otherwise, manage-

³⁶ *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 805 A.2d 882 (Del. 2002). *Gotham Partners* involved the equivalent provision under the Delaware Revised Uniform Partnership Act, 6 Del. C. § 17-1101(d). In an opinion dangerously close to an advisory opinion, in response to Chancery Court dictum that a limited partnership agreement could eliminate fiduciary duties, the Court stated “although it is not appropriate for us to express an advisory opinion on a matter not before us, we simply raise a note of concern and caution relating to this dubious dictum in the Vice Chancellor’s summary judgment opinion.” 805 A.2d 882, 891.

³⁷ Act §§ 18-306 (members), 18-405 (managers).

ment is vested in the members.³⁸ Voting is in proportion to the then percentage or other interest share in profits, with 50 percent of the interests controlling, unless otherwise specified in the agreement.³⁹

Management may be vested in one or more managers,⁴⁰ who are designated by the members.⁴¹ The agreement should provide for the appointment of a successor manager on the manager's inability to serve and a method to remove a manager. Neither issue is addressed by the Act, so there are no defaults. Managers may also be members.⁴² The members and managers have the power and authority to delegate management powers.⁴³

Records, Returns and Reports

The company is not required to maintain any particular records. Each member is entitled to obtain, on reasonable demand for any purpose reasonably related to the

³⁸ Act § 18-402.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Act §§ 18-101(10), 18-401. Act Section 18-110 makes explicit the Court of Chancery's power to hear and determine disputes relating to the admission, election, appointment or withdrawal of a manager.

⁴² Act § 18-403.

⁴³ Act § 18-407.

member's interest as a member, the following:⁴⁴

- Information regarding the status of the business and financial condition of the company;
- Copies of the company's federal, state and local income tax returns;
- A list of members and managers, and their addresses;
- A copy of the limited liability company agreement and the certificate of formation, as amended;
- Information regarding the capital contribution obligation of each member;
- Other just and reasonable information about the company's affairs.

Any manager is entitled to examine this information for any purpose reasonably related to his or her status as a manager.⁴⁵

Trade secret information and other sensitive information may remain confidential in the reasonable exercise of the manager's discretion.⁴⁶

3. *Series Limited Liability Company*

A business structure commonly advanced to limit liability is the holding company structure. This involves forming a master limited liability company that owns one or more single member limited liability companies.

The holding company structure may be collapsed into one limited liability company by use of a series limited liability company. A series limited liability company

⁴⁴ Act § 18-305(a).

⁴⁵ Act § 18-305(b).

⁴⁶ Act § 18-305(c).

is one that authorizes “designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations....”⁴⁷ Any series may have a business purpose or investment objective separate from any other series in the limited liability company.⁴⁸

To protect any series from the debts, liabilities and obligations of any other series in the limited liability company, certain steps must be taken.⁴⁹ First, the Certificate of Formation must set forth the limitation on liabilities.⁵⁰ Second, each series must maintain separate and distinct records and the assets of such series must be held and accounted for separately from any other series.⁵¹

In the author’s experience, and the experience of other practitioners with whom the author has spoken, series limited liability companies are infrequently used because of uncertainties over the extent of the liability protection afforded each series, particularly where a series conducts business or owns assets outside of Delaware. Thus, the series limited liability company has largely been limited to companies holding

⁴⁷ Act § 18-215(a).

⁴⁸ *Id.*

⁴⁹ Act § 18-215(b).

⁵⁰ *Id.*

⁵¹ *Id.*

Delaware real estate where the members have been unwilling to bear the expense of a master/single member limited liability company holding company structure.

In addition to the untested treatment of Delaware series limited liability companies operating in foreign jurisdictions, the federal income tax treatment of series limited liability companies is uncertain.⁵²

4. Special Rules Applicable to Regulated Professionals

Licensed professionals' interest in the limited liability company as a form of doing business was sparked by the broad range of business permitted a limited liability company under the Act.⁵³ The purpose for which a limited liability company may be formed is virtually without limit.⁵⁴ Only two activities, insurance and banking, are specifically excluded by the Act.⁵⁵ The broad statutory grant indicates the drafters' intent to let professionals enjoy the protection of the Act.⁵⁶

However clear the objective, the law is not self-actualizing; its application to any specific profession requires action by that profession's regulatory agency. For

⁵² For an article on the taxation of Delaware series limited liability companies, see Terence Floyd Cuff, *Series LLCs and the Abolition of the Tax System*, BUSINESS ENTITIES, Jan./Feb. 2000, at 26.

⁵³ § 18-106(a).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Use of the statute by professionals is further anticipated by the drafters' foresight to allow company names to include the names of members and managers. *See* Act § 18-102(2).

attorneys, Supreme Court Rule 67 provides the authority to practice law through a limited liability company.

B. Amendment

A Delaware limited liability company may amend its certificate of formation for any proper purpose by filing a certificate of amendment with the Secretary of State.⁵⁷ Filing fees for a certificate of merger total \$70.00.⁵⁸

C. Merger

The Delaware Limited Liability Company Act's merger and consolidation provisions will be familiar to anyone who has worked with the corresponding sections of the Delaware General Corporation Law⁵⁹ or the Delaware Revised Uniform Limited Partnership Act.⁶⁰ A Delaware limited liability company may merge or consolidate with or into virtually any other form of business entity, domestic or foreign.⁶¹ The resulting

⁵⁷ Act § 18-209(c). The certificate must state the name of the limited liability company and the amendment. Act § 18-202(a).

⁵⁸ The actual filing fee is \$50.00, Act §§ 18-206(c), 18-1104(a)(3), and the Secretary of State's fee for certifying a copy of the certificate is \$20.00, Act §§ 18-206(d), 18-1104(a)(4).

⁵⁹ 8 *Del. C.* §§251-264. Delaware corporations merging or consolidating with limited liability companies must comply with Section 264 of the Delaware General Corporation Law.

⁶⁰ 6 *Del. C.* §17-211.

⁶¹ Act § 18-209. A general partnership includes a registered limited liability partnership. *Id.*

entity may be a limited liability company or other business entity, domestic or foreign.⁶²

Holders of more than 50 percent of the interests in the profits of the company must approve the merger or consolidation.⁶³ If there are classes of members, then each class must approve the transaction.⁶⁴

The resulting entity must file a certificate of merger or consolidation, as the case may be, with the Secretary of State.⁶⁵ Where the certificate of merger

⁶² Act § 18-209(b).

⁶³ *Id.*.

⁶⁴ *Id.*

⁶⁵ Act § 18-209(c). The certificate must state:

1. The name and jurisdiction of formation or organization of each constituent business entity;
2. That an agreement of merger or consolidation has been approved and executed by each constituent business entity;
3. The name of the surviving or resulting business entity;
4. The The future effective date if the certificate is not be effective upon filing;
5. That a copy of the agreement of merger or consolidation is on file at a place of business of the surviving or resulting business entity and that address;
6. That a copy of the agreement of merger or consolidation will by furnished on any interest holder's request, without cost; and
7. If the jurisdiction of the surviving or resulting business entity is not Delaware, that the Secretary of State is appointed agent for the service of process.

Act § 18-209(c). A form of Certificate of Merger from the Division of Corporation's web site appears at the end of these materials. <http://www.state.de.us/corp/webmerg.pdf>.

The certificate of merger will serve as the certificate of cancellation of the non-surviving Delaware entity. Act § 18-209(c), (f) (limited liability companies); 6. Del. C. §15-902(c), (f) (general partnerships); 6 Del. C. §17-211(c), (f) (limited partnerships).

provides a future effective date, the certificate may be terminated on the abandonment of the merger by filing a certificate of termination. Filing fees for a certificate of merger or consolidation total \$70.00.⁶⁶

The assets and liabilities of the constituent entities vest in the surviving or resulting entity.⁶⁷ Merger or consolidation does not cause any constituent Delaware limited liability company to dissolve.⁶⁸

D. Conversion

Merger or consolidation requires an enabling statute for each of the constituent entities. To facilitate the transformation of other entities, foreign and domestic, into Delaware limited liability companies, Act was amended to provide for the conversion of other entities into Delaware limited liability companies. Virtually any other form of business entity, domestic or foreign, may convert into a Delaware limited liability company.⁶⁹

The conversion of the converting entity to a Delaware limited liability company

⁶⁶ The actual filing fee is \$50.00, Act § 18-1104(a)(3), and the Secretary of State's fee for certifying a copy of the certificate is \$20.00, Act § 18-1104(a)(4).

⁶⁷ Act § 18-209(g).

⁶⁸ *Id.*

⁶⁹ Act § 18-214(a).

must be approved by the converting entity in accordance with its governing documents.⁷⁰ The limited liability company agreement of the resulting limited liability company is approved in the same manner.⁷¹

Conversion requires the sequential filing of two certificates with the Division, a certificate of conversion to limited liability company and a certificate of formation.⁷² Because of the sequential filing requirement, a converting entity cannot convert into an already formed Delaware limited liability company.

The conversion process may be used to freeze out the interests of certain holders of interests in the converting entity by exchanging such interests for

⁷⁰ Act § 18-214(h). For example, in the case of a Delaware limited partnership desiring to convert to a Delaware limited liability company, the limited partnership agreement is the governing document. 6 Del. C. § 17-219. If the limited partnership agreement is silent as to conversions, but provides for the approval of a merger or consolidation, that procedure shall be followed. *Id.* In default of a merger or consolidation approval procedure, all general partners and limited partners owning more than 50 percent of profit interests must approve the conversion. *Id.*

⁷¹ *Id.*

⁷² Act § 18-214(b). The certificate must state:

1. The date and jurisdiction of the converting entity;
2. The name of the converting entity;
3. The name of the limited liability company; and
4. The future effective date if the certificate is not be effective upon filing;

Act § 18-214(c).

property other than member interests in the resulting limited liability company.⁷³

Filing fees for a certificate of conversion total \$70.00,⁷⁴ plus the filing fees for the certificate of formation for the limited liability company.

Upon the certificate of conversion and certificate of formation becoming effective, the converting entity into a domestic limited liability company.⁷⁵ The date of formation of the resulting limited liability company is the original date the converting entity first came into existence.⁷⁶ The assets and liabilities of the converting entity vest in the resulting limited liability company.⁷⁷ Conversion does not cause the dissolution of the converting entity.⁷⁸

E. Dissolution

A limited liability company will dissolve and its affairs must be wound up on the first to occur of the following:⁷⁹

⁷³ Act § 18-214(i).

⁷⁴ The actual filing fee is \$50.00, Act § 18-1104(a)(3), and the Secretary of State's fee for certifying a copy of the certificate is \$20.00, Act § 18-1104(a)(4).

⁷⁵ Act § 18-209(d).

⁷⁶ *Id.*

⁷⁷ Act § 18-214(f).

⁷⁸ Act § 18-214(g).

⁷⁹ Act § 18-801(a).

- At the time designated in the limited liability company agreement;
- The happening of a dissolution event specified in the limited liability company agreement;
- The vote or written consent of members holding two-thirds of the then current percentage or other interest in the limited liability company;
- At any time that there are no members, unless the personal representative of the last member agrees in writing to continue the limited liability company or a member is admitted within 90 days (or such period as provided in the agreement) as provided in the limited liability company agreement,⁸⁰ or
- The entry of a decree of judicial dissolution.⁸¹

Once the winding up process is complete, the limited liability company must file a certificate of cancellation.⁸² Filing fees for the certificate total \$70.00.⁸³

F. State Income Taxation

Delaware income taxation largely confirms to federal income taxation. Delaware respects a limited liability company's entity classification elections under federal law,

⁸⁰ The limited liability company agreement may obligate the personal representative of the last remaining member to continue the limited liability company. Act § 18-801(4)(a).

⁸¹ The Court of Chancery may decree dissolution if it is not reasonably practicable to carry on the business of the limited liability company. Act § 18-802.

⁸² Act § 18-203. The certificate must state:

1. The name of the limited liability company;
2. The date of filing of its certificate of formation;
3. The effective date, if not the filing date;
4. Any other desired information.

Id.

⁸³ The actual filing fee is \$50.00, Act §§ 18-206(c), 18-1104(a)(3), and the Secretary of State's fee for certifying a copy of the certificate is \$20.00, Act §§ 18-206(d), 18-1104(a)(4).

without the requirement of separate Delaware filings.⁸⁴

G. Realty Transfer Tax Issues

H. Business Tax Issues

A limited liability company must register with the Delaware Division for both income tax and business license compliance using Form CRA. A copy of Form CRA appears following these materials.

The City of Wilmington and other local governments impose their own business license requirements.

⁸⁴ Div. Rev. Tech. Info. Memo. 98-1, 1998 Del. Tax LEXIS 2.

TABLE OF EXHIBITS

1. Certificate of Formation
2. Document Filing Sheet
3. Certification Sheet
4. Certificate of Merger of Domestic Limited Liability Companies
5. Certificate of Cancellation
6. Senate Bill 128
7. Division of Revenue Combined Registration Application (Form CRA)

STATE of DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE of FORMATION

- **First:** The name of the limited liability company is _____
_____.
- **Second:** The address of its registered office in the State of Delaware is _____
_____ in the City of _____.
The name of its Registered agent at such address is _____
_____.
- **Third:** *(Use this paragraph only if the company is to have a specific effective date of dissolution.)* “The latest date on which the limited liability company is to dissolve is _____.”
- **Fourth:** *(Insert any other matters the members determine to include herein.)*

In Witness Whereof, the undersigned have executed this Certificate of Formation of _____ this _____ day of _____, 20_____.

BY: _____
Authorized Person(s)

NAME: _____
Type or Print

State of Delaware - Division of Corporations

DOCUMENT FILING SHEET

Priority 1
(One hr)

Priority 2
(Two Hr.)

Priority 3
(Same Day)

Priority 4
(24 Hour)

Priority 7
(Reg. Work)

SUBMITTER'S INFORMATION

Company/Firm or
Individual's Name _____
Return Address _____

Attention: _____
Phone# _____ Fax# _____
E-mail address _____
Account Number _____

DO NOT WRITE IN THIS SPACE

DOCUMENT FILING REQUEST INFORMATION

Name of Company/Entity _____
File Number _____ Reservation Number _____
Type of Document _____
Check if document is:
Changing Name _____ Changing Registered Agent _____ Changing Stock _____

OTHER DOCUMENT FILING INFORMATION

of Certified Copies returned _____
Other requests _____
Check # _____ Total \$ enclosed _____

METHOD OF RETURN

_____ Messenger/Pick up
_____ Express Service Delivery - Type _____
Acct# _____
_____ Regular Mail
_____ Other _____

CREDIT CARD INFORMATION

(Visa, MasterCard or Discover Card Only)

_____-_____-_____-_____
Expiration Date - ____/____

COMMENTS/FILING INSTRUCTIONS

INSTRUCTIONS

1. Fully shade in the required Priority Square using X's on both lines of the Priority Square.
2. Each request must be submitted as a separate item, with its own Filing Sheet as the FIRST PAGE.

**STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC LIMITED LIABILITY COMPANIES**

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Act, the undersigned limited liability company executed the following Certificate of Merger:

FIRST: The name of the surviving limited liability company is _____,
and the name of the limited liability company being merged into this surviving limited liability company is _____.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent limited liability companies.

THIRD: The name of the surviving limited liability company is _____.

FOURTH: The merger is to become effective on _____.

FIFTH: The Agreement of Merger is on file at _____, the place of business of the surviving limited liability company.

SIXTH: A copy of the Agreement of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of the constituent limited liability companies.

IN WITNESS WHEREOF, said surviving limited liability company has caused this certificate to be signed by an authorized person, the _____ day of _____, A.D., _____.

By: _____
Authorized Person

Name: _____
Print or Type

Title: _____

**STATE OF DELAWARE
CERTIFICATE OF CANCELLATION
OF**

1. The name of the limited liability company is _____

2. The Certificate of Formation of the limited liability company was filed on

3. The reason for filing of the Certificate of Cancellation is _____

4. (Insert any other information the person filing this Certificate determines to include herein. For instance, this Certificate may be made effective on a date or time later than that of filing. If a later effective date is desirable, set forth an additional item: "This Certificate of Cancellation shall be effective _____
_____".)

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Cancellation of _____ this _____ day of _____, A.D._____.

By: _____

Authorized Person(s)

Name: _____

Print or Type

Senate Bill 128

SYNOPSIS: AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

This bill continues the practice of amending periodically the Delaware Limited Liability Company Act (the "Act") to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1, 2, 5, 9, 10, 14 and 16. These amendments permit conversion of a Delaware limited liability company to a non-Delaware entity.

Sections 3, 4, and 6-8. These amendments clarify the general rule that the date and time of filing of a certificate filed with the Secretary of State is the date and time of delivery of the certificate and the limited exceptions to this rule.

Section 11. This amendment clarifies the language of Section 18-213(a) of the Act to be consistent with language used in other analogous sections of the Act.

Sections 12 and 13. These sections amend Section 18-215 of the Act to confirm the ability to provide for the establishment of 1 or more series and the sufficiency of a general notice of the limitation on liabilities of a series without referring to any specific series.

Section 15. This section amends the Act to add a new Section 18-805 to provide, under certain circumstances, for the appointment of trustees and receivers for limited liability companies after the cancellation of the certificate of formation upon the application of a creditor, a person who was a member or manager at the time of the cancellation of the certificate of formation or any person who shows good cause.

Section 17. This section provides that the proposed amendments of the Act shall become effective on August 1, 2003.

Author: Delaware Bar Association

TEXT: BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 18-203, Chapter 18, Title 6 of the Delaware Code by adding the following words immediately prior to the "." at the end of the first sentence thereof: ", or upon the filing of a certificate of transfer, or upon the filing of a certificate of conversion to a non-Delaware entity".

Section 2. Amend Section 18-206(a), Chapter 18, Title 6 of the Delaware Code by inserting "any certificate of conversion to a non-Delaware entity," immediately following "any certificate of conversion to limited liability company," in the first sentence thereof.

Section 3. Amend Section 18-206(a), Chapter 18, Title 6 of the Delaware Code by deleting the word "original" in the first sentence thereof and by inserting the following sentence immediately after the third sentence thereof: "Upon delivery of any certificate, the Secretary of State shall record the date and time of its delivery."

Section 4. Amend Section 18-206(a)(1), Chapter 18, Title 6 of the Delaware Code by deleting the word "original" in the first sentence thereof and substituting in lieu thereof the word "signed", by deleting the word "hour" in the first sentence thereof and substituting in lieu thereof the word "time", by deleting the ";" at the end thereof and substituting in lieu thereof ".", and by adding the following at the end of such subsection: "Except as provided in subsection (a)(5) or (a)(6) of this section, such date and time of filing of a certificate shall be the date and time of delivery of the certificate;"

Section 5. Amend Section 18-206(a)(1), Chapter 18, Title 6 of the Delaware Code by inserting "the certificate of conversion to a non-Delaware entity," immediately following "the certificate of conversion to limited liability company," in the first sentence thereof.

Section 6. Amend Section 18-206(a)(3), Chapter 18, Title 6 of the Delaware Code by deleting the word "original" in each place where it appears therein, and by deleting the word "instrument" in each place where it appears therein and substituting in lieu thereof the word "certificate".

Section 7. Amend Section 18-206(a)(4), Chapter 18, Title 6 of the Delaware Code by deleting the word "Enter" at the beginning of the first sentence thereof and substituting in lieu thereof "Cause to be entered", by inserting "and a copy of such certificate" immediately before the word "shall" in the first sentence thereof, by inserting "on a suitable medium" immediately before the "." at the end of the first sentence thereof, and by deleting the second sentence thereof and inserting in lieu thereof the following: "The Secretary of State is authorized to grant direct access to such system to registered agents subject to the execution of an operating agreement between the Secretary of State and such registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that information entered into the system accurately reflects the content of certificates in the possession of the registered agent at the time of entry."

Section 8. Amend Section 18-206(a), Chapter 18, Title 6 of the Delaware Code by adding new paragraphs (5) and (6) thereto reading as follows:

"(5) Upon request made upon or prior to delivery, the Secretary of State may, to the extent deemed practicable, establish as the date and time of filing of a certificate a date and time after its delivery. If the Secretary of State refuses to file any certificate due to an error, omission or other imperfection, the Secretary of State may hold such certificate in suspension, and in such event, upon delivery of a replacement certificate in proper form for filing and tender of the required fees within five business days after notice of such suspension is given to the filer, the Secretary of State shall establish as the date and time of filing of such certificate the date and time that would have been the date and time of filing of the rejected certificate had it been accepted for filing. The Secretary of State shall not issue a certificate of good standing with respect to any limited liability company with a certificate held in suspension pursuant to this subsection. The Secretary of State may establish as the date and time of filing of a certificate the date and time at which information from such certificate is entered pursuant to subsection (a)(4) of this section if such certificate is delivered on the same date and within four hours after such information is entered.

(6) If:

(A) together with the actual delivery of a certificate and tender of the required fees, there is delivered to the Secretary of State a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary of State establish such date and time as the date and time of filing of such certificate; or

(B) upon the actual delivery of a certificate and tender of the required fees, the Secretary of State in his or her discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver such certificate and tender such fees was made in good faith and specifying the date and time of such effort; and

(C) the Secretary of State determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed two business days) after the cessation of such extraordinary condition, then the Secretary of State may establish such date and time as the date and time of filing of such certificate. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection, or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of certificates under this chapter or such filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under clause (C) of this subsection, and any such determination shall be conclusive in the absence of actual fraud. If the Secretary of State establishes the date and time of filing of a certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed certificate to which it relates. Such filed certificate shall be effective as of the date and time established as the date and time of filing by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto."

Section 9. Amend Section 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting "or a certificate of conversion to a non-Delaware entity," after both appearances of "or a certificate of transfer," in the second sentence thereof.

Section 10. Amend Section 18-206(d), Chapter 18, Title 6 of the Delaware Code by inserting the words "a certificate of conversion to a non-Delaware entity," immediately following "a certificate of conversion to limited liability company,".

Section 11. Amend Section 18-213(a), Chapter 18, Title 6 of the Delaware Code by deleting "that permits the transfer to or domestication in such jurisdiction of a limited liability company".

Section 12. Amend Section 18-215(a), Chapter 18, Title 6 of the Delaware Code by inserting "1 or more" immediately following "for the establishment of" and by deleting ", to the extent provided in the limited liability company agreement,".

Section 13. Amend Section 18-215(b), Chapter 18, Title 6 of the Delaware Code by deleting from the first sentence thereof the word "creates" and by substituting in lieu thereof "establishes or provides for the establishment of", by inserting the word "if" immediately following "if the limited liability company agreement so provides, and" in the first sentence thereof, by deleting from the first sentence thereof "debts, liabilities and obligations incurred" and by substituting in lieu thereof "debts, liabilities, obligations and expenses incurred", and by inserting immediately prior to the last sentence thereof a new sentence thereto reading as follows:

"Notice in a certificate of formation of the limitation on liabilities of a series as referenced in this subsection shall be sufficient for all purposes of this subsection whether or not the limited liability company has established any series when such notice is included in the certificate of formation, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice."

Section 14. Amend Section 18-216, Chapter 18, Title 6 of the Delaware Code by striking said section in its entirety and substituting in lieu thereof the following:

"Section 18-216. Approval of conversion of a limited liability company.

(a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, statutory trust, business trust or association, a real estate investment trust, a common-law trust or any other unincorporated business, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

(b) If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by the members or, if there is more than 1 class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate.

(c) Unless otherwise agreed, the conversion of a domestic limited liability company to another business form pursuant to this section shall not require such limited liability company to wind up its

affairs under Section 18-803 of this title or pay its liabilities and distribute its assets under Section 18-804 of this title.

(d) In connection with a conversion of a domestic limited liability company to another business form pursuant to this section, rights or securities of or interests in the domestic limited liability company which is to be converted may be exchanged for or converted into cash, property, rights or securities of or interests in the business form into which the domestic limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of or interests in another business form.

(e) If a limited liability company shall convert in accordance with this section to another business form organized, formed or created under the laws of a jurisdiction other than the State of Delaware, a certificate of conversion to non-Delaware entity executed in accordance with Section 18-204 of this title, shall be filed in the office of the Secretary of State in accordance with Section 18-206 of this title. The certificate of conversion to non-Delaware entity shall state:

(1) The name of the limited liability company and, if it has been changed, the name under which its certificate of formation was originally filed;

(2) The date of filing of its original certificate of formation with the Secretary of State;

(3) The jurisdiction in which the business form, to which the limited liability company shall be converted, is organized, formed or created;

(4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to non-Delaware entity;

(5) That the conversion has been approved in accordance with this section;

(6) The agreement of the limited liability company that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the limited liability company arising while it was a limited liability company of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in subsection (e)(6) of this section shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the procedures set forth in Section 18-911(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection (e)(7) and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the limited liability company that has converted out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in Section 18-911(c) of this title.

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon the limited liability company shall cease to exist as a limited liability company of the State of Delaware. Such certificate of the Secretary of State shall be

prima facie evidence of the conversion by such limited liability company out of the State of Delaware.

(g) The conversion of a limited liability company out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a limited liability company of the State of Delaware pursuant to a certificate of conversion to non-Delaware entity shall not be deemed to affect any obligations or liabilities of the limited liability company incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the limited liability company with respect to matters arising prior to such conversion."

Section 15. Amend Subchapter VIII of Chapter 18, Title 6 of the Delaware Code by adding thereto, immediately following Section 18-804, a new Section 18-805 reading as follows:

"Section 18-805 Trustees or receivers for limited liability companies; appointment; powers; duties.

When the certificate of formation of any limited liability company formed under this chapter shall be canceled by the filing of a certificate of cancellation pursuant to Section 18-203 of this chapter, the Court of Chancery, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the limited liability company to be trustees, or appoint one or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the Court of Chancery shall think necessary for the purposes aforesaid."

Section 16. Amend Section 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by inserting "a certificate of conversion to a non-Delaware entity under Section 18-216 of this title," immediately following "a certificate of conversion to limited liability company under Section 18-214 of this title,".

Section 17. This Act shall become effective August 1, 2003.

FROM:
DIVISION OF REVENUE
STATE OF DELAWARE
P.O. BOX 8750
WILMINGTON, DE 19899-8750



State of Delaware
Form CRA

COMBINED REGISTRATION APPLICATION
FOR
STATE OF DELAWARE
BUSINESS LICENSE AND/OR
WITHHOLDING AGENT

LOCATION OF OFFICES
TOLL-FREE TELEPHONE NUMBER (DELAWARE ONLY) 1 - 800 - 292 - 7826

DOVER

Division of Revenue
Thomas Collins Building
Route 13, Dover, Delaware 19901

Telephone: (302) 744-1085

WILMINGTON

Division of Revenue
State Office Building
820 N. French Street
Wilmington, Delaware 19801

Taxpayers Assistance Section
Telephone: (302) 577-8205

GEORGETOWN

Division of Revenue
422 N. DuPont Highway, Suite 2
Georgetown, Delaware 19947

Telephone: (302) 856-5358

COMBINED REGISTRATION APPLICATION FORM

1. This Combined Registration Application form must be completed by **all** persons or companies conducting any business activity in Delaware or having one or more employees who work in the State of Delaware or who are residents of Delaware for whom you are deducting Delaware income tax. **Part A** is to be completed by all taxpayers. **Part B** must be completed by any person or company paying Delaware withholding tax. **Part C** must be completed by taxpayers applying for a Delaware Business License(s). The attachment for **Contractors Only** is to be attached to the application along with the other appropriate forms listed. The Initial Employer's Report of Delaware Tax Withheld and the Initial Gross Receipts Tax Return are only to be used for your **FIRST** time filing of these returns. Separate checks must accompany each type of tax return(s) you file. A separate Initial Gross Receipts Tax Return must be filed for each type of license acquired.
2. You should receive your personalized Withholding and Gross Receipts forms by the time your next return is due. If you have not received your forms, contact the Business Master File Section at (302) 577-8778. If you have questions concerning the completion of the forms, contact the Withholding Tax Section at (302) 577-8779; or the Gross Receipts Section at (302) 577-8780.
3. All questions in Part A **MUST** be answered; if not applicable, write "NA" in the answer block.
4. This application may not be accepted if all necessary information is not provided.
5. This application must be signed at the end of Part C by the owner or officer and dated.
6. Mail completed application with the **required license fee**, if applicable, to DIVISION OF REVENUE, P.O. BOX 8750, WILMINGTON, DELAWARE 19899-8750.

SPECIFIC INSTRUCTIONS - PLEASE READ CAREFULLY - PLEASE PRINT CLEARLY OR TYPE.

- Line 1. Enter your Federal Employer Identification Number or Social Security number, whichever is used for federal purposes. If you are an employer or your business ownership is not that of a Sole Proprietorship, you must have a Federal Employer Identification number. You can apply for a number using Federal Form SS-4. (Call your nearest IRS office.) If you have applied for a Federal Employer Identification number, please enter "APPLIED FOR" on Line 1 and the Division of Revenue will assign a temporary number until your Federal Identification number has been received. **Notify the Business Master File Unit at (302) 577-8778, when your Federal Employer Identification Number is obtained.** All of your tax returns should be filed under **ONE** identification number. **If you are a sole proprietor and you have a federal identification number, you must enter both numbers on Line 1 of Part A and Part C.**
- Line 2. Enter the name of the business (individual, partnership, corporate name, governmental agency, etc.).
- Line 3. Enter the trade name of your business if different from the primary business name on Line 2.
- Line 4. Enter the address of your primary business location. (A Post Office Box is **NOT** an acceptable location address.)
- Line 5. Enter the address to which correspondence should be mailed if different from your primary business location. If you have a PO Box, enter that information here.
- Line 6. If your business operates on a seasonal basis, enter the month your seasonal activity begins and ends.
- Line 7. Please check the appropriate box which indicates the period of your taxable year. If you are a fiscal year taxpayer, please enter the last month and day of the taxable year.
- Line 8. If incorporated, enter the State in which incorporated.
- Line 9. If incorporated, enter the date on which incorporated.
- Line 10. Enter the date your business operations began or will begin in Delaware.
- Line 11. Check the appropriate box which describes your legal form of business. If you are a sole proprietor and you have a federal identification number, **please ensure that you have entered both numbers on Line 1.** If you are registering to remit withholding taxes for a person performing domestic services in your home, indicate your type of ownership as **#18 Employer-Domestic Employees**. If you are only registering to be a withholding agent as a convenience to your employees and are not conducting business in Delaware, **Check Type ownership #35, Withholding Agent Only.**
- Line 12. On line 11 if you have checked 06 - Sub Chapter S Corporation, please indicate if you have Shareholders that are NOT Delaware residents.
- Line 13. Enter the parent company's name.
- Line 14. Enter the parent company's identification number.
- Line 15. Enter the previous name of your business if it has been changed.
- Line 16. Enter the previous identification number of your business if it has been changed.
- Line 17. Enter the name, title, phone number, fax number and e-mail address of the individual who should be contacted regarding tax matters.
- Line 18. Enter the name, title and social security number of the proprietor, partners or principal officers of your business. If more than three, please attach a separate list. If you have a Registered Agent, provide that information also.
- Line 19. Fully describe the specific nature of your business.

NOTE: Without a COMPLETE application, we cannot process the forms necessary for your filing requirements.



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
820 N. French Street
Wilmington, Delaware 19801
(302) 577-8778

**COMBINED REGISTRATION APPLICATION
FOR
STATE OF DELAWARE
BUSINESS LICENSE AND/OR
WITHHOLDING AGENT**

DO NOT WRITE OR STAPLE IN THIS AREA

THIS FORM MUST BE COMPLETED BY ALL PERSONS OR COMPANIES CONDUCTING BUSINESS ACTIVITIES IN DELAWARE

FAILURE TO COMPLETE ALL QUESTIONS MAY RESULT IN DENIAL OF A BUSINESS LICENSE

TEMPORARY FOR OFFICE USE ONLY
3-

PART A - TO BE COMPLETED BY ALL TAXPAYERS

1 Enter Employer Identification Number 1- or Social Security Number 2-

2 Name
3 Trade Name (If different from above)
4 Primary Location Address
5 Mailing Address if Different
6 If business is Seasonal, State Active Months From: _____ To: _____
7 Accounting Period (Check appropriate Box) Enter Month and Day of Fiscal Year Ending MO DAY
 Calendar Year Fiscal Year - 12 Month Basis Ending
8 If Incorporated Enter State Incorporated 9 Date Incorporated MO DAY YEAR
10 When did or when will you begin operating in Delaware MO DAY YEAR

11 Type of Ownership (Check Appropriate box)
01 Sole Proprietorship
02 Partnership
03 Non-Profit Corporation
04 Corporation
06 Sub-Chapter S Corporation
07 Federal Government
08 Fiduciary (Estate or Trust)
09 Cooperative
10 Other: Explain _____
11 Holding/Investment Company
12 Professional Association
18 Employer - Domestic Employee(s)
20 Bank
21 Insurance Company
23 Limited Liability Company
24 Limited Liability Partnership
25 Delaware State Government
26 Delaware County Government
27 Delaware Municipal Government
28 Other State's Government Agency
30 LLC - Partnership
31 LLC - Corporation
32 LLC - Non-Elect
33 LLC - Non-Elect Individual
34 QSSS
35 Withholding Agent Only

12 Sub Chapter S Corporations only - Do you have Shareholders that DO NOT reside in Delaware? YES NO

13 Parent Company Name
14 Parent Employer Identification Number

15 Previous Business Name
16 Previous Identification Number EIN SSN (Circle One)

17 Name of individual who may be contacted regarding tax matters. Phone FAX E-mail Address

18 Identify Owners, Partners, Corporate Officers, Registered Agent or Trustees:
Name: Last First Title Social Security #

19 Fully Describe Business Activity (MUST BE COMPLETED)

PART B - TO BE COMPLETED BY ALL EMPLOYERS

Every employer making the payment of wages taxable to a resident or non-resident employee working in Delaware is required to withhold state income taxes. Employers may also withhold Delaware state income tax from residents of Delaware who do not work in Delaware.

The filing frequency for a withholding agent is determined by the amount of withholding paid during a "lookback" period. The lookback period is a twelve month period between July 1 and June 30 immediately preceding the calendar year for which the lookback period is determined. The Division of Revenue will determine the amount of tax reported during the lookback period and advise all withholding agents of their withholding filing method. **All withholding agents having no prior record of withholding will file on a monthly basis until the next "lookback period".**

Amount of Withholding During "Lookback" Period	Filing Method
\$3,600 or Less	Quarterly
\$3,600.01 and Less Than \$20,000	Monthly
\$20,000.01 and Greater	Eighth Monthly

1. Will you have employees that work in Delaware, or withhold DE state income tax from DE residents that do not work in DE? YES NO
2. Do you need a copy of the Delaware State Withholding Tax Tables? YES NO

Sole proprietors and partners are responsible for filing and paying their own Delaware state taxes. This is done by remitting personal estimated taxes on a quarterly basis. To obtain Personal Estimated Tax Packages; call the Individual Master File Unit at (302) 577-8588.

PLEASE NOTE: All employers are also required to register with the Delaware Department of Labor, Unemployment Insurance and report new hires to the Division of Child Support Enforcement.

PART C - TO BE COMPLETED BY TAXPAYERS APPLYING FOR A LICENSE

LICENSE APPLICATIONS WILL NOT BE PROCESSED WITHOUT LICENSE FEE

LICENSE #1 - NAME AND ADDRESS

REV CODE 0101-01

1. Enter Federal Employer Identification Number OR Social Security Number

1- -

2- - -

2. Name _____

3. Trade Name if Different from Above _____

4. Business Location Address _____

5. Mailing Address if Different _____

City State Zip Code City State Zip Code

6. Describe your business activity _____

7. When did or when will you begin operating in Delaware? _____

FOR OFFICE USE ONLY	
Bus Code	Suffix

8. For what calendar year are you applying? Calendar year ending 12/31/ _____

Check if 65 years or older and whose total sales are less than \$5,000 (25% of Annual Fee)

Proration Basis for Initial Licenses	Jan - 100%	Apr - 75%	Jul - 50%	Oct - 25%
Multiply Annual Fee by Respective Month	Feb - 92%	May - 67%	Aug - 42%	Nov - 17%
Percentage and Circle Month Started	Mar - 83%	Jun - 58%	Sep - 33%	Dec - 8%

PLEASE READ PART C INSTRUCTIONS BEFORE COMPLETING COMPUTATION OF THE FEE.

COMPUTATION OF FEE \$ _____ X _____ = \$ _____ x _____ = \$ _____

Annual Fee # of units if Applicable Total License (annual fee X # of units) Prorated Percentage Total Fee

LICENSE #2 - NAME AND ADDRESS

1. Enter Federal Employer Identification Number OR Social Security Number

1- -

2- - -

2. Name _____

3. Trade Name if Different from Above _____

4. Business Location Address _____

5. Mailing Address if Different _____

City State Zip Code City State Zip Code

6. Describe your business activity _____

7. When did or when will you begin operating in Delaware? _____

FOR OFFICE USE ONLY	
Bus Code	Suffix

8. For what calendar year are you applying? Calendar year ending 12/31/ _____

Check if 65 years or older and whose total sales are less than \$5,000 (25% of Annual Fee)

Proration Basis for Initial Licenses	Jan - 100%	Apr - 75%	Jul - 50%	Oct - 25%
Multiply Annual Fee by Respective Month	Feb - 92%	May - 67%	Aug - 42%	Nov - 17%
Percentage and Circle Month Started	Mar - 83%	Jun - 58%	Sep - 33%	Dec - 8%

PLEASE READ PART C INSTRUCTIONS BEFORE COMPLETING COMPUTATION OF THE FEE.

COMPUTATION OF FEE \$ _____ X _____ = \$ _____ x _____ = \$ _____

Annual Fee # of units if Applicable Total License (annual fee X # of units) Prorated Percentage Total Fee

9. AMOUNT DUE MUST BE REMITTED WITH THIS APPLICATION. (Total Fee from License # 1 and License # 2.) \$ _____

SIGNATURE TITLE DATE

I declare under penalties as provided by law that the information on this application is true, correct and complete.

PART B - REGISTERING TO WITHHOLD DELAWARE INCOME TAXES

Delaware requires that every employer register with the Delaware Division of Revenue. Registration is accomplished by completing this form. Delaware Withholding Agents must use the same identification number as their Federal Employer Identification Number. Every employer required to deduct and withhold tax must file a withholding tax return as prescribed by the statute and pay over to the Division of Revenue or its designated depository the tax required to be deducted and withheld. An initial return is included in this application to use in filing your first return. If you do not receive your preprinted forms in time to file your second return, call the Business Master File Unit at (302) 577-8778. If you do not have Delaware Withholding Tax Tables or need information, call the Withholding Tax Unit at (302) 577-8779 or visit our website (see page 8). The Division of Revenue does not accept common paymasters.

Please Note: All employers are also required to register with the Department of Labor Unemployment Insurance. For information call (302) 761-8484.

Mandatory Electronic Funds Transfer Any employer required under the provisions of §6302 of the Internal Revenue Code to deposit federal employment taxes by electronic funds transfer will be required to deposit Delaware withholding taxes by electronic funds transfer. The effective date for this new requirement is one year after the employer is required to deposit the federal funds electronically. House Bill 605 imposes a penalty on employers who are required by Delaware law but fail to deposit their withholding tax electronically. The penalty is the lesser of 5.0% of the amount that should have been electronically transferred or \$500. Employers who want to participate either as mandated under the Internal Revenue Code requirements or voluntarily for Delaware should contact the Division of Revenue at (302) 577-8231 for additional information and the proper form.

PART C - APPLYING FOR DELAWARE BUSINESS OR OCCUPATIONAL LICENSE(S)

Enter your Federal Identification Number or Social Security Number as entered on Part A. If you are a sole proprietor and you have a federal identification number, you must enter both numbers on Line 1.

Delaware law requires every person, firm or corporation conducting a business within this State to obtain a license and to pay an additional monthly or quarterly fee based on the aggregate gross receipts derived from the operation of such business. Failure to obtain a business license will result in a \$200 penalty if such failure is not self disclosed. **A separate license is required for each separate business activity.** You may apply for two (2) different licenses on this application. Enter the type of license applied for and the business name and address for each separate location and/or activity. Complete the schedule for the COMPUTATION OF FEE for each license. If you start doing business in Delaware after February 1st, you may prorate the fees for your initial year according to the schedule, i.e., if you started doing business in Delaware in the month of April and you are a Retailer, you are required to pay .75 x \$75.00 which is \$56.25. License Fees for all new applications are proratable except Cigarette, Motor Vehicle Dealers, Circus Exhibitors and Outdoor Musical Festival Promoters.

Decals for Cigarette, Merchandise Vending Machines and Amusement Machines are proratable upon first application or as additional machines are purchased and placed in service.

Unless otherwise listed, the annual license fee is \$75 for the first location. Occupational, Professional, General Service, Lessors of Tangible Personal Property and Retailer's licenses require a \$25 license fee for each additional location. Farm Machinery Retailers, Food Processors, Commercial Feed Dealers, Manufacturers and Wholesalers licenses require a \$75 license for each additional location. Contractors, Motor Vehicle Dealers and Steam, Gas and Electric licenses are not required to obtain a license for additional locations. Public utilities (gas, electric, telephone and telegraph) are required to complete this application but are not required to obtain a business license. A complete list of Revenue licenses is contained in this booklet titled "Detailed List of Revenue Licenses and Tax Rates". Any person 65 years of age or older whose gross receipts are less than \$5,000 per year shall pay one quarter (¼) of the annual occupational license fee specified. There is a \$15.00 fee for the replacement of any lost or stolen license.

The license fee must accompany this application. Applications without the license fee will not be processed.

Most businesses are liable for a monthly or quarterly gross receipts tax at rates ranging from 0.096% to 0.72% (.00096 - .0072) in excess of allowable exclusions. Unless expressly provided in the statutes, the term "gross receipts" is the total receipts of a business for goods sold or services rendered and no deduction is made for the cost of goods or property sold, labor costs, interest expense, delivery costs, State or Federal taxes or any other expenses. For additional information visit our website: www.state.de.us/revenue. Select business tax questions, then scroll down to "Tax Tips". After you have filed your application, the Division of Revenue will mail the appropriate forms required to report and pay the Gross Receipts Tax. An initial quarterly return is included in this application to use in filing your first return. Please refer to the table on the next page to determine the tax rate and exclusion amount for your business activity. If you do not receive your pre-printed forms in time to file your second return, call the Business Master File Unit at (302) 577-8778.

DETAILED LIST OF DIVISION OF REVENUE LICENSES AND TAX RATES

Category	Annual Fee	Additional Locations	Tax Rate	Returns Due	Exclusion Effective 1/1/99
Advertising Agency	\$ 75	\$ 25	0.00384	Monthly	\$ 50,000
Amusement Machine Owner					
Business License Fee	75	25	0.00384	Monthly	50,000
Each Machine (Decal)	75	--	--	--	--
Auctioneer Non-Resident Each County	225	225	0.00384	Monthly	50,000
Auctioneer Resident	75	25	0.00384	Monthly	50,000
Broker	75	25	0.00384	Monthly	50,000
*Cigarette					
* Wholesaler and/or Affixing Agent	200	200	--	--	--
Wholesale Bus. License also needed	75	75	0.00384	Monthly	50,000
* Retail Permit (3 years)	15	--	--	--	--
Vend. Mach. Decals Ea. Machine	3	--	--	--	--
*Circus Exhibitor	750	--	--	--	--
Non-profit Organizations	300	--	--	--	--
Commercial Feed Dealers	75	75	0.00096	Monthly	50,000
Commercial Lessors	75	25	0.00384	Monthly	50,000
Contractors	75	--	0.00624	Monthly	50,000
Developers	75	--	0.00624	Monthly	50,000
Non-Residents (Bonding Requirements)	75	--	0.00624	Monthly	50,000
Construction Transportaion	75	--	0.00624	Monthly	50,000
Drayperson or Mover	75	25	0.00384	Monthly	50,000
Electric Use Tax	--	--	.0425/.0200	Tech Info Memo 97-8 and 97-9	
Farm Machinery Retailer	75	75	0.00096	Monthly	50,000
Finance or Small Loan Agency	450	450	--	--	--
Food Processors	75	75	0.00192	Monthly	50,000
Foreign Sales Corporation	150	25			
Foreign Sales Service Corporation	150	25	0.00384	Monthly	50,000
Gas Use Tax	--	--	.0425 /.0200	Tech Info Memo 97-8 and 97-9	
General Services	75	25	0.00384	Monthly	50,000
[1] Grocery Supermarkets	75	25	0.00384	Monthly	50,000
[2] Hotel -- Per Suite / Per Room	30/25	--	0.08	Monthly	--
Lease/Use of Tangible Personal Property					
Motor Vehicles	--	--	0.0192	Quarterly	--
Other	--	--	0.0192	Quarterly	--
Lessor of Tangible Personal Property					
Motor Vehicles	75	25	0.00288	Quarterly	150,000
Other	75	25	0.00288	Quarterly	150,000
Manufacturers	75	75	0.0018	Monthly	1,000,000
Manufacturers Representative	75	25	0.00384	Monthly	50,000
[2] Motel --Per Room	25	--	0.08	Monthly	--
[7] *Motor Vehicle Dealer	100	--	2.00 ea veh	Quarterly	--
Occupational / Professional	75	25	0.00384	Monthly	50,000
*Outdoor Music Festival Promoter	750	--	--	--	--
Parking Lot or Garage Operator	75	35	0.00384	Monthly	50,000
Petroleum Dealers					
[3] Retailer	75	25	0.0162	Monthly	50,000
[4] Wholesaler	75	75	0.01524	Monthly	50,000
Photographer - Resident	75	25	0.00384	Monthly	50,000
*Transient - Plus \$25 per day	--	--	0.00384	Monthly	50,000
Private Detective (State Police Approval Required)	75	25	0.00384	Monthly	50,000
Public Utilities					
Cable Television	--	--	0.02125	Monthly	--

DETAILED LIST OF DIVISION OF REVENUE LICENSES AND TAX RATES

Category	Annual Fee	Additional Locations	Tax Rate	Returns Due	Exclusion Effective 1/1/99
[5] Electric Utility	--	--	0.0425	Monthly	--
Gas Utility	--	--	0.0425	Monthly	--
[6] Telephone	--	--	0.0425	Monthly	--
Telegraph	--	--	0.0425	Monthly	--
Real Estate Broker	75	25	0.00384	Monthly	50,000
Restaurant Retailer	75	25	0.00624	Monthly	50,000
Retailer - General	75	25	0.0072	Monthly	50,000
Transient (Registration & Bonding Required)	75	25	0.0072	Monthly	50,000
Transient 10 days or less	25	--	0.0072	After 10th day	3,000
Sales Representative	75	--	--	--	--
Security Guard Co. (State Police Approval Required)	75	25	0.00384	Monthly	50,000
Security Systems (State Police Approval Required)	115	25	0.00384	Monthly	50,000
Showperson	375	--	--	--	--
Steam, Gas & Electric	50	1st year	0.001	Annually	
Taxicab or Bus Operator -- 1st Veh / Each	45	30	--	--	--
[2] Tourist Home--Per Room (Min. 5 Rooms)	15	--	0.08	Monthly	
Trailer Park -- Each Space	10	--	--	--	--
Transportation Agent	75	25	--	--	--
Travel Agency	225	25	--	--	--
Machine Decals					
Amusement Machine	75	--	--	--	--
Vending Machine -- Each Machine	5	--	--	--	--
Cigarette -- Each Machine	3	--	--	--	--
(Business License Also Needed)					
Wholesalers	75	75	0.00384	Monthly	50,000

* Those categories marked with an asterisk (*) are not proratable and the full amount must be paid.

[1] Grocery Supermarkets -- The tax rate for the first \$2 million is .00384 and .0072 on the remaining taxable gross receipts.

[2] Hotels, Motels and Tourist Homes -- The eight percent (8%) tax is collected from the guest and remitted to the Division of Revenue.

[3] Petroleum Retailers -- The composite rate includes the General Fund tax of .0072 and a Hazardous Substance tax of .009

[4] Petroleum Wholesalers -- The composite rate includes the General Fund tax of .00384, a Hazardous Substance tax of .009 and surtax of .0024.

[5] Electric Utility -- The tax rate is .02 for electric consumed by manufacturers, food processors and agribusinesses.

[6] Interstate calls are exempt.

[7] Motor Vehicle Dealer -- **House Bill 163, effective August, 1999, requires Motor Vehicle Dealers who self-finance any sale of a motor vehicle to a retail buyer without charging interest** to file an original surety bond in the principal sum of \$25,000 with the Division of Revenue.

REPORTING OF NEW HIRES

Delaware Law requires that every employer who is required to withhold Delaware income tax from its employees is also required to report the hiring of new employees to the Division of Child Support Enforcement. The report must be made within 20 days of hiring the new employee(s) and must contain the name, address and social security of the employee and the name, address and federal employer identification number of the employer. The report may be made using federal form W-4 or an equivalent form of your choice. The report may be in paper and mailed to Division of Child Support Enforcement, New Hire Reporting, P.O. Box 913, New Castle, DE 19720, faxed to (302) 577-4873 or E-mail to: newhires@state.de.us. Reports may be made by electronic or magnetic media and a multistate employer may elect to report to one state. For more information concerning multistate or magnetic filing, call the Division of Child Support Enforcement at (302) 577-7171. Contact the Customer Service Unit at (302) 369-2160 for specific questions.

UNEMPLOYMENT INSURANCE

In addition to registering as an employer with the Division of Revenue, all employers must file Form UC-1 with the State of Delaware, Department of Labor. Employers are required to pay unemployment insurance taxes with respect to any calendar year if they (a) pay wages of \$1,500 or more during any calendar quarter in that year or (b) employ at least one person for 20 days during such calendar year, each day being in a different week. If you have any questions concerning your filing requirements with the Department of Labor you may write to Department of Labor, Division of Unemployment Insurance, P.O. Box 9950, Wilmington, DE 19809 or by calling (302) 761-8484.

PLACES TO FIND ADDITIONAL INFORMATION

BUSINESS INTERNET FILING PROGRAM

The Division of Revenue has partnered with NationTax Online to provide taxpayers with an easy to use web based filing system. The Business Internet Filing System will allow registered taxpayers to file and pay their taxes over the internet. Currently you can file the following taxes: withholding, corporate tentative, "S" corporation estimated, gross receipt and excise taxes. To register for the Business Tax Internet Filing Program, go to NationTax Online www.nationtax.com and complete the easy online registration.

DIVISION OF REVENUE

The Office of Business Taxes of the Division of Revenue has a Home Page especially designed for business customers to answer questions and assist business taxpayers in obtaining a business license and meeting their filing requirements. The site also permits a business to file many business taxes using the Internet. The address is <http://www.state.de.us/revenue>. At the Division of Revenue's Home Page, select "Business Tax" from the side bar menu.

SPECIFIC CONTACTS AT DIVISION OF REVENUE:

TOPIC	CONTACT	PHONE #	E-MAIL ADDRESS
License Registration / Business Tax Forms	Patty Locklear	(302) 577-8250	plocklear@state.de.us
New Business Compliance	Selena Gardner	(302) 577-8447	sgardner@state.de.us
Business Tax Forms System Support	Elsie Rogers	(302) 577-8222	erogers@state.de.us
Business Tax Systems	David Sullivan	(302) 577-8230	dasullivan@state.de.us
Corporate Refunds /Return Processing	Shirley Gladney	(302) 577-8235	sgladney@state.de.us
Gross Receipts & Withholding Tax	Greg MacCord	(302) 577-8240	gmaccord@state.de.us
Business Electronic Funds Transfer	EFT Department	(302) 577-8231	gmaccord@state.de.us
Business Audit Bureau	Ron Kaminski	(302) 577-8445	rkaminski@state.de.us
Affiliated Finance Companies	Ron Kaminski	(302) 577-8445	rkaminski@state.de.us
Business Tax Claims for Refunds	Theresa Mau	(302) 577-8264	tmau@state.de.us
Cigarette Tax	Jeanne M. Davis	(302) 577-8448	jedavis@state.de.us
Commercial Lessor	Thomas Eopollo	(302) 577-8261	teopollo@state.de.us
Contractors & Developers	Gary Stulir	(302) 577-8266	gstulir@state.de.us
Corporate Income Tax Amended Returns	Shirley B. Deans	(302) 577-8258	sdeans@state.de.us
Petroleum Superfund Tax	Rick Jezyk	(302) 577-8265	rjezyk@state.de.us
Occupational Licenses	Elliott Johns	(302) 577-8262	ejohns@state.de.us
Other Tobacco Products	Jeanne M. Davis	(302) 577-8448	jedavis@state.de.us
Public Accommodations Tax	Gary Stulir	(302) 577-8266	gstulir@state.de.us
Public Utility Tax	Marilyn Brisco	(302) 577-8269	mbrisco@state.de.us
Realty Transfer Tax	Steve Seidel	(302) 577-8455	sseidel@state.de.us
Telecommunications	Marilyn Brisco	(302) 577-8269	mbrisco@state.de.us
Transient Retailers	Elliott Johns	(302) 577-8262	ejohns@state.de.us
Abandoned Property	Diane Breighner	(302) 577-8220	dbreighner@state.de.us
Manufacturer	Steve Seidel	(302) 577-8455	sseidel@state.de.us
Retail, General	William Kirby	(302) 577-8259	wkirby@state.de.us
Wholesale, General	William Kirby	(302) 577-8259	wkirby@state.de.us

STATE OF DELAWARE
 Mail This Copy With Remittance
 Payable To
 Delaware Division of Revenue
 P.O. Box 8995
 Wilmington, DE 19899-8995

**INITIAL
 MONTHLY
 EMPLOYER'S REPORT OF
 DELAWARE TAX WITHHELD**

DO NOT WRITE OR STAPLE IN THIS AREA **089 OR 090**

Employer Identification Number
 1 -

Social Security Number
 2 - -

FOR OFFICE USE ONLY

 Suffix

BUSINESS NAME AND ADDRESS

MAILING ADDRESS IF DIFFERENT

PAYMENT DUE DATE 15 days after end of month

PAYMENT FOR PERIOD

FROM			TO		
Month	Day	Year	Month	Day	Year

1. AMOUNT WITHHELD AND DUE FOR PERIOD	\$ _____
2. AMOUNT REMITTED	\$ _____

X AUTHORIZED SIGNATURE (I DECLARE UNDER PENALTIES OF PERJURY THAT THIS IS A TRUE, CORRECT AND COMPLETE RETURN.) _____ DATE _____ TELEPHONE NUMBER _____

STATE OF DELAWARE
 Mail This Copy With Remittance
 Payable To
 Delaware Division of Revenue
 P.O. Box 2340
 Wilmington, DE 19899-2340

**INITIAL
 QUARTERLY
 GROSS RECEIPTS
 TAX RETURN**

DO NOT WRITE OR STAPLE IN THIS AREA **028**

Employer Identification Number
 1 -

Social Security Number
 2 - -

FOR OFFICE USE ONLY
 s B
 s B
FILING PERIOD

BUSINESS NAME AND ADDRESS

MAILING ADDRESS IF DIFFERENT

BUSINESS DESCRIPTION

PAYMENT FOR QUARTER ENDING

PAYMENT DUE DATE

Last day of first month following the end of quarter

GROSS RECEIPTS

1. TOTAL GROSS RECEIPTS	\$ _____
2. LESS EXCLUSION	\$ _____
3. TAXABLE AMOUNT	\$ _____
4. GROSS RECEIPTS TAX, LINE 3 X _____ TAX RATE	= \$ _____
5. APPROVED TAX CREDITS	\$ _____
6. BALANCE DUE. SUBTRACT LINE 5 FROM LINE 4	\$ _____

X AUTHORIZED SIGNATURE (I DECLARE UNDER PENALTIES OF PERJURY THAT THIS IS A TRUE, CORRECT AND COMPLETE RETURN.) _____ DATE _____ TELEPHONE NUMBER _____

INSTRUCTIONS FOR INITIAL EMPLOYER'S REPORT OF DELAWARE TAX WITHHELD

This form is only to be used for the **FIRST** time filing of your Delaware withholding tax. Withholding returns for new employers are due on the 15th day after the end of the month. If you do not receive your pre-printed forms in time to file your second return, call the Business Master File Unit at (302) 577-8778. If you need **INFORMATION**, contact the Withholding Tax Section at (302) 577-8779.

Enter your Federal Employer Identification Number. If you have applied for a Federal Employer Identification Number and have not yet received it, either use the temporary number assigned by the Division of Revenue or write "Applied For". **Notify the Business Master File Unit at (302) 577-8778 when your number is obtained.** Enter the Business Name, Trade Name if applicable, and the mailing address for your withholding forms. Enter the beginning and ending dates of your filing period.

All filers must enter the total amount withheld for the period on Line 1. The tax is due with the filing of the return. Enter on Line 2 the amount remitted with this return. If Line 2 does not equal Line 1, please provide an explanation for the difference.

Be sure to sign and date the return and include a telephone number.

INSTRUCTIONS FOR INITIAL LICENSE TAX RETURN

This form is only to be used for **FIRST** time filing of your Delaware gross receipts or excise tax return. If you do not receive your pre-printed forms in time to file your second return, call the Business Master File Section at (302) 577-8778. If you need **INFORMATION**, call the Gross Receipts Tax Section at (302) 577-8780. **DO NOT DUPLICATE** this form. Your filing period is determined by the type of license for which you are paying the gross receipts tax. A separate Initial Gross Receipts Tax Return must be filed for each type of license acquired. Contact the Division of Revenue to receive additional Initial Gross Receipts Tax Returns.

Enter your Federal Employer Identification Number or Social Security Number, whichever is used. You should be using the **SAME** number on **ALL** of your Delaware tax returns. If you are using your Social Security Number until you receive your Federal Employer Identification Number, use that same number on both the Gross Receipts and Withholding Initial returns. **Notify the Business Master File Section at (302) 577-8778 when your Federal Employer Identification Number is obtained.** Enter the Business Name (trade name if applicable) and the address for the location for which you are paying the gross receipts tax. Please provide a mail-to address in the space provided if it is different from the location address. Provide a brief description of your business activity. Use the Detailed List of Revenue Licenses and Tax Rates chart on Pages 6 & 7 to find the tax rate and exclusion and provide the Quarter Ending Date (03/31/YY, 06/30/YY, etc). The return is due on the last day of the first month following the tax period ending e.g. the return for the tax period ending March 31, 2000 is due on April 30, 2000.

Line 1. Enter the total gross receipts for the period.

Line 2. Enter the amount of the allowable quarterly exclusion using the Rate Chart on Page 6.

Line 3. Subtract Line 2 from Line 1. This is the Taxable Amount of Gross Receipts.

Line 4. Using the Rate Chart on Page 6, determine the proper Tax Rate for your category, enter this tax rate and multiply Line 3 by this rate and enter result on Line 4.

Line 5. Enter the amount of **approved** license gross receipt credits such as New Business Facility or Travelink.

Line 6. **Balance Due. Subtract Line 5 from Line 4 and enter result on Line 6.**

Please be sure to sign, date and provide a telephone number.

SPECIAL REQUIREMENTS FOR CONTRACTORS

ALL RESIDENT AND NON-RESIDENT CONTRACTORS must complete the following check list and attach all required documentation and this form to their Combined Registration Application. Please see the instructions on the back of this form. You should also get a copy Technical Information Memorandum TIM 93-5 for contractors. If you did not receive the required forms or if you have questions, contact the Division of Revenue at (302) 577-8205.

RESIDENT CONTRACTORS

Check Off

- 1. DEPARTMENT OF LABOR FORM UC-1 (Must be completed and attached even if you do not have employees).
- 2. INDUSTRIAL ACCIDENT BOARD FORM (Must be completed and attached even if you do not have employees).
- 3. Will you subcontract? YES NO If yes, complete and attach Division of Revenue Form 5060, Statement of Contractors Awarded by General Contractors and Subcontractors. *The civil penalty for failure or refusal to comply with this section is a fine of up to \$10,000 for each occurrence.*
- 4. Are you applying for a business license for bidding purposes only? YES NO
- 5. Complete Part C of the Combined Registration Application and attach your check for the license fee.
The license fee is not required if the application is being submitted for bidding purposes only.

NON-RESIDENT CONTRACTORS

- 1. DEPARTMENT OF LABOR FORM UC-1 (Must be completed and attached even if you do not have employees).
- 2. INDUSTRIAL ACCIDENT BOARD FORM (Must be completed and attached even if you do not have employees).
- 3. Will you subcontract? YES NO If yes, complete and attach Division of Revenue Form 5060, Statement of Contractors Awarded by General Contractors and Subcontractors. *The civil penalty for failure or refusal to comply with this section is a fine of up to \$10,000 for each occurrence.*
- 4. Are you applying for a business license for bidding purposes only? YES NO
- 5. Non-resident contractors must supply a bond equal to 6% of the contract(s) totaling \$20,000 or more with this application. If you don't have a bonding requirement at this time, check the box on this line and skip item number 6. A bond is required at the time when the total of all contracts exceeds \$20,000.

6.	Name & Address of person(s) with whom you have this contract(s)	Contract Period	Contract Amount \$

Total Contracts \$ _____ x .06 = \$ _____ (Amount of Bond)

Type of Bond: Cash (Attach Form 1125-C) Surety (Attach Form 1125)

Name of Bonding Company _____ Bond Number _____ Value \$ _____

Letter of Credit Bank Name _____ (Requires Director of Revenue's approval.)

- 7. Complete Part C of the Combined Registration Application and attach your check for the license fee.
The license fee is not required if the application is being submitted for bidding purposes only.

I declare under penalties as provided by law that this application has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement.

Signature Title Date

INSTRUCTIONS FOR SPECIAL REQUIREMENTS FOR CONTRACTORS

Please start by completing the State of Delaware Combined Registration Application for State of Delaware Business License and/or Withholding Agent (Form CRA) in its entirety.

Refer to the Technical Information Memorandum 93-5 for specific requirements of Resident and Non-Resident Contractors and Real Estate Developers.

1. The statute requires that all contractors register with the Department of Labor. Form UC-1 must be completed or you must supply a Certificate of Notice issued by the Division of Unemployment Insurance to document such registration.
2. The statute also requires that you show evidence of insurance to pay Workmen's Compensation. You must supply either a copy of Page 1 of your insurance policy **OR** the name, address, and policy number of your carrier **OR** a copy of Form 22 issued by the Industrial Accident Board which certifies your ability to make direct payments of workmen's compensation. Even if you do not have employees, the Division of Industrial Affairs form is required.
3. Every architect, professional engineer, contractor, or construction manager must file with the Division of Revenue a statement of the total value of any contract or subcontract entered into with a non-resident of the State of Delaware within ten (10) days of entering into such contracts. This statement, Form 5060, must include the names and addresses of the contracting parties. The civil penalty for failure or refusal to comply with this section is a fine of up to \$10,000 for each such occurrence.
4. Non-Resident Contractors are required to obtain a bond equal to six percent (6%) of the contract amount for all single contracts/subcontracts exceeding \$20,000 or when the aggregate of two or more contracts/subcontracts in a calendar year total \$20,000 or more. Form 1125, Non-Resident Contractor Bond, may be used to fulfill this bonding requirement. The Division of Revenue will accept an alternative bond form supplied by your bonding company or cash bonds on any contract amount. The contractor's bond must be filed **before** construction commences on any contract for which a bond is required.

Bonds will be released at the completion of the contract and after a verification that all State tax liabilities have been met. The following information must be supplied at the time of making the request for the release of the bond or a request for a refund of a cash bond.

1. A copy of the contract award.
 2. Date construction commenced.
 3. Date construction ended.
 4. A schedule by month of payments received.
 5. A list of persons (resident and non-resident), with social security numbers, employed at the construction site.
 6. A Schedule by month of the wages paid to the persons referenced in item #5.
5. If this application is for bidding purposes only, please check the box on line four.
 6. Be sure to include your license fee. Your fee is proratable for your initial year, based on what month of the year your business will begin. Only one license fee is required regardless of the number of locations a contractor may have. If you are engaged in any activity other than contracting as described in the Technical Memorandum, you may be required to obtain a separate business license for that activity. The license fee is not required if the application is being submitted for bidding purposes only.
 7. Real Estate Development involves the acquisition of land (raw or improved), the building of structures thereon and the sale of the land with structures to a customer. Persons engaged in the business of a Real Estate Developer are subject to the licensing requirements as a contractor and must complete this form. Contractors are permitted to reduce their gross receipts by amounts paid to subcontractors and Real Estate Developers are permitted to further reduce such receipts by expenses incurred in the development of realty (see Technical Information Memorandum 93-5 for details)

BE SURE TO SIGN THE STATEMENT AT THE BOTTOM ON THE COMBINED REGISTRATION APPLICATION AND THE CONTRACTORS FORM.

COUNTY AND LOCAL GOVERNMENT

ALTHOUGH A DELAWARE DIVISION OF REVENUE BUSINESS LICENSE IS AN IMPORTANT STEP IN TAX COMPLIANCE, EACH BUSINESS MUST ALSO CONFORM TO ZONING REQUIREMENTS WITH THE COUNTY AND/OR CITY OR TOWN IN WHICH IT IS LOCATED. A DELAWARE DIVISION OF REVENUE BUSINESS LICENSE DOES NOT EXEMPT YOU FROM COMPLIANCE WITH THE RESPECTIVE COUNTY ZONING ORDINANCES.

NEW CASTLE COUNTY

New Castle County permits business activities to principally occur in office, commercial and industrial zoning districts. Before commencing a new business activity, the proprietor should contact the Department of Land Use at (302) 395-5400, to ascertain whether the activity is permitted. A New Castle County contractor registration or license is required of proprietors of construction and construction-related businesses. The Department of Land Use will provide a zoning certification for a \$50 fee. The Licensing Division issues contractor registrations, contractor licenses and occupancy or use certifications, depending on the proposed activity. The address is 87 Reads Way, Corporate Commons, New Castle, Delaware 19720. New Castle County jurisdiction is limited to the unincorporated areas of the County.

KENT AND SUSSEX COUNTIES

Visit or contact the Kent County Department of Inspections & Enforcement or the Sussex County Department of Planning to verify that your business is zoned properly. First, this will ensure that your business is in compliance with the regulation for the Zoning District in which your business is located. Secondly, it will allow you to determine whether you would be able to expand your business (in size or level of activity) in the future, or apply for a conditional use or rezoning. When you have verified that your business is zoned properly, you will need to obtain a Zoning Certificate of Use or Certificate of Zoning. Except for the town of Ellendale, Kent and Sussex Counties jurisdiction is limited to unincorporated areas of the respective County.

Kent County:

Kent County Service Center
Department of Inspections & Enforcement
Room 303, Robert W. O'Brien Bldg.
414 Federal Street
Dover, DE 19901
Telephone (302) 744-2453
FAX (302) 736-2200

Sussex County:

Department of Planning and Zoning
1st Floor-Sussex County Administrative Office Bldg.
P.O. Box 417
Georgetown, DE 19947
Telephone (302) 855-7878
FAX (302) 854-5079

REGULATORY AGENCIES, CITIES AND TOWNS

The Division of Revenue business license that will be issued by the completion of this application is not a regulatory license nor does it attest to the workmanship of the licensee to perform the listed activity or the quality of the goods sold. The Division of Professional Regulation issues regulatory licenses which require certification of the applicant. Additionally, other Delaware agencies require licensing and certification of selected business activities. The **Delaware Guide for Small Business** (http://www.state.de.us/dedo/new_web_site/Publications/startup%20guide/Delaware%20Guide%20for%20Small%20Business-3.htm) is available at the Delaware Economic Development Office and the Division of Revenue which explains these requirements.

Many cities and towns also require a business license to operate in the respective jurisdiction and the City of Wilmington imposes a net profits tax on businesses located within the City. It is suggested that you contact the local government office in which you intend to conduct business.

**IMPORTANT INFORMATION FROM THE
DELAWARE ECONOMIC DEVELOPMENT OFFICE
AND YOUR LOCAL
CHAMBERS OF COMMERCE**

The Delaware Economic Development Office (DEDO) is the state agency responsible for Delaware's business and tourism development efforts. The DEDO staff works to encourage the retention and expansion of existing businesses and the recruitment of new businesses to Delaware. DEDO can provide existing and new businesses with a range of services including technical assistance, financing, exporter assistance, permitting assistance, employee training and statistical data. For more information, contact DEDO at 99 Kings Highway, P.O. Box 1401, Dover, Delaware 19903 302/739-4271.

Chambers of Commerce also provide a wide array of services for businesses. Use the following listing to contact the State, County or Local Chambers for information.

DELAWARE CHAMBERS OF COMMERCE

NEW CASTLE COUNTY

Delaware State
Chamber of Commerce
1201 N. Orange Street, Ste. 200
PO Box 671
Wilmington DE 19899-0671
302/655-7221
800/292-9507

Middletown Area
Chamber of Commerce
P.O. Box 1
Middletown DE 19709-0001
302/378-7545

New Castle County
Chamber of Commerce
County Commerce Office Park
P.O. Box 11247
Wilmington DE 19850
302/737-4343

KENT COUNTY

Central Delaware
Chamber of Commerce
Suite 2-A
9 East Loockerman Street
Dover DE 19901
or
P.O. Box 576
Dover DE 19903-0576
302/734-7513

Greater Milford
Chamber of Commerce
11 S. DuPont Blvd.
PO Box 805
Milford DE 19963-0805
302/422-3344

SUSSEX COUNTY

Bethany-Fenwick Area
Chamber of Commerce
P.O. Box 1450
Bethany Beach DE 19930-1450
302/539-2100
800/962-7873

Delmar
Chamber of Commerce
PO Box 416
Delmar DE 19940-0416
302/846-3336

Greater Georgetown
Chamber of Commerce
P.O. Box 1
Georgetown DE 19947-0001
302/856-1544

Greater Millsboro
Chamber of Commerce
P.O. Box 187
Millsboro DE 19966-0187
302/934-6777

Greater Seaford
Chamber of Commerce
P.O. Box 26
Seaford DE 19973-0026
302/629-9690

SUSSEX COUNTY

Laurel
Chamber of Commerce
P.O. Box 696
Laurel DE 19956-0696
302/875-9319

Lewes
Chamber of Commerce &
Visitors Bureau
P.O. Box 1
Lewes DE 19958-0001
302/645-8073

Milton
Chamber of Commerce
210 Union Street
P.O. Box 526
Milton DE 19968
302/684-1101
302/684-2509 (FAX)

Rehoboth-Dewey
Chamber of Commerce
501 Rehoboth Avenue
P.O. Box 216
Rehoboth Beach DE 19971-0216
302/227-2233
800/441-1329

Selbyville
Chamber of Commerce
P.O. Box 1150
Selbyville DE 19975-1150
302/436-5526