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# Doing Business with the Secretary of State

*Presented by:*  
Lorna Wassdorf  
Office of the Secretary of State

*Presented to:*  
2008 Partnerships, Limited Partnerships and LLCs  
University of Texas School of Law Continuing Legal  
Education  
July 17-18, 2008  
Austin, Texas



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# Statistics



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## New Business Entities

	2007	2006
For-Profit Corp	32,061	33,758
LLC	69,056	58,288
LP	10,718	16,255
LLPs (new & renewal)	4,669	5,607



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## Active Entities as of July 1, 2008

For-Profit Corporations	392,345
Limited Liability Companies	297,131
Limited Partnerships	151,355
Limited Liability Partnerships	4,627

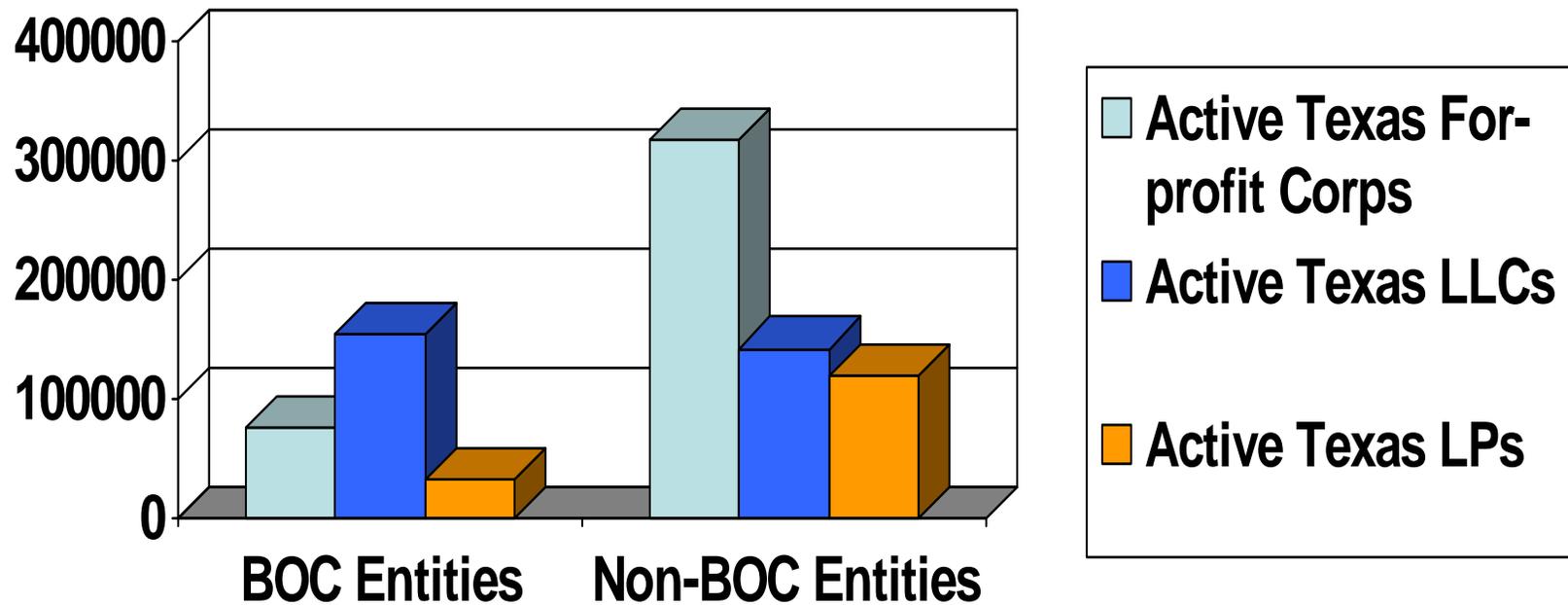


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## Statistics

### Census of Active BOC and Non-BOC Entities





# Conversions



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Does the Texas Business Organizations  
Code allow for redomestication?



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Yes, but we call it a conversion.



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Conversion is defined in § 1.002(10) to mean:

- (A) The continuance of a domestic entity as a foreign entity of any type
- (B) The continuance of a foreign entity as a domestic entity of any type
- (C) The continuance of a domestic entity of one type as a foreign entity of another type



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Conversion = Redomestication



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If you are considering the conversion of a non-BOC entity, you need to draft the certificate of conversion and plan of conversion to comply with prior law as well as the BOC.



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BOC merger and conversion provisions modeled on prior law. However, source law still contains some differences in filing requirements with respect to for-profit corporations.

Namely, information relating to the number of outstanding shares & corporate shareholder approval required of a non-BOC domestic corporation.



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The formation and existence of a domestic filing entity that is a converted entity takes effect and commences on the effectiveness of the conversion. §3.006 BOC.



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Converted entity will be a BOC entity.



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## SOS Conversion Forms

- Designed for BOC-entity transactions only.
- Do not include a plan of merger or conversion. A copy of the plan of merger or conversion may be attached to the form, or the alternative statements may be completed.
- Not designed to address filing requirements of other jurisdictions or cross-statutory transactions.
- Not designed to effect a redomestication of a foreign or domestic entity.



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Don't Use SOS Certificates of Formation for the formation document in a conversion unless.....

SOS certificates of formation do not include the additional language required by § 3.005(7):

- A statement that the entity is formed under a plan of merger or conversion.
- The name, address, date of formation, prior form of organization, and jurisdiction of formation of the converting entity.



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## Common Reasons for Rejection of a Conversion

- Use of SOS merger form by a non-BOC corporation.
- Failure to include additional statements in the certificate of formation of converted domestic entity. If using SOS form, provide additional statements as supplemental information.
- Entity status (e.g., involuntary termination of LP, etc.).
- Tax clearance issues.



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## Avoid Tax Clearance Issues

- ✓ Submit a certificate of account status for each merging or converting domestic entity and registered foreign entity; *or*
- ✓ Include statement that one or more of the surviving or new entities in the merger, or the converted entity in a conversion, will be responsible for the payment of all fees and franchises taxes and will be obligated to pay any fees and franchise taxes if not timely paid.



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## Nonprofit Conversions

TNPCA did not specifically authorize the creation of a nonprofit corporation by conversion.

BOC specifically authorizes creation of a nonprofit corporation by conversion.

Domestic nonprofit corporation may not convert to a for-profit entity.



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# Newly Taxable Entities and Tax Certificates



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Certain filing transactions require a certificate of good standing as a pre-condition to filing:

- ✓ Voluntary dissolution filed under TBCA;
- ✓ Voluntary dissolution filed under TLLCA; and
- ✓ Voluntary termination filed under chap. 11 BOC when entity is a for-profit corporation, professional corporation, or limited liability company.



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## When are tax certificates required?

Neither the BOC nor its source statutes were amended to require the tax certificate for the new taxable entities. A tax certificate *is not* required as a condition for filing:

- ❖ Voluntary dissolution filed by PA under TPAA;
- ❖ Cancellation of LP certificate under TRLPA;
- ❖ Voluntary termination filed under chap. 11 BOC when entity is a PA or LP; and
- ❖ Withdrawal or termination of LLP registration.



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## What are the franchise tax reporting obligations?

New taxable entities do have franchise tax reporting obligations that need to be satisfied *post*-termination, dissolution or cancellation.

The Comptroller of Public Accounts sends a letter after termination notifying limited partnerships and professional associations to file a franchise tax report based on the margin calculation. Questions regarding the final report, call the Comptroller at (800) 252-1381 or (512) 463-4600.



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## When is Tax Clearance Required?

- ✓ Mergers and conversions filed pursuant to TBCA, TLLCA, TRLPA, TRPA, and BOC;
- ✓ A reinstatement following an involuntary dissolution filed by a for-profit corporation, professional corporation, professional association, or LLC under the TBCA and TLLCA; and
- ✓ A reinstatement filed under chapter 11 BOC when filed by a for-profit corporation, professional corporation or a LLC.



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## Limited Liability Partnerships

It is a taxable entity under the revised  
franchise tax.



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## LPs Registered as LLPs

❖ While a domestic limited partnership subject to the revised franchise tax may forfeit its privileges and be subject to forfeiture of its certificate, it is our understanding that the LLP registration itself will not be subject to forfeiture due to nonpayment of taxes.



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## Double Taxation?

- On the LLP registration indicate that the registrant is a limited partnership and provide the SOS file number.
- SOS working on changes to its computer programs to tie the LLP registration to the certification of formation for the LP.



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## LLP and LP names

Conform the names:

- Amend the certificate of formation for the LP to add LLP or LLLP.
- File an assumed name certificate to show that the LP is also conducting business under the name shown in the LLP registration.
- When the certificate of formation is amended to change the name of the LP, file an amendment to the LLP registration too.



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## Withdrawal of the LLP registration

*Does an LLP have franchise tax liability if the underlying entity has ceased to exist?*

Consider withdrawing the LLP registration when the underlying LP or GP terminates its existence.

*Carol Keeton Rylander v. Bandag Licensing Corporation*, 18 S.W.3d 296 (Civ. App.-Austin, 2000)



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## LLPs—Strict Compliance

*Apcar Inv. Partners VI, Ltd. v. Gaus*

LLP provisions do not have a substantial compliance standard and there is no grace period for renewal—strict compliance with the statute required for liability protection.



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## LLPs—Strict Compliance

*Edward B. Elmer M.D., P.A. v. Santa Fe Properties, Inc.*

Strict compliance with insurance or financial responsibility requirements is required in order for a LLP to be properly registered.



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## Homeland Security & Business Entity Formation

Federal government concerns:

- ✓ U.S. companies used by foreign nationals and others to engage in money laundering and other illicit and terroristic activities.
- ✓ State filing officers not collecting sufficient information to enable law enforcement agencies to investigate and prosecute companies/individuals.
- ✓ Bring U.S. into compliance with its international commitments.



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## What the Federal Government Wants?

- States to collect beneficial ownership information for corporations and LLCs as part of the entity formation process and an annual reporting process.
- *Formation Agents* to verify and certify the identity of non-U.S. beneficial owners.



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## Incorporation Transparency and Law Enforcement Assistance Act

- S. 2956
- Introduced May 1, 2008, in the U.S. Senate
- Senate sponsors: Carl Levin, Michigan; Barak Obama, Illinois; and Norm Coleman, Minnesota
- Gives the states until 2011 to require beneficial ownership information.



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## Formation Agents

A person who, for compensation, acts on behalf of another person to assist in the formation of a corporation or limited liability company under the laws of a State.



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## State Government Concerns:

- ✓ Collection of information will increase processing time and workloads.
- ✓ Cost.
- ✓ Derail legitimate business transactions.
- ✓ Runs contrary to the efforts to make it easy to do business.
- ✓ Privacy issues.
- ✓ Discourages foreign investment.
- ✓ Not an effective mechanism to combat the security issues that federal government seeks to address.



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## More to Come

- Issue is not going away.
- Lots of interested parties: ABA, NCCUSL, NASS, IACA, NCSL, U.S. Chamber of Commerce, NFIB, and NEMA.
- States urged to wait and see and not to act until the processed has played out.



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## Need Help?

Contact SOS by Email

Name availability & general entity information:

*[corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us)*

Request copies or certificates of fact:

*[corpcert@sos.state.tx.us](mailto:corpcert@sos.state.tx.us)*

Legal questions relating to filing issues:

*[corphelp@sos.state.tx.us](mailto:corphelp@sos.state.tx.us)*

SOSDirect assistance & issues:

*[sosdirect@sos.state.tx.us](mailto:sosdirect@sos.state.tx.us)*



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## Need Help?

Contact SOS by Email

Contact individual at SOS:

*first initial last name@sos.state.tx.us*

*lwassdorf@sos.state.tx.us*

*cflores@sos.state.tx.us*



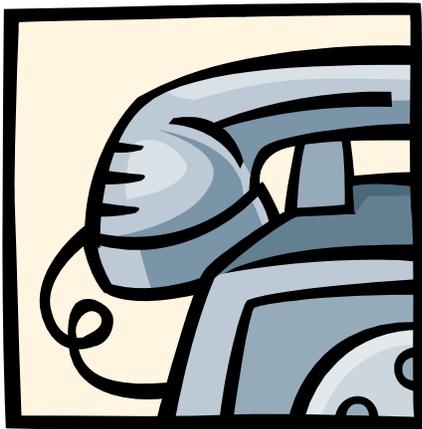
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## Need Help? Call



Briana Godbey

463-5590

Mike Powell

463-9856

Nahdiah Hoang

475-0218

Carmen Flores

463-5588

Lorna Wassdorf

463-5591



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