

Dissolution of Corporations for Failure to Comply with the Corporations Tax Act, Revival of Corporations and Inactive Corporations

References: subsections 75(1), 75(4) and 75(5)

Application

This bulletin replaces Information Bulletin 4006R originally published March 2003.

This bulletin is provided as a guide to taxpayers and is not intended as a substitute for the relevant legislation. Any references to legislation are to the provisions of the CTA and its Regulations, unless otherwise noted.

This bulletin is applicable to corporations incorporated under the Business Corporations Act (Ontario) (BCA).

Dissolution of a Corporation

Dissolving a Corporation for Non-Compliance with the CTA

1. It is imperative that corporations comply with all provisions of the CTA including the timely filing of returns and the payment of all taxes when due. In administering the enforcement provisions of the CTA, the Corporations Tax Branch ("Branch"), will ensure compliance with the use of such measures as prosecutions through the Ontario Court of Justice for failure to file tax returns and the issuance of third party demands and warrants of execution for failure of a corporation to pay its taxes, interest and penalties. For information on penalties and fines including liabilities of officers, directors or agents for corporate offences, refer to Information Bulletin 4004.
2. A corporation not filing its tax returns may receive a request from the Ministry of Finance (MOF) to do so. Failure to respond, after notice, may result in dissolution and the cancellation of the corporation's certificate of incorporation (charter.) The cancellation of the charter has serious implications, including:
 - the forfeiture to the Crown of any real or personal property of the corporation at the date of its dissolution,
 - the lapse of corporate limited liability and insurance coverage, and
 - the inability to apply tax losses.

Notice of Dissolution

3. When considered necessary in the circumstances, the Branch will pursue dissolution of a corporation when, after notice has been given, the corporation fails to remedy its default. Notice, in this case, takes the form of a letter from the MOF mailed to the last known address of the corporation. The letter sets out a final date for the corporation to remedy its default before steps are taken to have the corporation dissolved by the Ministry of Consumer and Business Services (MCBS). Note that it is the responsibility of the corporation to ensure that the Branch is advised of any address changes on an ongoing basis.

Notice of Dissolution (continued)

4. Section 241 of the BCA authorizes the MCBS to dissolve a corporation when:
 - the Minister of Finance notifies the Director appointed under the BCA that the corporation is in default in complying with the provisions of the CTA, and
 - the Director appointed under the BCA gives the corporation notice by registered mail or by a one-time publication in The Ontario Gazette that an order dissolving the corporation will be issued unless it remedies its default within ninety days after the giving of this notice.

Revival of a Corporation

Requirements for Reviving a Corporation

5. Subsection 241(5) of the BCA provides the Director appointed under the BCA with discretion, on the terms and conditions that the Director sees fit to impose, to revive a corporation which was dissolved for failure to comply with the provisions of the CTA. The corporation must first apply for the revival by filing Articles of Revival and paying a revival fee to MCBS. In addition, the corporation must obtain, from the Branch, a consent to the revival and also submit it to the MCBS. Before this consent is given, the Branch requires that all returns due for the period before and subsequent to the dissolution must be filed and all related taxes, penalties and interest owing must be paid.
6. The Branch's letter of consent to revive is valid for 60 days after it is issued. If a corporation does not apply to the MCBS for revival within 60 days of the consent, it must make a written request to the Branch for a new letter of consent. All conditions for issuing the new consent letter still apply, as before. No fee is charged by the Branch for the letter of consent to revive.

Effect of Revival on Corporation and Tax Losses

7. Upon revival by the Director appointed under the BCA, the corporation will be legally restored to its previous status under subsection 241(5) of the BCA, including having the rights to all of its property and privileges as well as being bound by all of its liabilities, contracts and debts at the date of dissolution, as if it had never been dissolved, subject to the terms and conditions imposed by the Director and to the rights, if any, acquired by any person during the period of dissolution.
8. The Branch considers that a revival under section 241(5) of the BCA restores any prior balances of the corporation's unutilized net capital and non-capital losses. Because the revival restores the corporation as if the charter cancellation did not occur and the taxation years continued without break, the taxation years between dissolution and revival will be counted within the normal time limits for applying its non-capital losses to future or prior taxation years.
9. In most circumstances non-capital losses cannot be used to reduce income from business or property earned between the time of dissolution and revival. The Branch follows the position adopted by the Canada Customs and Revenue Agency (CCRA) as stated in federal Interpretation Bulletin IT-444R. CCRA will consider attributing the income to the corporation only where the dissolution was unintentional and the corporation was revived within a short period of time. In all other cases, the income will be attributed to the person(s) who carried on the business of the corporation after dissolution.

Inactive Corporations

Where Inactive Corporations Fail to File Tax Returns

10. In certain circumstances a corporation may become inactive, ceasing all its business operations and having no assets or income. As long as a corporation's articles of incorporation remain legally in force, the corporation must file either a tax return or an Exempt From Filing (EFF) Declaration. This requirement applies to all corporations, including those that have neither taxable income nor assets due to inactivity. For information on a corporation's filing requirements, refer to Information Bulletin 4001.
11. Until a corporation formally dissolves, the charter remains legally in force and the corporation must continue to file an Ontario corporations tax return or an Exempt from Filing (EFF) Declaration. This requirement applies to all corporations, including those that have neither taxable income nor assets due to inactivity. Where an inactive corporation fails to file an Ontario corporations tax return or EFF Declaration, it is considered to be in default of filing.

If the corporation no longer wants to retain its charter, it can voluntarily dissolve by contacting the Ministry of Consumer and Business Services (MCBS). However, the corporation must first obtain a Letter of Consent from the corporations Tax Branch-Tax Roll Services at 1-800-262-0784 ext. 6666. A Letter of Consent will only be issued after a corporation has filed an Ontario corporation tax return or an EFF Declaration as applicable for each outstanding tax year and paid all outstanding tax liabilities. The return for the final year must be marked "Final to Dissolution". Once the corporation has been formally dissolved through MCBS, the corporation will no longer be required to file tax returns/EFF Declarations.

Articles of Dissolutions are available from the Ministry of Consumer and Business Services (MCBS) website www.cbs.gov.on.ca An MCBS Information Sheet on this subject is also available at www.cbs.gov.on.ca/mcbs/english/5LAR8K.htm

Reviving a Voluntarily Dissolved Corporation

12. Where a corporation is voluntarily dissolved, it may be revived only by a special act of the legislature (private members bill). The MCBS cannot revive the corporation in the manner described in paragraphs 5 and 6 above.

Forms and Enquiries

13. For more information on corporate dissolutions and revivals, refer to:

Ministry of Consumer and Business Services
Companies Branch
393 University Avenue, Suite 200
Toronto, Ontario M5G 2M2

Telephone: (416) 314-8880 or toll free in Ontario 1-800-361-3223.

Information sheets are available, from MCBS' primary service providers, on the following websites:

English: www.cbs.gov.on.ca/mcbs/english/company_info.htm

French: www.cbs.gov.on.ca/mcbs/francais/info_sur_les_compagnies.htm

Forms and
Enquiries
(continued)

14. To obtain further information on name, address or telephone changes; and dissolutions, revivals or amalgamations, please contact the Ministry of Finance, Corporations Tax Branch, Tax Roll Services, Monday to Friday from 8:30 am to 5:00 pm:

Toll-free calls from within Ontario: English language enquiries French language enquiries	1-800-262-0784 ext. 6666 ext. 6263
Calls from within metropolitan Toronto (Toronto line) English language enquiries French language enquiries	(416) 920-9048 ext. 6666 ext. 6263
All other calls English and French enquiries	(905) 433-6666

Information can also be obtained from the Ministry's website at: www.trd.fin.gov.on.ca

Ce guide est disponible en français sous le nom « Dissolution de corporations pour non-conformité avec la Loi sur l'imposition des corporations, reconstitution de corporations et corporations inactives, n° 4006RF1 ». Vous pouvez en obtenir un exemplaire en appelant le 1 800 668-5821.