

Online Filing for Annual Statements and Reports

FileOnline is being expanded to include prior year annual reports and annual statements. In 2006, the Bureau of Commercial Services, Corporation Division, implemented online filing for current year limited liability company annual statements and domestic corporation annual reports. The program has been expanded to include prior year annual statements and reports for entities in good standing. The ability to file annual reports for foreign corporations is being explored and may be available later in 2007.

For limited liability companies and professional limited liability companies in good standing and domestic corporations and professional service corporations that have not been dissolved, when the six-digit file number is entered, FileOnline will display a list of the three most recent reporting years and the status of the annual statement or report for each year. Customers click on the year of the statement or report they wish to file and then proceed to complete the document online, paying the fee with a credit card. Each statement or report is completed separately, and the fees for each statement or report are collected separately.

The FileOnline program will add a late penalty fee for profit corporation annual reports being filed after September 30 of the year in which the report is due. It will also add a late penalty for professional limited liability company annual statements and reports being filed after the February 15 due date. If a report or statement was previously filed for a particular year and the entity wishes to file an additional report or statement for that same year, the program will permit the second report or statement to be filed but will not add a late penalty to the second report or statement.

If an annual report or annual statement contains incorrect information and does not accurately present the action the entity intended to take or is erroneously executed, a Certificate of Correction, BCS/CD-518, may

be filed to correct an annual report or annual statement. The form is available online at <http://www.dleg.state.mi.us/bcsc/forms/corp/corp/518.pdf>. A Certificate of Correction, however, must be submitted via MICH-ELF, email, or regular mail.

Religious College Legislation

Michigan law establishes specific criteria for postsecondary educational institutions, including educational corporations, unincorporated private educational institutions, and proprietary schools. Educational corporations form under section 170-177 of the General Corporation Act, MCL 450.171-450.177. Public Act 142 of 1964, MCL 390.771-390.772, establishes minimum requirements for unincorporated private institutions. Proprietary schools are regulated and licensed under 1943 PA 148, MCL 395.101-395.103. Ecclesiastical corporations are permitted to operate a licensed proprietary school to train individuals to become clergy or enter other vocations related to their particular faith.

Grace Baptist Church of Gaylord, an ecclesiastical corporation formed under the General Corporation Act, 1931 PA 327, was operating as Grace Baptist College without a proprietary school license. Grace Baptist Church of Gaylord sought passage of HB 6014-6016 to allow it to continue to operate Grace Baptist College, using "college" in the name, and to grant degrees without obtaining approval from the Office of Postsecondary Services, Bureau of Career Education, Department of Labor & Economic Growth.

HB 6014 and HB 6016, signed by Governor Granholm on September 29, 2006, became 2006 PA 420 and 2006 PA 421. Public Act 420 amends the General Corporation Act to permit an ecclesiastical corporation, under certain circumstances, to operate an educational institution for training individuals to become clergy or to enter other vocations related to its particular faith without obtain-

ing a proprietary school license or forming an educational corporation. Public Act 421 amends 1964 PA 142 regarding unincorporated, privately operated institutions to add section 1a, MCL 390.771a, which states, "This act does not apply to a religious college described in section 184a of 1931 PA 327, MCL 450.185a."

Public Act 420 of 2006 added section 184a to the General Corporation Act. Section 184a(7) provides, in part, that an ecclesiastical corporation that meets the criteria of section 184a "is not required to obtain the approval of or a license from the department of labor and economic growth to operate a religious college under this section in this state and the operation of the religious college and its educational programs are not subject to the supervision of the department." In addition, section 184a(3)(a) provides that the ecclesiastical corporation may use the word "college" in the name of the religious college. If it uses "college" in the name of the religious college, the ecclesiastical corporation must provide the Bureau of Career Education, Department of Labor & Economic Growth with a copy of each filed Certificate of Assumed Name.

Only a limited number of ecclesiastical corporations, however, will be able to meet the criteria in section 184a. It applies to ecclesiastical corporations formed under the General Corporation Act but does not apply to ecclesiastical corporations included in Chapter 458 of the Michigan Compiled Laws, MCL 458.1 et seq. In addition, section 184a applies only to an ecclesiastical corporation incorporated under 1931 PA 327 prior to January 1, 2007 and located at the time of its organization in a county with a population of more than 17,500 and fewer than 23,500 residents on the most recent federal decennial census. Only five counties had more than 17,500 and fewer than 23,500 residents on the most recent decennial census: Antrim (23,110), Leelanau (21,119), Ogemaw (21,645), Osceola (23,197), and Otsego (23, 301).¹ Section 184a(2) further limits the ecclesiastical corpo-

rations to which the new provisions apply by requiring that the religious college must be operated as a division of an ecclesiastical corporation, and it must have begun operating before January 1, 2007.

An ecclesiastical corporation subject to section 184a may organize and operate a religious college to offer "postsecondary educational programs that are solely designed for, directed toward, and attended by students who seek to learn the particular religious faith or beliefs of the ecclesiastical corporation." The program is limited to preparing students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect, or to enter into other vocations directly related to the particular faith of the ecclesiastical corporation. It may not offer "general or liberal arts educational programs or any other postsecondary educational programs." Under section 184a, a religious college may award degrees in biblical studies, religious studies, theology, and substantially similar degrees, but it may not grant a degree that includes the word "arts," "science," "business," or "applied."

Section 184a also includes specific requirements regarding printed material distributed by the religious college and requires disclosures to be made regarding the religious limitation on the degrees offered and whether it does not accept state or federal assistance for its educational programs. The ecclesiastical corporation must annually provide the Department of Labor & Economic Growth with a surety bond and submit to the department every two years a sworn affidavit that the religious college complies with the requirements of section 184a.

Foreign Corporations and Fees for Shares Attributable to Michigan

Public Act 21 of 2005, effective January 1, 2006, changed the fees foreign corporations pay for shares attributable to Michigan and for increases

in shares attributable to Michigan. Worksheets that accompany Amended Application for Certificate of Authority, BCS/CD 562, and foreign corporation annual reports have been revised. Prior worksheets will continue to be used to compute fees for increases in shares attributable, which occurred prior to January 1, 2006 but are reported after that date.

In fiscal year 2006, several foreign corporations completed and returned the worksheet with an additional fee when no fee was due, and the state processed refunds for the excess fees paid. In an effort to reduce confusion about whether an additional fee is due, a procedure change is being made on the 2007 foreign profit corporation annual reports. Beginning in January 2007, no worksheet will be included if the corporation has 60,000 or fewer shares or if the corporation has 100 percent of its shares attributable to Michigan.

Internal Procedure Changes

In conjunction with the implementation of expedited services and the launch of online filing for annual reports and statements, the review and processing of corporation renewals of existence and limited liability company Certificates of Restoration have moved from Document Review to Business Services. Additional employees have been trained to review and process corporation annual reports, limited liability company annual statements, corporations' renewals of existence, and Certificates of Restoration. In addition, when the missing reports or statements are submitted, they will be assigned to the person who wrote the letter advising the corporation or LLC what needed to be submitted.

The manager of Business Services is Robert Engle. Pat Perry supervises the individuals reviewing limited liability company annual statements and processing Certificates of Restoration. Susan Leach supervises the individuals reviewing corporation annual reports and reviewing requests to renew a corporation dissolved for

failure to file reports or to renew a Certificate of Authority revoked for failure to file reports. Questions regarding automatic dissolutions and revocations of corporations or regarding limited liability companies not in good standing may be directed to annual report and statement examiners at (517) 241-6470, mailed to PO Box 30054, Lansing MI 48909, or faxed to (517) 241-0538.

NOTES

1. Population information for Michigan is available online at http://www.michigan.gov/documents/hal_lm_census_schlueter_2004PopEstimate-MI_122773_7.pdf.

G. Ann Baker is the director of the Corporation Division of the Michigan Bureau of Commercial Services, Lansing. Ms. Baker routinely works with the department, legislature, and State Bar of Michigan's Business Law Section to review legislation. From 1981 to 1984, she served as the Director of the Office of Franchise and Agent Licensing, administering the Michigan Franchise Investment Law and the broker, dealer, agent, and investment adviser portion of the Michigan Uniform Securities Act. Ms. Baker is a member of the International Association of Commercial Administrators, and of the State Bar's Committee on Libraries, Legal Research and Legal Publications. She is a past chairperson of the Business Law Section and a current member of the Section's Corporate Laws Committee and the Unincorporated Enterprises Committee's Subcommittee on the LLC Act. Ms. Baker has been a frequent speaker at ICLE courses and is actively involved in programs to train officers and directors of non-profit corporations.