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Doing Business in CT: Failure to Register Proves Costly

Business entities doing business in Connecticut without registration with the Secretary of the State have become a prime target for enforcement by top state officials. Secretary of the State Denise Merrill and Attorney General George Jepsen issued a joint press release last week, stating that out-of-state business entities that failed to register paid more than \$1.3 million in penalties in fiscal year 2013. The largest penalty imposed was more than \$54,000.

Under Connecticut law, corporations (both stock and nonstock), limited partnerships, limited liability companies, limited liability partnerships and statutory trusts formed outside of Connecticut must obtain a certificate of authority from the Secretary of the State and pay a statutory fee before transacting business in Connecticut. There is a 90-day grace period for foreign corporations to obtain a certificate of authority. Registered businesses must also file a biennial report with the Secretary of the State's office.

Here is how Connecticut is more punitive than other states: Connecticut assesses a \$300 penalty for each month, or \$3,600 for each year, in which an out-of-state entity transacts business in the state without a certificate of authority (in addition to the overdue fees and accrued interest). The penalty increased to \$300 per month from \$165 per month in October 2009. There is no "cap" or maximum on this monthly penalty. For example, an LLC formed in another state that has conducted business in Connecticut without registration for three years would be obligated to pay the back fees plus interest plus a total of \$10,800 in penalties. A large company headquartered in Connecticut with multiple subsidiaries organized elsewhere but "transacting business" in the state without registration could easily face penalties in the tens of thousands of dollars.

In certain circumstances, the Attorney General's Office will consider reductions in the statutory penalty. That is especially true if the company has paid all state taxes due the Department of Revenue Services on a timely basis and the failure to qualify with the Secretary of the State was a mere oversight. But there is no guarantee that a settlement can be reached.

In addition, as in other states, a foreign corporation transacting business in Connecticut without a certificate of authority may not maintain a proceeding in state courts until it obtains a certificate of authority. An unregistered company wishing to bring suit may find the cost of pre-suit registration too high to justify the lawsuit. However, failure to register does not impair the validity of contracts or prevent a company from defending a lawsuit.

Connecticut statutes do not define what types of activities constitute "transacting business." However, the statutes do give a nonexclusive list of activities that do not constitute "transacting business." For example, under the Connecticut Business Corporation Act, the following activities do not constitute "transacting business":

- Maintaining, defending or settling any proceeding.
- Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
- Maintaining bank accounts.
- Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities, or maintaining trustees or depositaries with respect to those securities.
- Selling through independent contractors.

- Soliciting or obtaining orders (whether by mail, through employees or agents, or otherwise), if the orders require acceptance outside Connecticut before they become contracts.
- Creating or acquiring debt, mortgages and security interests in real or personal property.
- Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- Owning, without more, real or personal property.
- Conducting an isolated transaction that is:
 - completed within 30 days; and
 - not one in the course of repeated transactions of a like nature.
- Transacting business in interstate commerce.

The question of whether or not other activities constitute "transacting business" is determined on a case-by-case basis. This has been litigated frequently in the courts, typically in the context of whether or not an unregistered company can bring a lawsuit.

Impact of Limited Tax Amnesty. On June 10 the Connecticut General Assembly passed Public Act 13-184, which includes a tax amnesty program. The amnesty period will run from September 16 to November 15 and is open to individuals, businesses or other taxpayers that owe Connecticut state taxes (other than motor carrier road taxes) for any taxable period ending on or before November 30, 2012. This tax amnesty applies only to taxes payable to the Connecticut Department of Revenue Services. Fees and penalties associated with an out-of-state business entity obtaining a certificate of authority to transact business in Connecticut are not covered by the tax amnesty program. For more information about the tax amnesty program, see our client alert [here](#).

Day Pitney has represented many out-of-state businesses in determining whether or not registration is required and in negotiations with the state with respect to penalties for failure to register. The firm would be pleased to advise on the application of the "transacting business" laws to specific situations.