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HOUSE BILL NO. 860

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 13.1-615, 13.1-815, 13.1-1065, 13.1-1255, and 50-73.70 of the Code of Virginia, relating to post-assessment document filings by corporations and other business entities.

Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-615, 13.1-815, 13.1-1065, 13.1-1255, and 50-73.70 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-615. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect the filing fees, charter fees, and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not ~~issue any certificate or file or issue with respect to any domestic or foreign corporation~~ any document or certificate specified in this chapter, except the report required by § 13.1-775, a statement of change pursuant to § 13.1-635 or 13.1-764, and a statement of resignation pursuant to § 13.1-636 or 13.1-765, until all fees, fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been paid by or on behalf of such corporation. ~~However, a certificate of termination of corporate existence may be issued under the provisions of § 13.1-751 without requiring prepayment of any such assessment. Notwithstanding the foregoing, the Commission may file or issue any document or certificate with respect to a domestic or foreign corporation that has been assessed an annual registration fee if the document or certificate is filed or issued with an effective date that is prior to the due date of the corporation's annual registration fee payment in any year. Except as provided hereinafter, the issuance of such a certificate of termination of corporate existence pursuant to § 13.1-751 shall not have the effect of releasing any obligation that has accrued in favor of the Commonwealth on account of such assessment.~~

Any domestic corporation that has ceased to exist in the Commonwealth because of the issuance of a certificate of termination of corporate existence, certificate of incorporation surrender or certificate of entity conversion or any foreign corporation that has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to subsection C of § 13.1-775 in any year, shall not be required to pay the registration fee for that year. Any domestic or foreign corporation that has merged, effective prior to its annual report due date pursuant to subsection C of § 13.1-775 in any year, into a surviving domestic corporation or into a surviving foreign corporation that files with the Commission the certificate of merger prior to such date, shall not be required to pay the registration fee for that year. The Commission shall enter an order withdrawing and ~~cancelling~~ *canceling* the registration fee assessments specified in this section that remain unpaid. Any foreign corporation that has amended its articles of incorporation to reduce the number of shares it is authorized to issue, effective prior to its annual assessment date pursuant to subsection B of § 13.1-775.1 of a given year, and has timely filed an authenticated copy of the amendment with the Commission pursuant to § 13.1-760 after its annual assessment date pursuant to subsection B of § 13.1-775.1, shall have its registration fee reassessed to reflect the new number of authorized shares. Registration fee assessments that have been paid shall not be refunded.

§ 13.1-815. Fees to be collected by Commission; payment of fees prerequisite to Commission action; exceptions.

A. The Commission shall assess the registration fees and shall charge and collect filing fees, the charter fees and entrance fees imposed by law. The Commission shall have authority to certify to the Comptroller directing refund of any overpayment of a fee, or of any fee collected for a document which is not accepted for filing, at any time within one year from the date of its payment.

B. The Commission shall not ~~issue any certificate or file or issue with respect to any domestic or foreign corporation~~ any document or certificate specified in this chapter, except the report required by § 13.1-936, a statement of change pursuant to § 13.1-834 or 13.1-926, and a statement of resignation pursuant to § 13.1-835 or 13.1-927, until all fees, charges, fines, penalties, and interest assessed,

INTRODUCED

HB860

59 imposed, charged, or to be collected by the Commission pursuant to this chapter or Title 12.1 have been
60 paid by or on behalf of such corporation. However, a certificate of termination of corporate existence
61 may be issued under the provisions of § 13.1-913 without requiring prepayment of any such assessment,
62 but Notwithstanding the foregoing, the Commission may file or issue any document or certificate with
63 respect to a domestic or foreign corporation that has been assessed an annual registration fee if the
64 document or certificate is filed or issued with an effective date that is prior to the due date of the
65 corporation's annual registration payment in any year. Except as hereinafter provided, the issuance of
66 such a certificate of termination of corporate existence pursuant to § 13.1-913 shall not have the effect
67 of releasing any obligation that has accrued in favor of this Commonwealth on account of such
68 assessment, except as provided hereinafter.

69 Any domestic corporation that has ceased to exist because of the issuance of a certificate of
70 termination of corporate existence or certificate of incorporation surrender or any foreign corporation
71 that has obtained a certificate of withdrawal, effective prior to its annual report due date pursuant to
72 subsection C of § 13.1-936 in any year, shall not be required to pay the registration fee for that year.
73 Any domestic or foreign corporation that has merged, effective prior to its annual report due date
74 pursuant to subsection C of § 13.1-936 in any year, into a surviving domestic corporation or into a
75 surviving foreign corporation that files with the Commission the certificate of merger prior to such date,
76 shall not be required to pay the registration fee for that year. The Commission shall enter an order
77 withdrawing and ~~cancelling~~ canceling the registration fee assessments above specified remaining unpaid.
78 Registration fee assessments that have been paid shall not be refunded.

79 § 13.1-1065. Payment of fees, fines, penalties, and interest prerequisite to Commission action;
80 refunds.

81 A. The Commission shall not file or issue with respect to any domestic or any foreign limited
82 liability company any document or certificate referred to specified in this chapter, except a statement of
83 change pursuant to § 13.1-1016 and a statement of resignation pursuant to § 13.1-1017, until all fees,
84 fines, penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant
85 to this chapter or Title 12.1 have been paid by or on behalf of such limited liability company.
86 Notwithstanding the foregoing, the Commission may file or issue any document or certificate with
87 respect to a domestic or foreign limited liability company that has been assessed an annual registration
88 fee if the document or certificate is filed or issued with an effective date that is prior to the due date of
89 the limited liability company's annual registration fee payment in any year.

90 B. The Commission shall have authority to certify to the Comptroller directing refund of any
91 overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time
92 within one year from the date of its payment.

93 § 13.1-1255. Payment of fees, fines, penalties, and interest prerequisite to Commission action;
94 refunds.

95 A. The Commission shall not file or issue with respect to any domestic or any foreign business trust
96 any document or certificate referred to specified in this chapter, except a statement of change pursuant
97 to § 13.1-1221 and a statement of resignation pursuant to § 13.1-1222, until all fees, fines, penalties,
98 and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this chapter
99 or Title 12.1 have been paid by or on behalf of such business trust. Notwithstanding the foregoing, the
100 Commission may file or issue any document or certificate with respect to a domestic or foreign business
101 trust that has been assessed an annual registration fee if the document or certificate is filed or issued
102 with an effective date that is prior to the due date of the business trust's annual registration fee payment
103 in any year.

104 B. The Commission shall have the authority to certify to the Comptroller directing refund of any
105 overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time
106 within one year from the date of its payment.

107 § 50-73.70. Payment of fees, fines, penalties, and interest prerequisite to Commission action; refunds.

108 A. The Commission shall not file or issue with respect to any domestic or any foreign limited
109 partnership any document or certificate referred to specified in this chapter, except a statement of change
110 pursuant to § 50-73.5 and a statement of resignation pursuant to § 50-73.6, until all fees, fines,
111 penalties, and interest assessed, imposed, charged, or to be collected by the Commission pursuant to this
112 chapter or Title 12.1 have been paid by or on behalf of such limited partnership. Notwithstanding the
113 foregoing, the Commission may file or issue any document or certificate with respect to a domestic or
114 foreign limited partnership that has been assessed an annual registration fee if the document or
115 certificate is filed or issued with an effective date that is prior to the due date of the limited
116 partnership's annual registration fee payment in any year.

117 B. The Commission shall have authority to certify to the Comptroller directing refund of any
118 overpayment of a fee, or of any fee collected for a document that is not accepted for filing, at any time
119 within one year from the date of its payment.