OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
TRIBAL LIAISON

State of Oregon
900 Court Street NE #136
Salem, Oregon 97301
503-986-1500

http://sos.oregon.gov

March 30, 2023

Dear Chair Fahey, Vice-Chair Breese-Iverson, Vice-Chair Kropf, and Members of the Committee:

I am Kathy Wai, Legislative & Policy Analyst for Secretary of State Shemia Fagan. The mission of the Secretary of State's Office is to build trust between the people of Oregon and our state government so that public services can make a positive impact in peoples' lives. The Corporation Division directly supports Oregon businesses and ensures registration processes are fast, simple, and easy as possible. It is the first stop for business and provides relevant information on government requirements for starting and operating a business.

HB 2109 is currently a placeholder bill for our Corporation Division. We submitted a -2 amendment after the Division approached us with an issue that needed to be clarified in statute around corporation soles.

Background:

A corporation sole is an obscure form of tax-exempt, nonprofit corporation originally used by legitimate religious organizations to hold property and conduct business for the benefit of the religious entity.

A principal characteristic of the corporation sole allows the religious organization to appoint one person such as a bishop or abbot, as its sole financial officer to administer its assets, whereas a traditional non-profit organization must have a 3-person board of directors.

Due to heightened awareness of liability issues and fiduciary responsibility, most all legitimate religious organizations have elected to organize as traditional non-profit corporations and have ceased using the Corporation Sole organization form. The Internal Revenue Service also finds that individuals were using corporation soles to evade paying income taxes. According to an Internal Revenue Service bulletin: A legitimate corporation sole is designed to ensure continuity of ownership of property dedicated to the benefit of a legitimate religious organization. A taxpayer cannot use a corporation sole created to avoid or evade income taxes as a means to exclude the taxpayer's personal income from tax. This was an issue here in Oregon as well.

In 2015, the Oregon Legislature passed Senate Bill 77 to limit the use of corporation soles as a tax-evasion scheme in Oregon. The intent of this bill was to no longer allow them to be formed in Oregon as well as reinstated if they are administratively dissolved. In 2015, there were 270

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active corporation soles registered with the Secretary of State Corporation Division and 175 (65%) had been filed in the two years prior to the bill by tax scheme promoters as tax avoidance packages costing victims hundreds or thousands of dollars. Promoters frequently claimed that people who form and transfer all their assets into a corporation sole are exempt from all taxes. In some cases, promoters marketed frivolous claims that the corporation sole exempts the person from federal, state, and local laws as well.

Senate Bill 77 was intended to limit the future promotion of these frivolous tax avoidance schemes by preventing the formation of new corporation soles after the effective date, and grandfathered in existing corporation soles who may continue to operate if they maintain annual registration requirements.

Problem:

The issue that we face today is that the original legislation lacked clarity regarding **reinstatement** if a corporation sole is administratively dissolved. In a recent court case, the original court verdict was appealed, and the Court of Appeals directed the Corporation Division to reinstate the corporation sole since it was not clearly stated in ORS 65.067 that reinstatement was not an option.

Since 2015, 215 Corporation Soles have been administratively dissolved. 39 of which are within the 5-year period to reinstate. This poses a problem for the Division because it is unclear from statute whether these corporation soles need to be reinstated. There are currently 53 active corporation soles.

Solution:

Current law around corporation sole need to be clarified for the Division to implement and follow the original legislative intent of Senate Bill 77 (2015). The -2 amendment prohibits a corporation sole from being reinstated in this state on or after June 8, 2015, and allows a corporation sole that exists before then to continue operating as along as they have remained active and not been dissolved. We encourage you to support HB 2109 and adopt the -2 amendment.

Thank you,
Kathy Wai

Point of Contact:
Jessica Ventura, Legislative Director
Jessica.Ventura @sos.oregon.gov