

Misclassification Taskforce
DFI Registration Work Group Meeting
Monday, October 11, 2021
9 AM - 11 AM

Attendees: Cindy Buchko, Megan Martin, Chris Rochester, David Haushalter, Marc Shovers, Mike Myszewski, Tim DeMinter, Maria Guerra Lapacek

Cindy's Presentation

- Scope of the problem
- CBG maintains a publicly available database that is annually verified
- Over 11,000 contractors in database
- Over 2,200 in the database are not registered/authorized by DFI
- 20% are not in compliance with Wisconsin law
- Most are foreign LLCs
- This is just one industry
- Penalties in statute already - monetary penalties

Discussion

- Recommendations
- Disclosure of members/managers
- DFI - may need additional staff to carry out these responsibilities, don't have these
 - responsibilities right now
 - Statutory change
 - Straightforward, change to the form
- Are there exceptions or work arounds?
 - Registered agent also has to be disclosed
 - Member or member with management authority would be disclosed
 - Suspects law firms would be less likely to disclose because of the liability
 - Accountability for disclosures
 - Requirements for registration
- DFI doesn't have the authority to investigate based on the law
- Regulatory agencies don't have enforcement authority in these areas - this
 - seems to be uniform throughout the United States
 - There are a number of states that give their Secretary of States the authority to
 - refer to the attorney general, not necessarily enforcement authority
 - This used to be under the Secretary of State, but some of the provisions
 - didn't follow with the creation of DFI
 - Marc can check into this
- UI tracking compliance
 - Turned a profit, spent about \$3 million on the program and have made about \$3.5 million
 - Managing partner and all the partners disclosed
 - See out of state entities - Minnesota and Illinois
 - Roofing companies out of state during storm seasons
 - Enforcement would be difficult for out of state entities
 - Wisconsin UI may apply to out of state entities, but sending auditors out of state is the issue
- DOR division
 - Entities that aren't filing tax return forms
 - Have collected quite a bit of revenue from this

- Enforcement that goes after foreign entities
 - Nexus unit
- Look through ads and other filings to ensure out of state companies are filing income tax
 - Statutes determine nexus
 - Send companies a letter based on what they owe
 - Is up to the company to disclose their records
 - Legal ability to collect from out of state entities
- Unit that assesses and different unit that collects
- Various tools to collect the money, including the IRS
- Authority comes from being a taxing agency
- Entities do have due process, but they have to disclose that information
- Enforcement
 - Statutes referenced on DFI
 - Statutes may say doing so is fraudulent, but Marc doesn't believe DFI has enforcement
 - Fraudulent filing statutes do not reference LLCs
 - Expansion of provision
- Addressing fraudulent filing concerns
 - Statutory authority to DFI and the Attorney General for enforcement
- Marc would need to discuss with others from DFI about support for something like this
 - Would need details to really determine support
 - Work group would just make the recommendation and not really drafting language for statute change - would go to the legislature
 - Broad policy recommendations and changes
 - Recommendations for larger task force by next task force meeting on
 - December 16th
 - Fees and penalties
- Some states have higher initial filing fees and vice versa
- Wisconsin is a higher penalty state
- Wisconsin is probably in line with other states
- Civil penalties on agents/owners
 - DOR doesn't feel strongly about proposing this because of the resistance that is likely to come of this
 - How many penalties DFI has imposed?
 - Patti would probably have this information, Marc will follow up
 - Cindy had a conversation with Patti and someone else from DFI about calculations
 - More enforcement authority to DFI
 - Is there any identifying tools to get entities that aren't filing on the radar?
 - It would be helpful for DOR if DFI could also capture FEIN
- Mike will bring up with leadership
- DFI doesn't have authority to ask for this
- Would need legislative sign off to collect this information
 - Information that would be helpful for enforcement
- Name of partners/managing members/members of LLCs
 - Vote on disclosure of members and managers
- Might cause another issue if a member of an LLC is an LLC itself
 - Note as possible work around and policy makers could make decisions on this
 - Other agencies could "investigate"/"Interview"
 - Disclosure of members and managers
 - Adding LLC statutes for fraudulent filings
 - Statutory change to provide DFI enforcement authority for filings and referring to the

- Attorney General to investigate
- Budget constraints and staffing concerns - would need additional resources

Next Meeting

- Week of November 8th
 - Marc is unavailable on the 10th and 11th
 - November 9th 10 or 2, 10 would be better
 - Schedule an hour
- Cindy will get write up done with the next week or two
- Feedback before meeting
- Consensus/majority from group before moving forward with recommendation