

Cancellation of registration

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OBJECTIVE

1. This practice directive examines the Assessment Department's authority to cancel a firm's account and aids in the interpretation of *Assessment Manual Item: AP1-38-1(c)* and *(e)*.

INTERPRETATIVE GUIDELINES

2. *AP1-38-1(e)* establishes a general rule that "[r]egistration with the Board is cancelled when the firm ceases to be an employer under the" *Workers Compensation Act*. That is, by and large, registration with the Board is cancelled when a firm ceases to,
 - (a) exist as a legal or business entity; or
 - (b) have an individual in its service under a contract of service;¹ or
 - (c) engage in work in or about an industry in British Columbia.²
3. However, the general rule is subject to the exception in *AP1-38-1(c)* that if a registered firm's putative business operations are being undertaken by an affiliated firm operating as a different form of a legal or business entity, the registered firm's account with the Board will be cancelled "when the correct legal status of the firm [undertaking the business operations] is discovered."
4. Thus, the effective date of cancellation of a firm's account with the Board is,
 - (a) the date that the firm ceased to be an employer under the *Act*, which may be evidenced by the firm,

¹ See *Practice Directive 1-1-4(A)*.

² *Ibid.*

- i) ceasing to exist as a legal or business entity; or
- ii) having no individual in its service under a contract of service; or
- iii) having no operations in or about an industry in British Columbia;

UNLESS

- (b) the firm is registered as an incorporated company and the firm’s putative business operations are being undertaken by an affiliated firm operating as a different form of entity, in which case the effective date of cancellation will be “when the correct legal status of the firm [undertaking the business operations] is discovered.”

IF THE FIRM CEASES TO ...		POLICY		DATE
		Text	Number	
Exist as a legal or business entity but its ...	business operations <u>do not</u> continue through an affiliated firm operating as a different form of entity	“when the [registered] firm ceases to be an employer under the <i>Act</i> ”	1-38-1(e)	The date the firm ceased to exist as a legal or business entity
	business operations continue through an affiliated firm operating as a different form of entity	“when the correct legal status of the firm [undertaking the business operations] is discovered”	1-38-1(c)	Date of discovery
Have an individual in its service under a contract of service		“when the [registered] firm ceases to be an employer under the <i>Act</i> ”	1-38-1(e)	The date the firm ceased to employ at least one worker
Engage in work in or about an industry in British Columbia		“when the [registered] firm ceases to be an employer under the <i>Act</i> ”	1-38-1(e)	The date the firm ceased operating in British Columbia

ADJUDICATIVE GUIDELINES

I CANCELLATION OF A FIRM’S REGISTRATION

- 5. *API-38-1* provides the following directions respecting the cancellation of a firm’s account with the Board.

A The General Rule

- 6. *“Registration with the Board is cancelled when the firm ceases to be an employer under the Act. The effective date of cancellation is when the employer ceased operating the business or ceased to employ workers. It is the employer’s responsibility to notify the Board of this.”*
- 7. Under the general rule,

- (a) The triggering event for cancellation of registration is that the firm ceases to be an employer under the *Act*; and
 - (b) The effective date of cancellation is the date that the firm ceased to be an employer under the *Act*.
8. Generally, the effective date of cancellation is the date the firm ceased to employ at least one worker in British Columbia. However, if that date cannot be determined with sufficient certainty or if the merits and justice of the case require it, the effective date of cancellation may be the date the firm ceased operating in or about an industry in British Columbia.
9. When the Board is unable to contact the firm and cannot determine either the date the employer ceased operating the business or the date the employer ceased to employ workers the effective date of cancellation will be the date of adjudication.

B The Continuing Business Operations Exception to the General Rule

10. *API-38-1(c)* creates an exception to the general rule in *API-38-1(e)*, such that if a firm is registered as an incorporated company, and the registered firm's putative business operations are undertaken by an affiliated firm operating as a different form of a legal or business entity, the registered firm's account with the Board will be cancelled "when the correct legal status of the firm [undertaking the business operations] is discovered."
11. For the purposes of this exception, "discovered" means to have acquired notice or knowledge of and reflects the date that the department first became aware of or reasonably should have become aware of the change in undertaking.

C The Labour Contractor Exception to the General Rule

12. If the registered firm

- (i) is a labour contractor, and
- (ii) supplies both labour and equipment, and
- (iii) has no personal optional protection, and
- (iv) has no reported assessable earnings,

registration "is cancelled when the Board becomes aware of the situation."

13. For the purposes of this exception, the phrase "becomes aware of the situation" means when determined by adjudication and reflects the date that determination of status is made. However, if the firm meets each of the above four conditions and the Board receives the firm's year-end report by 31 March X, cancellation is effective 31 December of X-1.

14. *Assessment Manual Item: API-47-1* directs that the Board may cancel a penalty imposed upon a firm for its failure to remit or report under sections 38(2), 40(2), or 47(1) if “the penalty is charged after the cancellation date for an employer’s account, except if it applies to a period before the cancellation date.” Therefore, any such penalty imposed upon a firm may be cancelled for a failure to remit or report after the cancellation date.

II COMPANIES

A Change of Legal Entity

15. *API-38-1(c)* provides guidance as to the application of the “Continuing Business Operations Exception to the General Rule” to the principle that an unregistered proprietor or partner is not a worker under the *Act*. In the main, *API-38-1(c)* directs that if,

- (i) a firm is erroneously registered as a company, or
- (ii) a company is dissolved but continues to operate as a company,

the firm’s account will be amended to reflect its actual status as a partnership or a proprietorship effective the date “the correct legal status of the firm is discovered.” For these purposes, “discovered” means to have acquired notice or knowledge of and reflects the date that the department first became aware of or reasonably should have become aware of the change in undertaking.

B Restoration of a Company

16. Although a limited company may upon restoration be “deemed to have continued in existence as if it had not been dissolved,”³ that company cannot be said to have been “engaged in work in or about an industry” between the time of dissolution and restoration. If, during that time, the business of the company was carried on by another form of legal entity, the other legal entity’s account will be maintained until the department has evidence that the other legal entity has ceased operating the business (which in the absence of countervailing evidence can be presumed to be the date of the restoration).

III “CONTINUING EMPLOYERSHIP”

A Proprietorship or Partnership

17. If a business owned by a proprietorship or a partnership

- (i) undergoes a change of ownership to another form of legal entity, and

³ *Business Corporations Act*, SBC 2002, c. 5, s. 364(4)

- (ii) at least one principal continues with the business through the change of form of legal entity,

the status of the account may be changed from that of the initial legal entity to that of the succeeding legal entity. That is, the account is not cancelled but is continued in the name of the new legal entity.

18. The effective date of the change of the status of the account will be the earlier of the date

- (i) on which the business underwent the change of ownership or employership, or
- (ii) the status of the succeeding form of legal entity is determined by adjudication.

IV CANCELLATION OF PERSONAL OPTIONAL PROTECTION COVERAGE

19. The effective date of the cancellation of Personal Optional Protection is determined in accordance with *Assessment Manual Item: AP1-2-3* and *Practice Directive 1-2-3(A)*.

V “EXTINGUISHMENT” OF AN EMPLOYER’S REGISTRATION

20. A material misrepresentation – innocent or otherwise – by an applicant for registration on an initial or renewal application may render the resulting account,

- (a) void from the beginning, or
- (b) void from the time of the discovery of the material misrepresentation.

21. In determining which such date is applicable, the department recognizes that in administering the *Act*, it must apply the common-law, as necessary, to ensure that the purposes and objects of the *Act* are fulfilled. Thus, if there is evidence of deliberate or negligent misrepresentation, the department must consider the common-law principle that a person should not benefit from its own wrongdoing especially in a case where the relief sought would have the effect of undermining the purposes and objects of the legislation being violated. Accordingly, if either deliberate or negligent material misrepresentation is established, the department will determine the date which best allows it to fulfill its mandate to continue and maintain the accident fund.

If a material misrepresentation led to the establishment of its account; and a registered firm,	The resulting account is
... was never an employer under the <i>Act</i>	void <i>ab initio</i> (from the beginning)
... is no longer sufficiently independent ⁴	void from the time of the discovery of the material misrepresentation

⁴ See *Assessment Manual Item AP1-1-3(b)*

22. For these purposes, a registrant's failure to inform the department as soon as practicable,
- (a) that a material representation made on application for registration has not or cannot be fulfilled; or
 - (b) of a material change which would clearly impact its status as an employer under the *Act*;

will be presumed to be a negligent material misrepresentation.

23. If it is determined that

- a registered firm was never an employer under the *Act*, and
- that a material misrepresentation led to the establishment of its account,

all of the arrears of assessments attributable to payroll will be cancelled upon the account being determined to be void, but any penalty will continue.