

LAW OFFICES
TMA KRITZER & LEVY P.C.
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ATLANTA, GEORGIA 30303
(404) 986-1111

DIRECT DIAL NUMBERS:

(770) 951-6789

March 8, 1996

TELECOPIER:

(770) 432-7121

(770) 955-2888

(770) 955-0030

(770) 999-3697

**TO: Qualification/Tax Lien Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314**

SUBJECT: KAUFFMAN TIRE, INC.

Dear Sir or Madam:

The enclosed "Application by Foreign Corporation for Authorization to Transact Business in Florida", "Certificate of Existence", and check in the amount of \$70.00 are submitted to register the above referenced foreign corporation to transact business in Florida.

Please return all correspondence concerning this matter to the following:

Deirdre Broadfoot, Legal Assistant
Altman, Kritzer & Levick, P.C.
6400 Powers Ferry Road, N.W., Suite 224
Atlanta, Georgia 30339

Should you need to call someone concerning this matter, please call Deirdre Broadfoot at (770) 951-6789.

Very truly yours,

Deirdre L. Broadfoot
Legal Assistant

Enclosures

cc: Lawrence H. Freiman, Esq.

38842-1

pg. 379



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

March 12, 1996

ALTMAN, KRITZER & LEVICK, P.C.
DEIRDRE L. BROADFOOT
6400 POWERS FERRY RD., NW #224
ATLANTA, GA 30339

SUBJECT: KAUFFMAN TIRE, INC.
Ref. Number: W9600005352

We have received your document for KAUFFMAN TIRE, INC. and your check(s) totaling \$70.00. However, the document has not been filed and is being retained in this office for the following:

Pursuant to section 607.1502(4), 617.1502(4) or 608.502(4), Florida Statutes, this office collects a civil penalty of \$1000 for each year this entity transacted business or conducted its affairs in Florida prior to qualification and the appropriate annual report fees that would have been due this office had the entity qualified the year it began operations in this state. The amount due this office to cover both annual report and penalty fees is \$1200.00.

Enclosed please find a copy of section 607.1501 or 617.1501, Florida Statutes, which lists those activities that do not constitute transacting business or conducting affairs in this state. If after reviewing this section you determine erroneous information was inserted on the application, a sworn affidavit containing the following information must be submitted: 1.) a statement indicating erroneous information was listed on the application; and 2.) the correct date the corporation began transacting business or conducting its affairs in Florida prior to the year the application was submitted did not constitute transacting business or conducting affairs pursuant to section 607.1501 or 617.1501, Florida Statutes.

If you have any questions concerning the filing of your document, please call (904) 487-6093.

Freta Lott
Corporate Specialist Supervisor

Letter Number: 996A00010882

ALLEN D. ALTMAN
LAURENCE S. APPEL
EMILY SANFORD BAIN
ANDREW B. BAUMANN
DANIEL BRILL
JEREMY P. COHEN
CRAIG P. COLEMAN, JR.
HAROLD M. EDWARDS
LAWRENCE H. FREEMAN
MARTIN FRIEDBERG
WILLIAM B. GAN
JAMES R. HARLAND, JR.
PETER M. HARTMAN
J. DANIEL RICE, JR.
D. CHARLES KIMM
ELIZABETH H. KUTCHINS
LOUIS KILBING
CRAIG H. KRITZER
MARK J. LEVICK
IAN L. LEVIN
GEORGE A. MATTINGLY
STEVEN A. PIPPER
RICHARD W. PROBERT
STEVEN J. ROBERTS
BENEDICT B. ROTHSCHILD, JR.
WILLIAM P. RUBENOFF
THEODORE H. SANDLER
KENNETH A. SHAPIRO
CHRISTIAN D. SHIELDS
ROBERT D. SIMONS
DUANE D. SITAN
FRANK SLOVER
EPHRAIM SPIELMAN
BURNH E. STOFFER
JOHN E. TAYLOR
DEBRA M. THOMPSON
THOMAS D. WHITE
CHARLES L. WOOD

* ADMISSION TO NY BAR ONLY

LAW OFFICES
ALTMAN, KRITZER & LEVICK, P.C.

8400 POWERS FERRY ROAD, N.W.
POWERS FERRY LANDING
SUITE 224
ATLANTA, GEORGIA 30339
(770) 955-3555

730 FIFTH AVENUE
SUITE 1805
NEW YORK, NEW YORK 10019
(212) 489-3745

DIRECT DIAL NUMBER:
(770) 951-6595

March 18, 1996

RETIREMENT PLAN ADMINISTRATION
SYNTHIA A. BRODFRISWIG, ACTUARY

TELECOPIER:
(770) 955-7831
(770) 955-2866
(770) 955-0036
(770) 955-3697

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ITEM # P 141 597 017**

Ms. Freta Lott
Corporate Specialist Supervisor
Florida Department of State,
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

FILED
96 MAR 25 AM 8:41
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Re: **Kauffman Tire, Inc.** (formerly known as **Kauffman Tire Service of Georgia, Inc.**)
Your Ref. Number: W96000005352

Dear Ms. Lott:

I am in receipt of your letter dated March 12, 1996 addressed to my legal assistant, Deirdre L. Broadfoot (Letter Number 996A00010882). Your letter states that the amount due the Florida Secretary of State's office to qualify the above-referenced corporation (the "Applicant") for the current year is \$1,200, consisting of a \$1,000 civil penalty [Fla. Stat. § 607.1502 (1993)] and a \$200 annual report fee (presumably for calendar year 1995). For reasons explained below, I request (i) a complete abatement of the civil penalty and the 1995 annual report fee imposed on the Applicant by your letter and (ii) permission to file the Applicant's Application by Foreign Corporation for Authorization to Transact Business in Florida currently being retained by your office (along with the previously submitted \$70 filing fee).

General

The Applicant, a Georgia corporation, is the surviving corporation in a complex, multi-step consolidation and merger of 19 distinct entities located in three separate states: Florida, Georgia

Ms. Freta Lott
March 18, 1996
Page 2

and Ohio. The following six entities involved in the consolidation and merger were incorporated in Florida:

- (1) Kauffman Tire Service of Largo, Inc.;
- (2) Kauffman Tire Center of Oldsmar, Inc.;
- (3) Kauffman Tire Center - Downtown, Inc.;
- (4) Kauffman Tire Service of St. Petersburg, Inc.;
- (5) Kauffman Tire Service of Tyrone, Inc.; and
- (6) Kauffman Tire Service of Florida, Inc.

First Step Mergers

The Florida entities listed in (1) through (3) above were each nonoperating, administratively dissolved subsidiaries of ***Kauffman, Inc.***, a former Georgia corporation which was merged into the Applicant effective 12:01am, January 1, 1996. Each of these nonoperating subsidiaries were reinstated on December 29, 1995 for the sole purpose of merging them out of existence and into Kauffman, Inc. (see your Document Numbers S75193, V46343 and V46349; your Letter Number 996A00000070) (the "First Step Mergers"). Such reinstatements required an aggregate fee payment to the Florida Secretary of State of \$1,125.00. The Applicant also paid to the Florida Secretary of State a filing fee of \$385.00 in connection with the First Step Mergers (see your Letter Number 996A00000070). Kauffman, Inc. did not transact business in Florida within the meaning of Fla. Stat. § 607.1501.

Second Step Mergers

The Florida entities listed in (4) through (6) above were each operating subsidiaries of the Applicant until December 29, 1995, at which time they were merged out of existence and into the Applicant (the "Second Step Mergers"). Prior to the merger, each of these operating subsidiaries were in good standing with the Florida Secretary of State, having paid their respective 1995 annual reporting and supplemental corporate fees of \$200.00. The Applicant also paid to the Florida Secretary of State a filing fee of \$280.00 in connection with the Second Step Mergers (see your Letter Number 596A00000080). Because of the continuing operations of its former Florida subsidiaries, the Applicant, under its former name of ***Kauffman Tire Service of Georgia, Inc.***, transacted business in Florida within the meaning of Fla. Stat. § 607.1501 (1993) for one day (Saturday, December 30) during calendar year 1995. *The sole reason the Second Step Mergers were to be effective on December 29, 1995 was to ensure that the Third Step Merger (described immediately below) would be effective on January 1, 1996.*

ALTMAN, KRITZER & LEVICK, P.C.

FILED
56 MAR 25 AM 8:45
TALLAHASSEE, FLORIDA

Ms. Freta Lott
March 18, 1996
Page 3

Third Step Merger

Effective 12:01am, January 1, 1996, *Kauffman, Inc.* merged with and into the Applicant, and the Applicant simultaneously changed its name from *Kauffman Tire Service of Georgia, Inc.* to *Kauffman Tire, Inc.* (see the Articles of Merger and Plan and Agreement of Merger attached to your Letter Numbers 996A00000070 and 596A00000080; additional copy enclosed herewith) (the "Third Step Merger").

Timely Application for Authorization to Transact Business in Florida

As referenced above, the multi-step consolidation and merger required coordination of contemporaneous filings with the States of Florida, Georgia and Ohio. To ensure that the transactions were actually consummated and the proper filing sequence of the First Step Mergers, Second Step Mergers and Third Step Merger complied with across the three states, we had to await written confirmation from each state. Moreover, in accordance with the Plan and Agreement of Merger, neither the First Step Mergers nor the Second Step Mergers would be effective until the *last of filing* of the First Step Mergers and the Second Step Mergers with the Secretaries of State of Florida, Georgia and Ohio.

Your office provided prompt, written confirmation of the Step One Merger and Step Two Merger being filed in the appropriate sequence (see your Letter Numbers 996A00000070 and 596A00000080). However, not until on or around January 8, 1996 did we receive written confirmation from the State of Georgia of the appropriate filings of the First Step Mergers, Second Step Mergers and Third Step Merger, and not until on or around February 5, 1996 did we receive written confirmation from the State of Ohio of the appropriate filings of the First Step Mergers and Second Step Mergers (see enclosed Affidavit of the undersigned). Therefore, we first received evidence of the December 29, 1995 effective date of the First Step Mergers and the Second Step Mergers on or around February 5, 1996. Within a reasonable time thereafter, we submitted to your office an Application by Foreign Corporation for Authorization to Transact Business in Florida along with the \$70 filing fee.

Conclusion

It would be *grossly inequitable* for your office to impose on the Applicant the \$1,000 civil penalty and the \$200 1995 annual report fee for the *one day* during calendar year 1995 the Applicant technically transacted business in Florida. Because of the complex, multi-step nature of the consolidation and merger, the Applicant was unable to confirm any sooner than

ALTMAN, KRITZER & LEVICK, P.C.

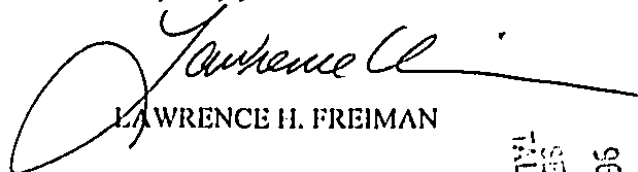
Ms. Freta Lott
March 18, 1996
Page 4

February 5, 1996 that the First Step Mergers and the Second Step Mergers were effective December 29, 1995; in due course thereafter, the Applicant filed for authority to transact business in Florida. Moreover, the Applicant's transaction of business in Florida was, and continues to be, solely through the operations of former Florida-incorporated subsidiaries of the Applicant, each of which paid their 1995 annual report fees to the State of Florida. The Applicant's situation is so unique as to be readily distinguishable from the fee-avoidance situation Fla. Stat. § 607.1502(4) (1993) is clearly intended to penalize.

Based on the foregoing and the enclosed Affidavit of the undersigned, I would appreciate a complete abatement of the civil penalty and the 1995 annual report fee imposed on the Applicant by your letter. In addition, please accept for filing the Application by Foreign Corporation for Authorization to Transact Business in Florida currently being retained by your office (along with the previously submitted \$70 filing fee).

Thank you in advance for your cooperation.

Very truly yours,



LAWRENCE H. FREIMAN

LHF/rtc
Enclosures

FILED
96 MAR 25 AM 8:42
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ALTMAN, KRITZER & LEVICK, P.C.

AFFIDAVIT

The undersigned, being duly sworn, deposes and says:

Deponent is associated with the law firm of Altman, Kritzer & Levick, P.C., which law firm represents Kauffman Tire, Inc., a Georgia corporation (formerly Kauffman Tire Service of Georgia, Inc.). Kauffman Tire, Inc. engaged C T Corporation System ("C T Corporation") to file documents for a multi-step consolidation and merger (the "Merger") involving Kauffman Tire, Inc. in three separate states: Florida, Georgia and Ohio. Kauffman Tire, Inc. is the surviving corporation of the Merger.

On or around January 8, 1996, Deponent received written confirmation and supporting documentation from C T Corporation of the Merger filings made in the office of the Georgia Secretary of State. On or around February 5, 1996, Deponent received written confirmation and supporting documentation from C T Corporation of the Merger filings made in the office of the Ohio Secretary of State.

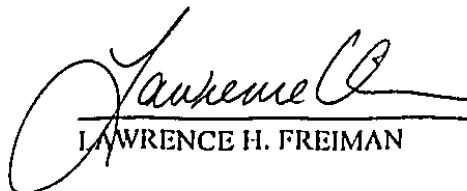
Deponent states that the above statements are true to the best of Deponent's knowledge, information and belief.

Dated as of the 18th day of March, 1996.

As to the Deponent, sworn to,
signed, sealed and delivered
this 18th day of March, 1996
in the presence of:


Notary Public, State of Georgia

RITA T. CASE
Notary Public, Paulding County, Georgia
Commission Expires July 18, 1998

 (SEAL)
LAWRENCE H. FREIMAN

FILED
96 MAR 25 AM 8:42
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION
TO TRANSACT BUSINESS IN FLORIDA**

**IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS
SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THE
STATE OF FLORIDA:**

1. KAUFFMAN TIRE, INC.

(Name of corporation: must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person or partnership if not so contained in the name at present.)

2. Georgia
(State or country under the law of which it is incorporated)

3. 58-1247005
(FEI number, if applicable)

4. February 17, 1978
(Date of Incorporation)

5. Perpetual
(Duration: Year corp. will cease to exist or "perpetual")

6. December 29, 1995
(Date first transacted business in Florida. (SEE SECTIONS 607.1501, 607.1502, AND 817.155, F.S.))

7. 4847 Clark Howell Highway

College Park, Georgia 30349
(Current mailing address)

8. Sale of tires and related products and services
(Purpose(s) of corporation authorized in home state or country to be carried out in the state of Florida)

9. **Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box NOT acceptable)**

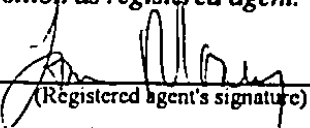
Name: Tom Money

Office Address: 2409 East Second Avenue

Tampa, Florida, 33605
(Zip Code)

10. Registered agent's acceptance:

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.


(Registered agent's signature) Tom Money

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

12. Names and addresses of officers and/or directors: (Street address ONLY- P. O. Box NOT acceptable)

A. DIRECTORS (Street address only- P. O. Box NOT acceptable)

Chairman: _____

Address: _____

Vice Chairman: _____

Address: _____

Director: _____

Address: _____

Director: John Kauffman

Address: 4847 Clark Howell Highway

College Park, Georgia 30349

B. OFFICERS (Street address only- P. O. Box NOT acceptable)

President: John Kauffman

Address: 4847 Clark Howell Highway

College Park, Georgia 30349

Vice President: _____

Address: _____

Secretary: Mark Kauffman

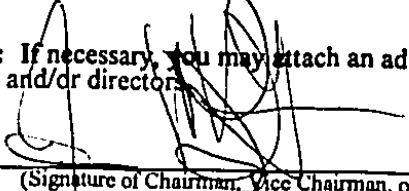
Address: 4847 Clark Howell Highway

College Park, Georgia 30349

Treasurer: Mark Kauffman

Address: 4847 Clark Howell Highway, College Park, Georgia 30349

NOTE: If necessary, you may attach an addendum to the application listing additional officers and/or directors.

13. 
(Signature of Chairman, Vice Chairman, or any officer listed in number 12 of the application)

14. John Kauffman, President
(Typed or printed name and capacity of person signing application)

FILED
96 MAR 25 AM 11 42
SEC. OF STATE
TALLAHASSEE, FLORIDA

Secretary of State
Business Information and Services
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1530

DOCKET NUMBER : 960500514
CONTROL NUMBER : 7801726
DATE INC/AUTH/FILED: 02/17/1978
JURISDICTION : GEORGIA
PRINT DATE : 02/19/1996
FORM NUMBER : 211

DEIDRE BROADFOOT
ALTMAN KRITZER LEVICK
6400 POWERS FERRY RD NW SUITE 224
ATLANTA GA 30339

FILED
56 MAR 25 AM 8:42
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CERTIFICATE OF EXISTENCE

I, the Secretary of State of the State of Georgia, do hereby certify under the seal of my office that

KAUFFMAN TIRE, INC.
A DOMESTIC PROFIT CORPORATION

was formed in the jurisdiction stated above or was authorized to transact business in Georgia on the above date. Said entity is in compliance with the applicable filing and annual registration provisions of Title 14 of the Official Code of Georgia Annotated and has not filed articles of dissolution, certificate of cancellation, or any other similar document with the office of the Secretary of State.

This certificate relates only to the legal existence of the above-named entity as of the date issued. It does not certify whether or not a notice of intent to dissolve, an application for withdrawal, a statement of commencement of winding up, or any other similar document has been filed or is pending with the Secretary of State.

This certificate is issued pursuant to Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence that said entity is in existence or is authorized to transact business in this state.

Lewis A. Massey
LEWIS A. MASSEY
SECRETARY OF STATE

