

Date of Hearing: April 2, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2503 (Irwin) – As Introduced February 14, 2018

SUBJECT: Corporations: limited liability companies: dissolution: cancellation: abatement of taxes

SUMMARY: Establishes processes for dissolving a corporation and cancelling a limited liability company (LLC or “company”) when the corporation’s or company’s powers, rights and privileges have been suspended by the Franchise Tax Board (FTB) for at least five years due to failure to pay taxes.

Specifically, **this bill:**

1. Authorizes the FTB and Secretary of State (SOS) to conduct the process of administrative dissolution of a corporation or administrative cancellation of a LLC if the corporation’s or company’s powers, rights and privileges have been suspended by the FTB for at least five years due to corporation’s or company’s failure to file a return or pay taxes. This process consists of the following steps:
 - a. The FTB shall mail written notice to the last known address of the corporation or company.
 - b. The FTB shall transmit to the SOS the name and SOS file number of the corporation or company subject to administrative dissolution or administrative cancellation.
 - c. The SOS shall provide 60 days’ notice of the pending administrative dissolution or administrative cancellation on its website and provide instructions for a corporation or company to submit a written objection to the FTB.
2. Permits a corporation or LLC to provide the FTB with a written objection to the administrative dissolution or cancellation within 60 days and requires the FTB to withdraw the administrative dissolution or cancellation if the corporation or LLC completes the following within 90 days of the receipt of the written objection: files returns, satisfies all accrued taxes, penalties, and interest, files a current Statement of Information with the SOS, fulfills any other requirements to be eligible, and applies for revivor. The FTB may extend the 90-day period for no more than one period of 90 days.
3. Requires a corporation or LLC to be administratively dissolved or administratively cancelled if no written objection is received by the FTB or if the written objection fails.
4. Provides that if a corporation is administratively dissolved, the liability to creditors is not discharged, and the liability of the directors, shareholders, transferees, or other persons related to the administratively dissolved corporation is not discharged.

5. Requires the FTB to abate a corporation's or LLC's liabilities for minimum franchise tax and associated interest and penalties, upon administrative dissolution or administrative cancellation.
6. Permits the FTB to abate unpaid minimum franchise taxes or annual tax, interest, and penalties for the taxable years when a domestic corporation or LLC certifies that it was not doing business, has ceased doing business, and does not have any remaining assets in the business. Such abatement is conditioned on the dissolution of the corporation or cancellation of the LLC with the SOS prior to the abatement.
7. Makes immediately due and payable the taxes, interest, and penalties abated and adds a penalty in the amount equal to 50% of the total tax abated plus accrued interest if a dissolved corporation or cancelled LLC continues to do business or has any remaining assets which were not disclosed at the time of request for abatement.

EXISTING LAW:

1. Provides for the formation, regulation and dissolution of corporations. [Corporations Code, Section 100 et seq.]
2. Provides for the formation, regulation and dissolution of limited liability companies. [Corporations Code, Section 17701.01 et seq.]
3. Establishes conditions whereby the corporate powers, rights and privileges of a domestic taxpayer may be suspended for failure to file a tax return or pay specified taxes as required. [Revenue and Taxation Code, Section 23301 et seq.]
4. Subjects corporations to a minimum franchise tax of \$800 per year and limited liability companies to an annual tax of \$800 per year, with exceptions. [Revenue and Taxation Code, Sections 17941 and 23153]

FISCAL EFFECT: Unknown

COMMENTS:

The purpose of this bill is to improve the operational efficiency of administering the tax system and ease compliance with the tax code. According to the author:

AB 2503 creates an administrative dissolution process that will allow the Franchise Tax Board (FTB) and Secretary of State (SOS) to dissolve domestic corporations and limited liability corporations that have ceased doing business for at least 5 years and have paid all taxes and filed all returns due up to the date that they stopped doing business.

California faces a significant problem where these entities ceased doing business, paid all their taxes, and yet do not formally file the paperwork to dissolve. Despite no longer doing business these entities will continue to accrue the minimum franchise and annual taxes for 20 years, at which time current state law allows FTB to extinguish the uncollected debt. However, the business entities will remain on the state books indefinitely.

This legislation improves government efficiency by streamlining the process for the state to dissolve these entities. AB 2503 will help California's tax agencies clear away their backlogs of inactive domestic corporations and LLCs and will save precious state resources.

In support, the California Society of Enrolled Agents states:

CSEA supported AB 557 (Irwin, Ch. 363, 2015) that enabled the Franchise Tax Board (FTB) to coordinate with the SOS to create an automatic dissolution process for non-profit businesses that are inactive, never started and are no longer operational. In 2017, SOS administratively dissolved over 8,500 suspended non-profit entities. CSEA has provided oral and written testimony multiple times at the annual Taxpayers' Bill of Rights Hearing on this important business entity issue, as documented in the FTB Annual Report to the Legislature.

Due to the effectiveness of the administrative dissolution process created for non-profits through AB 557, CSEA fully supports creating a similar administrative dissolution process for domestic business entities as is outlined in AB 2503.

As tax practitioners, Enrolled Agents are on the front lines in administering the tax code. AB 2503 makes our tax system more efficient, which is better for the state and California taxpayers alike. It is for these reasons we support AB 2503.

The processes outlined in this bill would allow the FTB and SOS to clear their systems of corporations and LLCs that have ceased to operate in California and remove associated tax liabilities that have automatically accrued for minimum franchise and annual taxes. By removing these entities from their systems, the FTB and SOS would no longer spend state resources in attempts to collect taxes from businesses that no longer operate in the state. The processes outlined in this bill provide adequate noticing requirements and opportunities for businesses to object to administrative actions by FTB.

This bill is double-referred to the Revenue and Taxation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Society of Enrolled Agents
California Taxpayers Association

Opposition

None on file

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