

RESOLUTION 11-06-2017

DIGEST

Corporations: Permit a Suspended Corporation to Voluntarily Dissolve

Amends Corporations Code section 2205 and Revenue and Tax Code sections 23301 and 23301.5 to authorize a suspended corporation to file a certificate of dissolution.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to 09-01-2016, which was disapproved.

Reasons:

This resolution amends Corporations Code section 2205 and Revenue and Taxation Code sections 23301 and 23301.5 to authorize a suspended corporation to file a certificate of dissolution. This resolution should be approved in principle because authorizing a corporation to file for voluntary dissolution if it is suspended provides a solution to a persistent problem.

Currently under section 2205 of the Corporations Code, a suspended corporation loses all rights and powers, including the power to dissolve the corporation. Therefore, many entities sit on the books of the Secretary of State that are dormant and defunct due to suspension. These corporations continue to accrue fines and penalties imposed by the Secretary of State and Franchise Tax Board, including for failures to file Statement of Information and minimum tax payments; but because these entities are now defunct and the founders/owners are not personally liable for their accruing debts, these entities simply sit on the record books continuing to accrue penalties without any resolution likely to occur.

If approved, the normal dissolution process under Corporations Code section 1900-1907 would apply. Under the Corporations Code, a corporation may *only* elect to dissolve if a majority of the directors certify either that corporation has paid or will pay its taxes or, per section 1900, subdivision (b)(2), if the corporation has not conducted any business for the preceding five years, i) that the corporation's known debts and liabilities have been paid or adequately provided for as far as its assets permitted, and ii) that a final franchise tax return has been or will be filed with the Franchise Tax Board.

Although the current law preventing corporate dissolutions unless and until its corporate tax responsibilities are fully paid is appealing in principle, the actual result is not increased tax payments – just more defunct corporations. Allowing for voluntary dissolution allows owners of defunct corporations to move on and discontinues a waste of Government resources, while still fully complying with their financial and tax obligations.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code section 2205 and Revenue and Tax Code sections 23301

and 23301.5 to read as follows:

1 § 2205

2 (a) A corporation that (1) fails to file a statement pursuant to Section 1502 for an
3 applicable filing period, (2) has not filed a statement pursuant to Section 1502 during the
4 preceding 24 months, and (3) was certified for penalty pursuant to Section 2204 for the same
5 filing period, is subject to suspension pursuant to this section rather than to penalty pursuant to
6 Section 2204.

7 (b) When subdivision (a) is applicable, the Secretary of State shall provide a notice to the
8 corporation informing the corporation that its corporate powers, rights, and privileges will be
9 suspended after 60 days if it fails to file a statement pursuant to Section 1502.

10 (c) After the expiration of the 60-day period without any statement filed pursuant to
11 Section 1502, the Secretary of State shall notify the Franchise Tax Board of the suspension and
12 provide a notice of the suspension to the corporation, and thereupon, the corporate powers,
13 rights, and privileges of the corporation are suspended, except for the purpose of filing an
14 application for exempt status or amending the articles of incorporation as necessary either to
15 perfect that application or to set forth a new name or filing a certificate of election to dissolve
16 and/or certificate of dissolution pursuant to Chapter 19.

17 (d) A statement pursuant to Section 1502 may be filed notwithstanding suspension of the
18 corporate powers, rights, and privileges pursuant to this section or Section 23301, 23301.5, or
19 23775 of the Revenue and Taxation Code. Upon the filing of a statement pursuant to Section
20 1502 by a corporation that has suffered suspension pursuant to this section, the Secretary of State
21 shall certify that fact to the Franchise Tax Board and the corporation may thereupon be relieved
22 from suspension unless the corporation is held in suspension by the Franchise Tax Board by
23 reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

24
25 § 23301

26 Except for the purposes of filing an application for exempt status or amending the articles
27 of incorporation as necessary either to perfect that application or to set forth a new name or filing
28 a certificate of election to dissolve and/or certificate of dissolution, the corporate powers, rights
29 and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate
30 powers, rights and privileges of a foreign taxpayer in this state may be forfeited, if any of the
31 following conditions occur:

32 (a) If any tax, penalty, or interest, or any portion thereof, that is due and payable under
33 Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, either at the time
34 the return is required to be filed or on or before the 15th day of the ninth month following the
35 close of the taxable year, is not paid on or before 6 p.m. on the last day of the 12th month after
36 the close of the taxable year.

37 (b) If any tax, penalty, or interest, or any portion thereof, due and payable under Chapter
38 4 (commencing with Section 19001) of Part 10.2, or under this part, upon notice and demand
39 from the Franchise Tax Board, is not paid on or before 6 p.m. on the last day of the 11th month
40 following the due date of the tax.

41 (c) If any liability, or any portion thereof, which is due and payable under Article 7
42 (commencing with Section 19131) of Chapter 4 of Part 10.2, is not paid on or before 6 p.m. on
43 the last day of the 11th month following the date that the tax liability is due and payable.
44

45 § 23301.5

46 Except for the purposes of filing an application for exempt status or amending the articles
47 of incorporation as necessary either to perfect that application or to set forth a new name or filing
48 a certificate of election to dissolve and/or certificate of dissolution, the corporate powers, rights,
49 and privileges of a domestic taxpayer may be suspended, and the exercise of the corporate
50 powers, rights, and privileges of a foreign taxpayer in this state may be forfeited, if a taxpayer
51 fails to file a tax return required by this part.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: A suspended corporation loses all of its rights and powers, including the power to dissolve the corporation. Many corporations sit on the books of the Secretary of State that are dormant and defunct due to suspension. These corporations continue to accrue minimum franchise taxes each year, even though the businesses are no longer operating.

The Solution: This resolution authorizes a corporation to file for voluntary dissolution if it is suspended in order to give some finality to the owners of the corporation and stop the hollow fines and penalties imposed by the Secretary of State and Franchise Tax Board.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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