ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Pérez	Analyst:	Diane Deatherage	Bill Number:	AB 1529
Related Bills:	See Legislative History	Telephone:	845-4783	Amended Date:	April 7, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: FTB, SOS, & AG Review & Develop Streamlined Process to Efficiently Dissolve Nonprofit Corporations

SUMMARY

This bill would modify the nonprofit corporate dissolution process under the Corporation Tax Law (CTL) and Corporations Code.

RECOMMENDATION

No position.

Summary of Amendments

The April 7, 2014, amendments removed general provisions of the bill relating to the review of the nonprofit corporate dissolution process, and replaced it with the provisions discussed in this analysis.

This bill analysis supersedes the previous analysis for the bill as introduced on January 17, 2014. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

REASON FOR THE BILL

The reason for the bill is to create a streamlined process to efficiently dissolve a nonprofit corporation. The existing dissolution process, which involves the Franchise Tax Board (FTB), Secretary of State (SOS), and possibly the Attorney General's Office (AG), is cumbersome and protracted.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2015.

PROGRAM BACKGROUND

The current process for winding up a nonprofit corporation involves the SOS, the FTB, and the AG:

- The SOS administers the incorporation process for nonprofit entities that choose to incorporate and ensures that nonprofit corporations adhere to their stated mission.

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- The FTB has the responsibility of determining, reviewing, and monitoring the state tax-exempt status of a nonprofit corporation to ensure that its tax-exempt status still applies.
- The California AG regulates the nonprofit organizations and individuals that administer or solicit charitable funds or assets in California and has broad legal and statutory authority to commence enforcement actions against charitable organizations and trusts.

ANALYSIS

STATE LAW

Existing state law provides that every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state is subject to the minimum franchise tax. Every corporation that incorporates on or after January 1, 2000, is not subject to the minimum franchise tax for its first taxable year. Additionally, the minimum franchise tax is not imposed if the taxable year is less than 15 days as long as the corporation has not done any business within this state.

Existing state law provides an exemption from franchise or corporate income tax for organizations that are organized and operated for one or more exempt purposes.

However, a tax-exempt organization that regularly carries on a trade or business not substantially related to its exempt purpose is required to pay tax on the unrelated trade or business income that results from such activity.

When a nonprofit corporation's tax-exempt status is revoked, the corporation is subject to the franchise or corporation income tax.

The yearly obligation to pay the franchise tax ends on the effective date of dissolution or withdrawal or, if later, the date the corporation ceases to do business within the state.

Existing state law requires that a dissolving or withdrawing corporation subject to tax in this state must pay a tax for the year it ceases to do business in California. The amount of tax owed is measured by the corporation's net income for its final taxable year, but cannot be less than the minimum franchise tax.

Nonprofit Corporation Dissolution Process (see Appendix 1 for flowchart of dissolution process)

A nonprofit corporation must prepare and file a Certificate of Election to Wind Up and Dissolve (Form ELEC NP) prior to or together with a Certificate of Dissolution (Form DISS NP) with the SOS.

If the corporation does not have the requirement to file with the AG when dissolving, the SOS would process the request and the corporation would be completely dissolved and its corporate existence will cease in California.

The following types of corporations must file with the AG when dissolving:

- Public benefit or religious corporations: If the dissolving corporation is a public benefit or religious corporation, the Certificate of Dissolution must be accompanied by a letter from the AG that either waives objections to the distribution of the corporation's assets or confirms that the corporation has no assets.[1]
- Mutual benefit corporations: If the dissolving corporation is a mutual benefit corporation, and that corporation is holding assets in a charitable trust, the distribution of those assets must be approved by the AG or be made by decree of a superior court.[2]

The public benefit, religious, or mutual benefit corporation must then submit final notice of submission to the SOS. The final dissolution packet must contain the following:

- a letter from the AG, either waiving objections to the proposed distribution of the corporation's assets or confirming that the corporation has no assets; and
- an executed Certificate of Dissolution.

After the SOS processes the corporation's paperwork, the corporation will be completely dissolved and its corporate existence will cease in California.

The final step for the public benefit, religious, or mutual benefit corporation requires that the corporation submit final notice of submission to the AG. The packet must contain the following:

- a copy of the Certificate of Dissolution filed by the SOS, or written confirmation that the Certificate of Dissolution has been filed with the SOS; and
- the final financial report for the corporation showing that all assets were distributed properly, resulting in a zero balance.

A dissolved corporation is no longer subject to the minimum franchise tax for taxable years beginning on or after the date of dissolution.

THIS BILL

Administrative Dissolution or Administrative Surrender

This bill would subject a nonprofit corporation to administrative dissolution or administrative surrender, as specified, if the nonprofit corporation's corporate powers are suspended or forfeited by the FTB and have been suspended or forfeited for a specified period of time or if the nonprofit corporation fails to file a Statement of Information with the SOS as specified.

Prior to the administrative dissolution or administrative surrender of the nonprofit corporation, the bill would require either the FTB or the SOS to provide written notice to the nonprofit corporation of the pending administrative dissolution or administrative surrender. Additionally, the SOS would be required to provide 60 calendar-days notice of a pending administrative dissolution or administrative surrender on its website by listing the corporation name, the SOS's file number, and the California corporation number, as applicable.

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[1] Corp. Code sections 6615 and 9680.
[2] Corp. Code section 8716.

A nonprofit corporation would be allowed to file a written objection to the administrative dissolution or administrative surrender. If a timely written objection is received either by the FTB or the SOS, the nonprofit corporation would have an additional 90 days to pay or satisfy all accrued taxes, penalties, and interest, and to file a current Statement of Information with the SOS. The 90-day period may be extended for no more than one period of up to 90 days, by the FTB or the SOS. If there is no written objection or the written objection fails, the nonprofit corporation would be administratively dissolved or administratively surrendered and the certificate of the SOS would be prima facie evidence of the administrative dissolution or administrative surrender. Upon administrative dissolution or administrative surrender, the bill would abate the nonprofit corporation's liabilities for qualified taxes, interest, and penalties, as provided.

Short Form Certificate of Dissolution

This bill would enact provisions applicable to nonprofit corporations similar to General Corporation Law provisions that allow a domestic corporation that meets certain requirements to file a shortened form of dissolution. The bill would additionally provide that liability to creditors, if any, is not discharged, the liability of the directors of the dissolved nonprofit corporation is not discharged, and the dissolution of a nonprofit corporation does not diminish or adversely affect the ability of the AG to enforce specified liabilities.

Streamlined Voluntary Dissolution

This bill would require the FTB to abate, upon written request by a qualified corporation, as defined, unpaid qualified taxes, interest, and penalties, as defined, for the taxable years in which the nonprofit corporation certifies, under penalty of perjury, that it was not doing business, as defined. Abatement would be conditional on the dissolution of the qualified corporation within a specified period of time of filing the request for abatement. The bill would require the FTB to prescribe rules and regulations to carry out these abatement provisions and would exempt these rules and regulations from the Administrative Procedure Act.

Address Sharing for Notices

This bill would allow the SOS to obtain address information from the FTB to provide notice.

Statewide Public Purpose

This bill would make certain legislative findings and declarations that abatement of a nonprofit corporation's liabilities for specified taxes, penalties, and interest serves a statewide public purpose, as provided.

TECHNICAL CONSIDERATIONS

For clarification purposes, page 17, line 4, "in which the nonprofit corporation certifies, under penalty of" should be stricken and replaced with "in which it certifies, under penalty of".

LEGISLATIVE HISTORY

AB 2341 (Villines, Chapter 773, Statutes of 2006) among other things, this bill allows certain suspended corporations to seek dissolution without requiring payment of the accrued tax liability for years in which the corporation was inactive and not doing business.

AB 2519 (Keeley, Chapter 112, Statutes of 2002) requires that a nonprofit public benefit corporation's Certificate of Dissolution, when filed with the SOS, be accompanied by either the AG's written waiver of objections to the dissolution or the AG's written confirmation that the corporation has no assets. It also prohibits the SOS from accepting for filing a Certificate of Dissolution that is not accompanied by one of those two documents.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

The above listed states have similar dissolution processes for nonprofit corporations to California's current nonprofit corporate dissolution process.

FISCAL IMPACT

This bill would impact the department's printing, processing and programming costs. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

The bill would have no affect on state income tax revenues.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some might say that a streamlined dissolution process could ease taxpayer burden and make the nonprofit corporate dissolution process more efficient.

Opponents: Some might say that the current dissolution process is adequate and a new process is unnecessary.

LEGISLATIVE STAFF CONTACT

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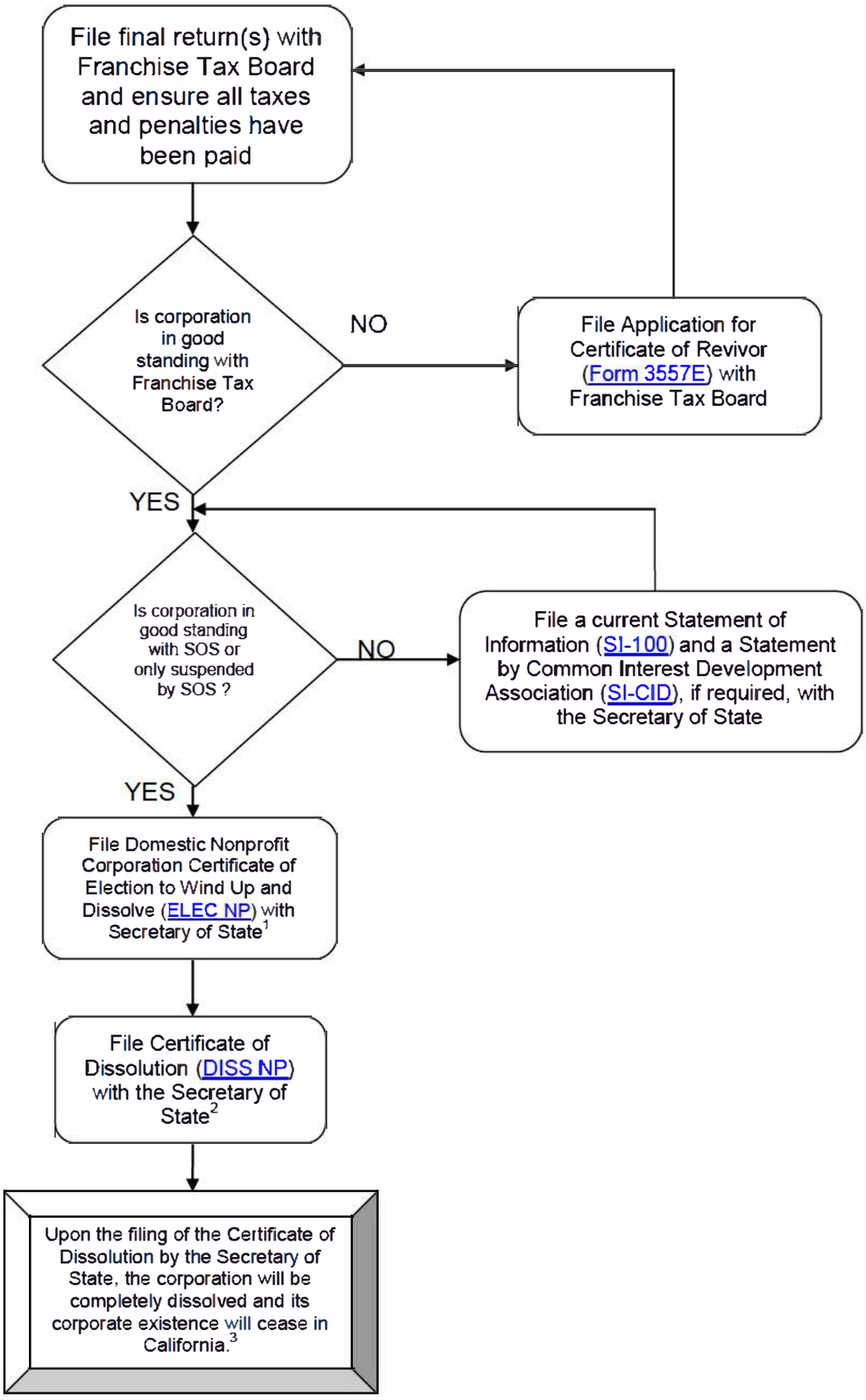
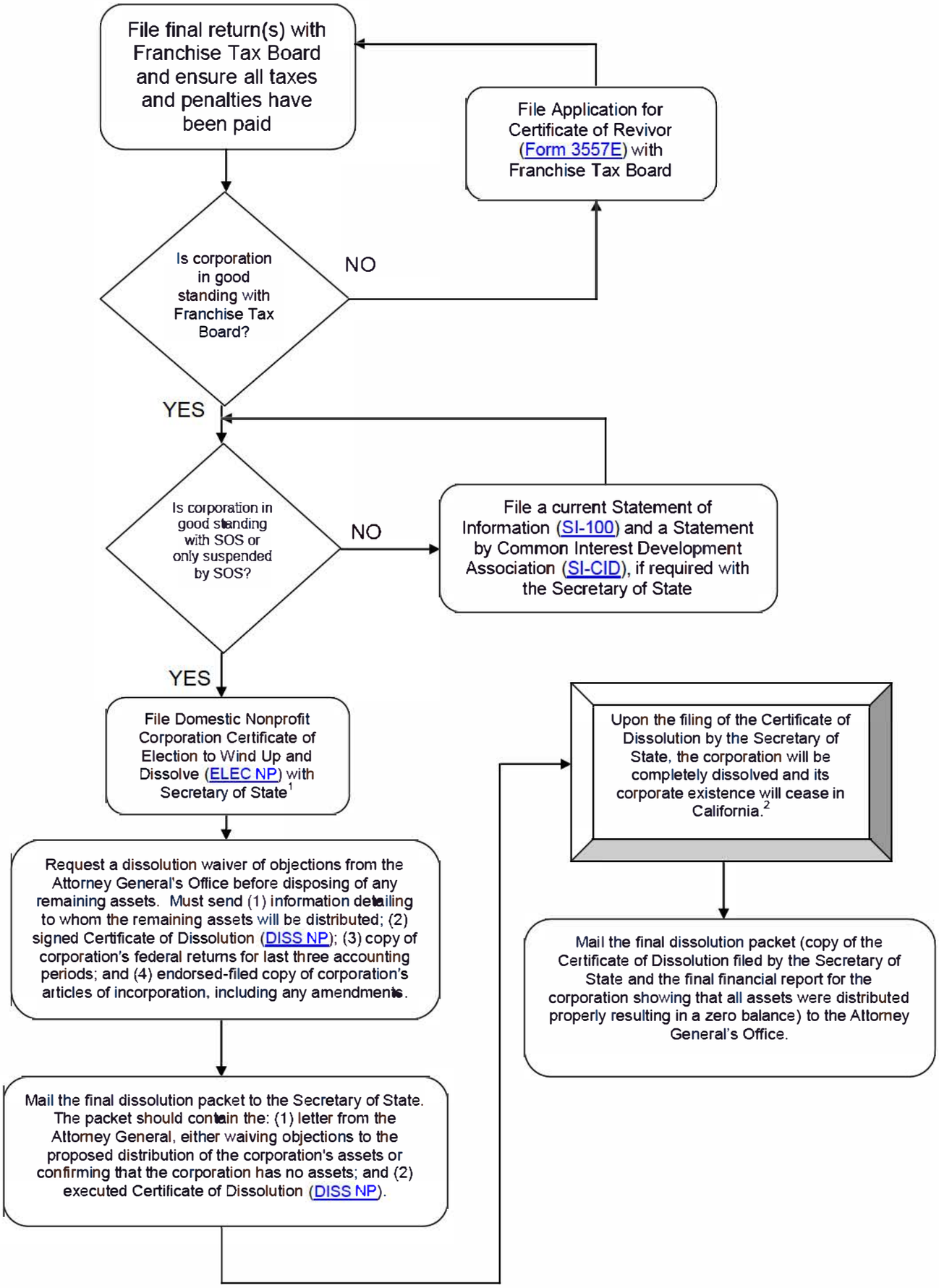
Appendix I

Dissolution Process for Nonprofit Corporations
(Other than domestic public benefit, mutual benefit, and religious corporations holding charitable assets in trust)



[1] The Certificate of Election to Wind Up and Dissolve (ELEC NP) is not required when the election to dissolve was approved by 100 percent of the members, or if the corporation has no members, by 100 percent of the directors, and if a statement to that effect is included in the Certificate of Dissolution (DISS NP).
[2] May be filed at the same time as ELEC NP.
[3] Secretary of State sends dissolution status information to Franchise Tax Board and Franchise Tax Board's system is updated with the corporation's dissolution status.

Dissolution Process for Nonprofit Corporations
(Domestic public benefit, mutual benefit, and religious corporations holding charitable assets in trust)



[1] The Certificate of Election to Wind Up and Dissolve (ELEC NP) is not required when the election to dissolve was approved by 100 percent of the members, or if the corporation has no members, by 100 percent of the directors, and if a statement to that effect is included in the Certificate of Dissolution (DISS NP).

[2] Secretary of State sends dissolution status information to Franchise Tax Board and Attorney General's Office.