

SUMMARY ANALYSIS OF AMENDED BILL

Author: Irwin Analyst: Diane Deatherage Bill Number: AB 557
 Related Bills: See Prior Analysis Telephone: 845-4783 Amended Date: May 28, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Nonprofit Corporation Administrative Dissolution or Administrative Surrender/Abatement of Qualified Taxes
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SUMMARY

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

This analysis only addresses the provisions of this bill that impact the department’s programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 28, 2015, amendments modified provisions related to administrative dissolution, administrative surrender, and shortened form of dissolution for certain nonprofit corporations.¹ As a result of these amendments, the implementation concern as provided in the department’s analysis of the bill as introduced February 23, 2015, has been resolved. Except for the "This Bill" and "Implementation Considerations" section, the remainder of that analysis still applies. The “Fiscal Impact,” “Economic Impact,” and “Support/Opposition” sections have been restated below for convenience.

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 Franchise Tax Board (FTB) and have been suspended or forfeited for a specified period of time.

¹ Nonprofit corporations include nonprofit mutual corporations, nonprofit public benefit corporations, nonprofit religious corporations (described in Corporations Code sections [5059](#), [5060](#), or [5061](#), respectively) and nonprofit foreign corporations (defined in Corporations Code section [5053](#)).

Board Position:	Legislative Director	Date
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Prior to the administrative dissolution or administrative surrender of the nonprofit corporation, the bill would require the FTB to provide written notice to the nonprofit corporation of the pending administrative dissolution or administrative surrender. Additionally, the Secretary of State (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, and the SOS's file number, as applicable.

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 by the FTB, 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. 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, would not be discharged, the liability of the directors of the dissolved nonprofit corporation would not be discharged, and the dissolution of a nonprofit corporation would not diminish or adversely affect the ability of the Attorney General 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 Procedures Act.

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.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate:

This bill would not change the amount of tax owed and would have no revenue impact.

Revenue Discussion:

This bill would not change the calculation or amount of tax an entity would owe; rather it is creating an easier process for nonprofit corporations to dissolve. Under current law, when tax exempt status is granted retroactively any outstanding liabilities assessed prior to the corporation obtaining tax-exempt status are waived. When a nonprofit is no longer operational and fails to file for dissolution, the FTB has found it is unable to collect from these corporations that no longer functionally exist. For both of these reasons, the FTB has determined there would be no revenue impact under the bill.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION²

Support: California Society of Enrolled Agents.

Opposition: None provided.

LEGISLATIVE STAFF CONTACT

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² From the Assembly Revenue and Taxation Committee bill analysis, dated 04/24/15.