STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Irwin Bill Number: AB 2503

Subject: Administrative Dissolution

Summary

This bill would, under the Corporations Code, provide administrative dissolution for certain domestic corporations and domestic limited liability companies (LLCs).

Reason for the Bill

The department lacks statutory authority to administratively dissolve business entities that fail to complete the process required to legally dissolve; thus these entities remain on the department's accounting system, continuing to accrue taxes, interest, and penalties.

Effective/Operative Date

If enacted in the 2018 legislative session, this bill would be effective and operative with respect to involuntary dissolutions occurring on or after January 1, 2019, and for applications for voluntary administrative dissolution received on or after January 1, 2019.

Federal/State Law

Current federal law does not impose a minimum franchise tax, however certain steps are necessary to dissolve a business entity;

- The business entity must file an annual return for the year a business entity ends business operations.
- If the business entity has employees, the entity must file the final employment returns, in addition to making final federal tax deposits of these taxes.
- The business entity must attach a statement to the return showing the name of the person keeping the payroll records and the address where those records will be kept.

For the tax year in which the business ceases to exist, the business entity must check the box indicating that the federal tax return is a “final return”.

Current State Law

In general, if the Franchise Tax Board (FTB) is unable to collect a debt from a taxpayer, current state law[1] allows the FTB to extinguish the uncollected debt after 20 years. However, the entity will continue to exist and accrue taxes, interest, and penalties, until it is properly dissolved.[2]

This Bill

This bill would provide two options for administrative dissolution of qualified entities when there is unpaid minimum franchise or annual tax.

Option 1: FTB-Initiated Administrative Dissolution (Involuntary)

This option would allow the FTB to administratively dissolve those domestic corporations and domestic LLCs that are suspended by the FTB, have ceased doing business, have been suspended for 60 or more consecutive months, and have paid all taxes and filed all returns due as of the date the entity ceased doing business.

Prior to the administrative dissolution under this option, the FTB would be required to provide written notice to the business entity of the pending administrative dissolution. The FTB would transmit to the Secretary of State (SOS) the names and SOS file numbers of domestic corporations and domestic LLCs subject to the administrative dissolution. Upon receipt of the transmission, the SOS would also be required to provide on its website a 60 calendar-day notice of a pending administrative dissolution by listing the corporation or LLC name, and the SOS's file number, as applicable.

The notified corporation or LLC would be allowed to file a written objection with the FTB to object to the administrative dissolution. If a timely written objection is received by the FTB, the domestic corporation or domestic LLC would have an additional 90 days to pay or otherwise satisfy all accrued taxes, penalties, and interest, file a current Statement of Information with the SOS, fulfill any other requirements to be eligible, and apply for revivor. 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 objector fails to revive, the domestic corporation or domestic LLC would be administratively dissolved. Upon administrative dissolution, the FTB would abate the domestic corporation’s or domestic LLC’s liabilities for qualified taxes, interest, and penalties.

The administrative dissolution of a corporation would not diminish or adversely affect the ability of the Attorney General to enforce liability as otherwise provided by law.

No administrative appeal, writ, or other judicial action may be taken based on the FTB’s or the SOS’s action, except if related to repayment of amounts erroneously received after administrative dissolution has occurred.

---

[1] Revenue & Taxation Code (R&TC) section 19255.
[2] Corporations Code sections 200(c) & 17701.04(c).

Upon administrative dissolution, the corporate rights, powers, and privileges of the corporation would cease.

Option 2: Taxpayer-Initiated Administrative Dissolution (Voluntary)

This option would be available to domestic corporations and domestic LLCs that have never done business or have ceased doing business within California, have paid all taxes due for years when the business was in operation, and filed all required returns prior to the cessation of business operations.

Under this option, taxpayers applying for administrative dissolution would be required to do all of the following:

- Request in writing from the FTB abatement of any unpaid qualified taxes, interest, and penalties.
- File dissolution paperwork with the SOS prior to the abatement of unpaid qualified tax, interest, and penalties by the FTB.
- Establish that it has ceased all business activity and has no remaining assets at the time of filing the request for abatement.

The FTB may prescribe any regulations that may be necessary or appropriate to implement the purposes of this section.

Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Tittle 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established by the FTB.

The bill would define the following:

- "Qualified entity" means a domestic corporation[3] or a domestic LLC[4] that satisfies either of the following conditions:
    - Was never doing business[5] in California at any time after the time of its incorporation in California.
    - Was previously doing business,[6] and has filed all returns required under R&TC sections 18601, 18633, or 18633.5 for the tax years prior to cessation of doing business.
- "Qualified taxes, interest, and penalties" would mean tax imposed under R&TC sections 17941 or 23153 and associated interest, and penalties, and any penalties imposed under R&TC section 19141. "Qualified taxes, interest, and penalties" would specifically

---

[3] Subject to corporation subject to Division 1 (commencing with Section 100) of Title 1 of the Corporations Code.
[4] Subject to Title 2.6 (commencing with Section 17701.01) of the Corporations Code.
[5] Within the meaning of subdivision (a) of Section 23101.
[6] Within the meaning of subdivision (a) of Section 23101.

exclude taxes and fees imposed under R&TC sections that govern the LLC fee, measured corporate tax, unrelated business income of a trust or exempt organization,[7] or associated interest or penalties, and does not include additional tax, penalties or interest resulting from a final or pending state or federal audit. "Qualified taxes" subject to abatement would be limited to the minimum or annual tax.

If a qualified entity has been dissolved but continues to do business,[8] or has any remaining assets which were not disclosed by the qualified entity at the time of the request for abatement,[9] the total tax, interest, and penalties that were abated shall be immediately due and payable. In addition, a penalty equal to 50 percent of the total tax abated, plus interest payable pursuant to Section 19101 on that amount for the period or periods beginning on the last date prescribed by law for the payment of that tax, determined without regard to extensions, and ending on the date the tax was abated, shall be imposed. This penalty would be in addition to any other penalty imposed.[10]

Legislative History

AB 557 (Irwin, Chapter 363, Statutes of 2015) established an administrative dissolution process for nonprofit entities.

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.

Florida, Michigan, and *Minnesota* lacks a minimum tax on business entities and lack the issues this bill would address.

Illinois, Massachusetts, and *New York* impose a minimum tax on corporations and in some cases on LLCs, depending on how the LLC is treated for federal tax purposes. These states also have dissolution procedures similar to California's in that the entity must file a final tax return and pay any tax liability and file with the appropriate agency (SOS for Illinois, Department of Revenue for Massachusetts, and New York Department of State for New York).

---

[7] R&TC sections 17942, 23501, or 23731.
[8] Within the meaning of subdivision (a) of Section 23310.
[9] Under Section 23310.
[10] Under Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401) and Part 11 (commencing with Section 23001).

Fiscal Impact

The department estimates an annual workload of 9,000 requests for voluntary administrative dissolutions. Based on the projected volume, staff estimates a cost of approximately $323,000 in fiscal year 2017-2018 and ongoing annual costs of $399,000 to develop and administer the administrative dissolution program, inclusive of system programming and testing costs.

Cost savings attributable to the bill's administrative dissolution process are estimated to be in the range of $115,000 to $280,000 per year.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2503
Assumed Enactment after June 30, 2018

($ in Millions)

Fiscal Year	Revenue
2018-2019	- $2.9 to - $6.7
2019-2020	- $3.7 to - $9.2
2020-2021	- $1.7 to - $5.5

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This estimate is based upon historical payment data for entities that may elect to dissolve or may meet the requirements for administrative dissolution. The revenue impact could vary widely depending on the amounts that would have been collected from entities that would be, or would elect to be, dissolved.

<u>FTB-Initiated Dissolution (Involuntary)</u>

Based upon historical payment data, the estimated revenue loss from administratively dissolving entities that have been suspended for at least 60 months would be between $450,000 and $2.4 million. This is equal to the amount of revenue that would have been received in the 2019 taxable year.

Taxpayer-Initiated Dissolution (Voluntary)

Based upon historical payment data, the estimated revenue loss from entities that may elect to voluntarily dissolve would be between $5.4 million and $11 million. This is equal to the amount of revenue that would have been received in the 2019 taxable year.

The tax-year estimates for involuntary and voluntary dissolution are combined and converted to fiscal-year estimates and then rounded to arrive at the amounts reflected in the above table.

Potential Additional Revenue Impact

Because the FTB sometimes receives income information more than five years after an entity was suspended, the FTB may incur an additional revenue loss on administratively dissolved business entities. Although the FTB could technically assess and pursue collections in these instances, the collection potential could be significantly impaired.

Based upon payment data received by the FTB after the 60th month of suspension, taxpayers suspended in excess of 60 months paid an estimated $1 million per year on average. This indicates there may be an additional revenue loss subsequent to administrative dissolution to the extent the FTB is unable to collect any additional tax assessed. Because it is difficult to predict the frequency and value of future assessments based upon new income information, the revenue impact could vary widely.

Appointments

None.

Support/Opposition[11]

Support: Alliance of Ventura and Santa Barbara Counties; Calaveras County Taxpayers Association; California Beer and Beverage Distributors; California Business Properties Association; California Chamber of Commerce; California Restaurant Association; California Society of Enrolled Agents; California Tank Line, Inc.; California Taxpayers Association; Camarillo Chamber of Commerce; Chemical Transfer Company; CompTIA; Council on State Taxation; Franchise Tax Board (sponsor); Kern County Taxpayers Association; North Orange County Chamber; Orange County Business Council; Rex Halverson and Associates, LLC.; San Gabriel Valley Economic Partnership; Spidell Publishing, Inc.; Superior Tank Wash, Inc.; Sutter County Taxpayers Association; West Coast Leasing LLC.

Opposition: Department of Finance.

[11] As provided in the Senate Governance and Finance Committee analysis dated June 25, 2018, and a letter received.

Votes

Location	Date	Yes Votes	No Votes
Senate Floor	August 24, 2018	39	0
Assembly Floor	May 29, 2018	77	0

Legislative Staff Contact

Marybel Batjer
Agency Secretary, GovOps
Work (916) 651-9024

Khaim Morton
Legislative Deputy, GovOps
Work (916) 651-9100

Selvi Stanislaus
Executive Officer, FTB
Work (916) 845-4543

Diane Deatherage
Legislative Director, FTB
Work (916) 845-6333