

**SUSPENDED AND FORFEITED CORPORATIONS –
REVIVOR, RESTORATION AND
RELIEF FROM CONTRACT VOIDABILITY**

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This outline was completed on November 1, 2019 and does not reflect developments after that date.

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1. OVERVIEW

- A California corporation can be suspended for various reasons.
 - Reviving a California corporation that was suspended only for failing to file a Statement of Information with the Secretary of State is simple.
 - In contrast, reviving a corporation that was suspended for failing to file California tax returns or to pay California taxes is more complex.
 - A nonprofit corporation can be suspended for failing to file with the California Attorney General.
- The permissible activities of a suspended corporation are severely limited.
- Individuals operating a suspended corporation risk criminal penalties.
- The contracts that a corporation makes while it is suspended for failing to pay taxes or file tax returns can be “voided” by the other party to the contract.
 - Reviving the corporation is not enough to make those contracts secure.
- A corporation organized outstanding California cannot be suspended by California, but it can forfeit its right to do business in California or to

use California courts, and its contracts made in California can be voided under California law.

- For LLCs, similar rules corporate and tax law rules and some identical tax law rules apply.
- This outline lists the consequences of suspension and forfeiture for for-profit and nonprofit corporations and the mechanics of reviving a suspended or forfeited corporation and making its contracts secure.

2. THE BASIC CONCEPTS

2.1 Corporate Powers, Rights and Privileges

2.1(a) A corporation is a “creature of statute.” It exists because there are laws that allow it to exist. It has only the rights, powers and privileges granted to it by a government.

2.1(b) In the U.S. today state statutes allow corporations to be created and to exist for an unlimited period of time. Those statutes give to corporations created under them specific rights, powers and privileges.¹ Generally, a corporation organized under these statutes exists until it dissolves.

2.1(c) However, the state that grants those rights, powers and privileges can also take them away or suspend them. We deal with so many corporations every day that we have operating assumptions about what they can do. But for a suspended corporation, many of those assumptions are false.

¹ For example, Section 207 of the California Corporations Code gives specific powers to corporations organized under California law. Such a corporation’s existence begins when it files its articles of incorporation. Cal. Corp. Code § 200(c). Generally, it ends when the corporation files a certificate of dissolution with the Secretary of State. Cal. Corp. Code § 1905(b) (at which time “its powers, rights and privileges shall cease”). For a California nonprofit public benefit corporation, the corresponding provisions are Sections 5140, 5120(c) and 6615(c). For a California LLC, see Sections 17701.05, 17702.01(d), 17701.04(c) (“perpetual durations”), 17707.02(c).

2.1(d) The law imposes various filing and reporting requirements on corporations. A violation of the requirements can lead to suspension or forfeiture. Two examples:

- ◇ A corporation organized under California law (called a “**domestic corporation**” in this outline and in the California Corporations Code) must file an annual **Statement of Information** with the California Secretary of State² and
- ◇ A “charitable corporation”³ must register initially with the California Attorney General under the Supervision of Trustees and Fundraisers for Charitable Purposes Act⁴ and thereafter file annual reports.

2.1(e) Generally, a for-profit corporation doing business in California is subject to California taxes: a corporate minimum tax, a tax on its business income sourced in California and, if the corporation is based in California, a tax on its non-business (that is, investment) income.

2.1(f) A nonprofit corporation can qualify for an exemption from these taxes, but remains subject to tax on its “unrelated business income.”⁵

² Cal. Corp. Code §§ 1502 (for-profit corporation), 6210 (nonprofit public benefit corporation). See Section 2.3 below,

³ Defined in Cal. Gov’t. Code § 12582.1.

⁴ Cal. Gov’t. Code §§ 12580–12599.8.

⁵ Sales, use and property taxes may also apply, but are not addressed in this Bulletin.

2.2 “Foreign Corporations” Doing Business in California

2.2(a) A corporation organized under the laws of another state, province or country is a “**foreign**” **corporation** for purposes of this outline and the California Corporations Code.⁶

- ◇ For these purposes, a corporation organized under the laws of, for example, Nevada, Alberta or Germany would be a “foreign corporation.”
- ◇ A foreign corporation gets its powers, rights and privileges from the laws of its home state, province or country, not from California law.⁷
- ◇ Consequently, California cannot *suspend* the powers, rights and privileges of a foreign corporation.
 - But California does have some leverage with a non-compliant foreign corporation.⁸

2.2(b) California does not allow foreign corporations to “**transact intrastate business**” (generally, that means to have employees active in California doing something besides just selling) *unless* the foreign corporation “registers to do business” in California.⁹

⁶ Cal. Corp. Code §§ 171 (for-profit corporations), 5053 (nonprofit corporations). For LLCs, see Cal. Corp. Code § 17701.01(g), (j), (k).

⁷ Vaughn v LJ Int’l, 174 CA4th 213, 226 (2009) (rights and duties of directors, officers, and shareholders are generally determined by law of state of incorporation). For LLCs, see Cal. Corp. Code § 17708.01.

⁸ See Section 2.6 below.

⁹ “Just selling” is interstate commerce that is protected under the U.S. Constitution. California has a very detailed set of statutes defining “transacting intrastate business.” Cal. Corp. Code §§ 191, 2105(a), 2258-60, 6910, 8910. The details are mostly from the
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- ◇ To “register.” the foreign corporation identifies itself to the California Secretary of State and consents to be sued in California. This is accomplished by filing with the California Secretary of State a “**Statement and Designation by Foreign Corporation.**” In response, the Secretary of State issues a “**Certificate of Qualification.**”¹⁰ This is the foreign corporation’s authorization to do business in California, even though it was not organized under California law.

2.2(c) Generally, the laws of the home state, province or country govern the internal affairs of the foreign corporation.¹¹ But there are several exceptions.¹² One is that the corporation

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many appellate cases on the subject. This is a very superficial summary of a complex area of corporate law. To add to the complexity, these rules are not the same as the “nexus” test to determine whether a foreign corporation must file a tax return in California. Cal. Rev. & Tax. Code § 23101; Cal. Admin. Code title 18 Reg. 23101. There is still another, similar test to determine whether a court has sufficient contacts with a person to subject the person to the court’s orders.

The California LLC law is different. It does not mandate registration. Instead, it permits registration and states the consequences for failing to register. Cal. Corp. Code §§ 17708.02, 17708.07.

¹⁰ Cal. Corp. Code §§ 2105 (filing by the foreign corporation), 2106 (certificate of qualification). The foreign corporation might also be required to obtain a license or permit to operate its business in California. For LLCs, see Cal. Corp. Code §§ 17708.03, 17708.04 (Secretary of State issues a “Certificate of Registration”).

¹¹ For LLCs, see Cal. Corp. Code § 17708.01. There is no corresponding provision in the General Corporation Law.

¹² Cal. Corp. Code §§ 2115-17.1, 2252-60. Section 2115 applies the “quasi-California corporation” rules, but these do not apply to foreign nonprofit corporations. Cal. Corp. Code § 6910. For LLCs, see Cal. Corp. Code § 17708.09.

must file an annual **Statement of Information** just like a domestic corporation (but using a slightly different form).¹³

2.2(d) A foreign corporation doing business in California is subject to the California corporate minimum tax, to a California tax on its business income from California sources and, if its base of operations is California, on its non-business (investment) income.

2.2(e) A foreign corporation that does business in California and fails to obtain a certificate of qualification (called a “**nonqualified foreign corporation**” by the Franchise Tax Board) cannot maintain an action in California concerning its business in the state.¹⁴

◇ If it is required to file California tax returns but does not do so, it can be subject to a \$2000 per year penalty.¹⁵

2.2(f) When the foreign corporation stops doing business in California (called “**withdrawing from business in California**”), it files with the California Secretary of State a “**Certificate of Surrender of Right to Transact Intrastate Business.**”¹⁶

2.3 Statements of Information

2.3(a) A domestic corporation or foreign corporation active in California must file annually with the California Secretary of State

¹³ Cal. Corp. Code § 2117. For LLCs, see Cal. Corp. Code § 17702.09. Domestic and foreign LLCs file the same Statement of Information (SOS Form LLC-12).

¹⁴ See Section 3 (Effects of Suspension or Forfeiture) of this Bulletin.

¹⁵ Cal. Rev. & Tax. Code § 19135.

¹⁶ Cal. Corp. Code §§ 2112, 2113. A foreign corporation that ceases to do business in California may still be sued in California for its activities in California. Cal. Corp. Code § 2114. For LLCs, see Cal. Corp. Code § 17708.06.

a Statement of Information to identify the humans who manage it and where it maintains offices in California.¹⁷

2.3(b) The Statement is published on the website of the Secretary of State and copies are available from the Secretary of State.¹⁸

2.4 Suspension, Restoration and Revivor of a Domestic Corporation

2.4(a) A California corporation is **suspended** when it fails to make a required filing or payment, after receiving a notice threatening suspension.

- ◇ What are actually suspended are “the corporate powers, rights and privileges of the corporation.”¹⁹
- ◇ A suspension initiated by the Franchise Tax Board is effective after the FTB both gives the notice to the corporation and gives the name of the suspended corporation to the Secretary of State.²⁰

¹⁷ Cal. Corp. Code §§ 1502(a) (domestic), 2117(a) (foreign), 6210 (domestic nonprofit public benefit corporation). See Section 17702.09 (biennial requirement for domestic and foreign LLC).

¹⁸ Cal. Corp. Code §§ 1502(h), 2117(c). The Secretary of State publishes on its website the Statements of Information for nonprofit corporations and LLCs, although the statute does not require this.

¹⁹ Cal. Corp. Code §§ 2205(c) (domestic corporation, failure of a for-profit corporation to file a Statement of Information); 5008.6 (nonprofit corps, failure of a nonprofit corporation to file a Statement of Information); Cal. Rev. & Tax. Code §§ 23301 (failure to pay a corporate tax or penalty), 23301.5 (failure to file a tax return), 23775 (failure to file a return or statement by a tax-exempt organization, to pay late filings penalties, or to pay corporate minimum tax that is due as a result of failure to file a Form RRF-1 with the Attorney General). See Section 3 below (Effect of Suspension or Forfeiture). For LLCs, see Cal. Corp. Code § 17713.10(c) (domestic) and 17713.11 (foreign)..

²⁰ Cal. Rev. & Tax. Code § 23302(c); *see* *Mediterranean Exports v. Superior Court*, 119 Cal. App. 3d 605, 615 (1981) (“The suspension or forfeiture contemplated by Rev-
(footnote continued on next page)”)

- ◇ A suspension initiated by the Secretary of State is effective after the Secretary of State both gives the notice to the corporation and gives the name of the suspended corporation to the Franchise Tax Board (the “FTB”).²¹

2.4(b) The suspension of a corporation can be initiated either by the Secretary of State or by the FTB (or, for a charitable corporation, by the Attorney General). Sometimes a corporation fails to file a Statements of Information with the Secretary of State and also fails to pay taxes or fails to file tax returns with the FTB. That corporation might first be suspended by the Secretary of State. However, when the corporation fails to pay taxes or file returns after notice from the FTB, the FTB also suspends the corporation, with additional consequences (as discussed below).

2.4(c) A suspension initiated by the FTB is effective only after it both gives at least 60-day notice to the corporation (before the date the suspension becomes effective) and transmits the name of the suspended corporation to the Secretary of State.²²

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enue and Taxation Code section 23302 is mandatory because the word ‘shall’ is used, but the statute is not self-executing. The suspension or forfeiture takes effect only when the Franchise Tax Board transmits the name of the tax-delinquent corporation to the Secretary of State.”). This can be important, because a suspension by the FTB can have drastic consequences, as discussed below.

²¹ Cal. Corp. Code § 2205(c). For LLCs see Cal. Corp. Code §§ 17713.10, 17713.11..

²² Cal. Rev. & Tax. Code §§ 21020, 23302(a), (c).

- ◇ The effective date can be important, because on and after the effective date, the suspended or forfeited corporation's contracts are *voidable*.²³

2.4(d) When a corporation has been suspended in California, it can become compliant again. When each of the government agencies that suspended the corporation agrees that the corporation is again compliant, they “**revive**” the corporation.²⁴ At that point, the FTB issues a “**Certificate of Revivor**.”²⁵

2.4(e) The mechanics of reviving a corporation vary somewhat depending on the cause of the suspension, as discussed in detail below.

2.4(f) If the corporation sends in its required filing or payment too late, the corporation might be suspended even though it was actually compliant at the time. In that case, the government agency corrects its mistake and **restores** the corporation to good standing.²⁶

²³ See Section 3.6 below (Contract Voidability and Relief from Contract Voidability).

²⁴ Cal. Corp. Code § 2205(c); Cal. Rev. & Tax. Code § 23305.

²⁵ Cal. Rev. & Tax. Code § 23305.

²⁶ Cal. Corp. Code § 204(e). The Franchise Tax Board must “abate” (or cease efforts to impose) any penalty resulting from the failure to file on time. Note that a corporation is “restored” if the suspension was erroneously imposed by the government agency. Cal. Rev. & Tax. Code § 23305c(c), (d). A corporation is “revived” if the suspension was properly imposed, and the problem causing the suspension was then corrected by the corporation.

2.5 Administrative Dissolution or Cancellation

2.5(a) What California calls “suspension” is known as “**administrative dissolution**” under the laws of some other states.²⁷

2.5(b) In California, suspension is a concept different from “involuntary dissolution.”²⁸

2.5(c) In California, a corporation that has been suspended for at least a specified number of months as of or after 1-1-19 is subject to “**administrative dissolution**.”²⁹

- ◇ Liability for the corporate minimum tax is abated, but not the tax on corporate income.³⁰
- ◇ “Upon administrative dissolution, the corporate rights, powers and privileges of the [for-profit] corporation shall

²⁷ See, e.g., Ga. Code Ann. §§ 14-2-1420, 14-2-1421(c); Ky Rev. Stat. Ann. § 14A.7-020(3); Mo. Rev. Stat. 351.484, 351.486; Or. Rev. Stat. §§ 65.647; 65.651; Wash. Rev. Code § 24.03.302.

²⁸ See, e.g., Corp C § 1800 (involuntary dissolution of a for-profit corporation); 6510 (involuntary dissolution of nonprofit public benefit corporation).

²⁹ Cal. Corp. Code §§ 2205.5 (for-profit corporations: 60 months; effective as of January 1, 2019), 5008.9 (nonprofit corporations: 48 months; effective as of January 1, 2016).

³⁰ Cal. Corp. Code §§ 2205.5(h), 5008.9(h).

cease.”³¹ This is the same as the effect of filing a certificate of dissolution for a for-profit corporation.³²

- ◇ The liability of the corporation to creditors and the liability of directors and officers to the corporation is not discharged.³³

2.5(d) A domestic LLC that is suspended for 60 months as of or after 1-1-19 may be “subject to administrative cancelation.”³⁴

- ◇ If the LLC does not respond to required notices from the FTB, the LLC’s “rights, powers, and privileges shall cease.”³⁵
- ◇ The LLC’s California minimum taxes are abated when the LLC is administratively cancelled, and the FTB is not authorized to continue any collection activity for those taxes.³⁶ The gross receipt tax (and corporate taxes on taxable income, if the LLC is classified as a corporation for tax purposes) are *not* abated.

³¹ Cal. Corp. Code §§ 2205.5(l). Section 5008.9 does not have a similar provision. Section 5008.9(f) provides, in pertinent part: “[T]he nonprofit corporation or foreign corporation shall be administratively dissolved or administratively surrendered in accordance with this section. The certificate of the Secretary of State shall be prima facie evidence of the administrative dissolution or administrative surrender.” This corresponds to Section 2205.5(f) but Section 2205 applies only to domestic corporations.

³² Cal. Corp. Code § 1905(b). It’s similar to the effect of an order of dissolution in a court-supervised dissolution. Cal. Corp. Code § 1808(b).

³³ Cal. Corp. Code § 5008.9(i).

³⁴ Cal. Corp. Code § 117713.10.1, enacted in 2018 and effective on 1-1-19.

³⁵ Cal. Corp. Code § 117713.10.1(k).

³⁶ Cal. Corp. Code § 117713.10.1(h), (i).

2.6 Forfeiture

2.6(a) California does not have the power to suspend the powers, rights and privileges of a non-compliant foreign corporation. Instead, a non-compliant foreign corporation **forfeits** the exercise of its corporate powers, rights and privileges in California.³⁷

2.6(b) Similar to the *suspension* of a domestic nonprofit corporation, the *forfeiture* of a foreign nonprofit corporation can be initiated either by the Secretary of State or the FTB.

◇ A forfeiture initiated by the Franchise Tax Board is effective after the FTB both gives the notice to the corporation and gives the name of the forfeited corporation to the Secretary of State.³⁸

◇ A forfeiture initiated by the Secretary of State is effective after the Secretary of State both gives the notice to the corporation and gives the name of the suspended corporation to the Franchise Tax Board.³⁹

2.6(c) After the forfeiture, the foreign corporation can still engage in constitutionally-protected “just selling” in California.⁴⁰

³⁷ Cal. Corp. Code § 2206(a); Cal. Rev. & Tax. Code §§ 23301 (failure to pay a corporate tax or penalty), 23301.5 (failure to file a tax return), 23775 (failure to file a return or statement by a tax-exempt organization, to pay late filings penalties, or to pay corporate minimum tax due as a result of failure to file a Form RRF-1 with the Attorney General). For LLCs, see Cal. Corp. Code § 17713.11.

³⁸ See footnote 20 above.

³⁹ Cal. Corp. Code § 2206(a).

⁴⁰ Cal. Corp. Code § 2206(c). The U.S. Constitution and federal law prohibit a state from restricting this activity. For the similar rule for foreign LLCs, see Cal. Corp. Code § 17713.11(b).

2.6(d) A foreign *for-profit* corporation or LLC is not subject to administrative dissolution in California.

- ◇ A foreign *nonprofit* corporation that has qualified to transact business in California is subject to “**administrative surrender**” of that qualification if its forfeiture continues for 48 consecutive months.⁴¹

2.6(e) The effects of forfeiture and the mechanics of reviving the corporation vary depending on whether the Secretary of State or the FTB initiated the forfeiture, as discussed below.

2.7 **Good Standing with the Secretary of State and Franchise Tax Board**

2.7(a) A corporation that was incorporated under California law and is not suspended is said to be in “**good standing.**”

2.7(b) A foreign corporation that has registered in California and has not forfeited is also said to be in “**good standing.**”

2.7(c) If a corporation is in good standing, its “Status” on the Secretary of State’s Business Search website will be “**Active**” (as opposed to “Suspended” or “Forfeited”).⁴²

2.7(d) Anyone can, for a fee, obtain from the Secretary of State a **certificate of status** for a particular corporation (or even a **Certificate of No Record** to prove that the corporation has not filed anything with the Secretary of State).

- ◇ If the certificate shows the corporation’s status as “Active (Good Standing),” the certificate is colloquially known as a “**Good Standing Certificate.**”

⁴¹ Cal. Corp. Code § 5008.9.

⁴² <http://kepler.sos.ca.gov/>.

2.7(e) A foreign corporation cannot register to do business in California unless it provides to the California Secretary of State a certificate of good standing from the corporation’s home state.⁴³

2.8 “Good Standing” with the Attorney General

2.8(a) A person or entity required to register with the Attorney General’s Registry of Charitable Trusts must be registered and in good standing with the Registry to operate or solicit for charitable purposes.

◇ Such a person or entity whose registration is delinquent or has been suspended or revoked is not in good standing with the Registry and is prohibited from engaging in conduct for which registration is required—including solicitation for charitable purposes.⁴⁴

2.8(b) A person or entity that is registered with the Registry and then has that registration suspended or revoked may not distribute or expend any charitable assets or assets subject to a charitable trust without the written approval of the Attorney General.⁴⁵

2.8(c) Members of the board of directors or any person directly involved in distributing or expending charitable assets in violation of this rule may be held personally liable in a civil action brought by the Attorney General for any charitable assets or

⁴³ Cal. Corp. Code § 2105(b). For LLCs, see Cal. Corp. Code § 17708.02(a)(2).

⁴⁴ Cal. Admin. Code title 11, § 999.9.4.

⁴⁵ 11 Cal Code Regs §99.9.3(d). “The acceptance of charitable contributions by a charity or any person soliciting on behalf of a charity establishes a **charitable trust** and a duty on the part of the charity and the person soliciting on behalf of the charity to use those charitable contributions for the declared charitable purposes for which they are sought.” Bus. & Prof. Code § 17510.8 (emphasis added).

assets subject to a charitable trust that are so distributed or expended.

- ◇ The Attorney General may direct a registrant whose registration has been suspended or revoked to distribute some or all of its charitable assets or assets subject to a charitable trust to another charitable organization or into a blocked bank account.⁴⁶

2.8(d) Note that the Attorney General’s online Registry Search Tool lists the “Registration Status” of California charities as “Current,” “Delinquent,” “Extension,” “Dissolved,” “Dissolution Pending,” “Suspended,” “Revoked,” “Never Registered—Dissolved,” or “Expired.”

- ◇ The Attorney General does not state that third parties are entitled to rely on a report of “Current” on the Registry Search Tool as an indication that the charity is in “good standing” for purposes of Rule 999.9.3.
- ◇ Nor has the Attorney General has published a way to obtain a “good standing” certificate from the Registry.
- ◇ However, in view of the severe restrictions on charities that are not in good standing with the Registry, directors who consider approving grants, as well as persons considering becoming directors or receiving grants from California charities, will need routinely to obtain good standing certificates from the Registry.

2.9 Suspension of Registration With the Registry of Charitable Trusts

2.9(a) The Attorney General may assess penalties on a charity.⁴⁷

⁴⁶ Cal. Admin. Code title 11, § 999.9.3(b), (c).

⁴⁷ Cal. Admin. Code title 11, § 315.

2.9(b) If the Attorney General does so, the Attorney General may suspend the registration of that person or entity.⁴⁸ If a penalty under those rules is assessed by the Attorney General but not timely paid, the registration with the Registry is automatically suspended until the penalty is paid.⁴⁹

3. EFFECTS OF SUSPENSION OR FORFEITURE

3.1 Limited Corporate Powers

3.1(a) A corporation suspended by the FTB “cannot sell, transfer, or exchange real property in California, and contracts entered into while it is suspended are voidable by the other party or parties through legal action.”⁵⁰

3.1(b) A suspended corporation cannot prevent another from assuming its corporate name, and it cannot borrow money, execute notes, or sell stock.⁵¹

3.1(c) In addition, while it is suspended, the corporation may not prosecute or defend an action, seek a writ of mandate, or renew a judgment obtained before suspension.⁵²

⁴⁸ Cal. Admin. Code title 11, § 316(a). There are several grounds on which the Attorney General may refuse to register an individual or charity, revoke a registration, suspend a registration, or refuse to renew a registration. Some grounds for suspension are automatic. Cal. Admin. Code title 11, §§ 999.9, 999.9.1, 999.9.2.

⁴⁹ Cal. Admin. Code title 11, § 316(b).

⁵⁰ Center for Self-Improvement & Community Dev. v Lennar, 173 Cal. App. 4th 1543, 1552, (2009) (citing Cal. Rev. & Tax. Code §§ 23301, 23302(d), 23304.1(a), 23304.5.)

⁵¹ Center for Self-Improvement & Community Dev. v Lennar, *supra* (citing Boyer v Jones 88 Cal. App. 4th 220, 224 (2001), and Silvey v Fink 99 Cal. App. 528, 532 (1929)).

⁵² Center for Self-Improvement & Community Dev. v Lennar, *supra* (citing Grell v Laci Le Beau 73 Cal. App. 4th 1300, 1306 (1999)).

3.2 Tax Returns and Exemption Applications

3.2(a) A corporation that is subject to suspension or forfeiture but continues to do business or to receive income is required to file a California tax return.⁵³

3.2(b) A nonprofit corporation can file an exemption application with the FTB while it is suspended.⁵⁴

3.3 Corporate Name

3.3(a) While the corporation is suspended for any reason, the Secretary of State will not protect its name.

- ◇ Another corporation can use the exact name of the suspended corporation, or a name confusingly similar to it.
- ◇ In that case, before the suspended corporation can be revived, it must change its name to one that is not the same or confusingly similar to the name of the corporation that took its name.⁵⁵

⁵³ Cal. Rev. & Tax. Code § 23303.

⁵⁴ Cal. Corp. Code §§ 5008.6(c) (domestic nonprofit corporation suspended by Secretary of State), 2206(b) (foreign nonprofit corporation forfeited by Secretary of State); Cal. Rev. & Tax. Code § 23301.5 (domestic or foreign nonprofit corporation suspended or forfeited by FTB). It must file an Exemption Application (FTB Form 3500) instead of the more simple Submission of Exemption Request (FTB Form 3500A). Cal. Rev. & Tax. Code § 23701(d)(2)(B). Note that *without* this rule, a suspended corporation that had not obtained a tax exemption would be required to pay at least minimum corporate taxes, interest and penalties before it could be revived and then file an exemption application.

⁵⁵ Boyer v. Jones, 88 Cal. App. 4th 220 (2001). The Secretary of State's website includes the following Q&A: "Q: What do I do if my business entity is suspended/forfeited and another party has reserved the name or another entity is using the name? A: The suspended/forfeited business entity must change its name, obtain a release of name reservation from the party who has reserved the name, [or] in certain circumstances, obtain written consent to use the name or convince the other entity to change its name."

(footnote continued on next page)

- ◇ Adverse parties in litigation have been known, when they find that an adversary is suspended, to consider incorporating with the suspended corporation's exact name so that they can use the name as leverage in settlement negotiations.

3.3(b) Generally, a suspended corporation cannot file an amendment to its articles of incorporation or a certificate of dissolution.

- ◇ However, an exception is made for name changes for a corporation that has lost the right to its name while it was suspended.⁵⁶

3.4 Participation in Litigation

3.4(a) While a corporation is suspended, it “lacks the legal capacity to prosecute or defend a civil action during its suspension.”⁵⁷

3.4(b) It cannot file or answer a complaint, file motions, or enter a judgment from another state.⁵⁸

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<http://www.sos.ca.gov/business/be/faqs.htm#suspension>. Note that the right to use a particular name to identify a corporation to the Secretary of State does not confer the right to use that name in commerce to identify a product, business or service to the public in violation of the trademarks or service marks of another.

⁵⁶ Cal. Corp. Code § 2205(c) (specific right to amend the articles of incorporation in this situation).

⁵⁷ *City of San Diego v San Diegans for Open Government*, 3 Cal. App. 5th 568, 577 (2016) (CCP §1021.5 fees denied to nonprofit that filed verified answer as interested party during time that nonprofit and its counsel both knew that it was a suspended corporation); *Palm Valley Homeowners v Design MTC*, 85 Cal.App. 4th 553, 559 (2000) (upholding sanctions against attorneys who knew their corporate client was suspended, but answered cross-complaints, engaged in discovery and filed motion for summary judgment; suspension for failure by domestic for-profit corporation to file statement of information).

- 3.4(c) Typically, when the suspension is discovered during litigation, the attorney for the suspended corporation asks the court for a continuation so the corporation can be revived.⁵⁹
- 3.4(d) When the suspended corporation is revived, there is no particular penalty in the litigation after the Certificate of Revivor is obtained.⁶⁰
- 3.4(e) However, if the officers do not revive a suspended defendant, a court can strike the defendant's answer and enter a default judgment against it.⁶¹
- 3.4(f) A nonqualified foreign nonprofit corporation can defend and commence, but not maintain, an action, in California.⁶²

(footnote continued from previous page)

⁵⁸ Palm Valley Homeowners v Design MTC, *supra*. (“All its ‘corporate powers, rights, and privileges’ are suspended; the only exceptions provided by statute are to change the name of the corporation, and to cure the default by filing the missing statement[.]... Just as the state may wish to persuade its corporate citizens to pay their taxes, it also may wish to persuade them to comply with basic filing requirements, requirements that are fundamental to holding a corporation accountable for its actions” (i.e., filing the statement of information)).

⁵⁹ A trial court abused its discretion by not continuing a trial on its own motion to enable a suspended corporate defendant to seek revivor. *Cadle v World Wide Hospitality Furniture*, 144 Cal. App. 4th 504 (2006).

⁶⁰ *Peacock Hill v. Peacock Lagoon Construction*, 8 Cal. 3d 369 (1972); *Cahill v. San Diego Gas & Electric*, 194 Cal. App. 4th 939, 958-59 (2011); *Center for Self-Improvement & Community Dev. v Lennar*, 173 Cal. App. 4th 1543 (2009); *Aspen Grove Condominium v CNL Income Northstar*, 231 Cal. App.4 th 53 (2014) (after good standing certificate was submitted, an appeal was allowed even though corporation was suspended when it filed its appeal).

⁶¹ *Moofly Prods. v Favila*, 2013 US Dist Lexis 168356 (CD Cal, Nov. 25, 2013, No. CV 13-5866 RSWL (PJWx)).

⁶² Cal. Corp. Code § 2203(c); *V&P Trading v United Charter*, 212 Cal. App. 4th 126 (2012); *United Med. Mgmt. v Gatto*, 49 Cal. App. 4th 1732, 1739 (1996).

- ◇ However, statutes of limitations continue to run while the foreign corporation is trying to be revived (which is not an instantaneous process).⁶³

3.4(g) Generally, a suspended corporation may not file an appeal from an adverse judgement.⁶⁴

- ◇ But the California Supreme Court held that a timely filed appeal by a suspended corporation could be cured if the corporation was later revived.⁶⁵

3.4(h) Courts distinguish between procedural steps and substantive defenses. “[P]rocedural steps taken on behalf of the suspended corporation” can be “resuscitated by [revivor],” while substantive defenses (*e.g.*, statutes of limitations) that accrue during the suspension cannot.⁶⁶

⁶³ United Medical Mgmt. v. Gatto, 49 Cal. App. 4th 1732, 1740 (1996), rehearing denied by California Supreme Court, 1997 LEXIS 561 (1997) (statute of limitations continues to run).

⁶⁴ Center for Self-Improvement & Community Dev. v Lennar Corp., *supra*.

⁶⁵ Bourhis v Lord, 56 Cal. 4th 320, 329 (2013):

[F]iling a timely notice of appeal is a jurisdictional requirement. ... [W]hat is jurisdictionally required is that the notice of appeal be timely, not that it be filed by an active corporation. Here, the notices of appeal were timely even if invalid when filed. ... [T]he corporation’s later reinstatement made the earlier, invalid but timely, notices of appeal valid and still timely.

See also Tabarrejo v Superior Court, 232 Cal. App. 4th 849 (2014) (“That [defendant] elected not to revive its corporate powers did not retroactively deprive the court of jurisdiction to accept the appeal ... or to dismiss the appeal based on [defendant]’s incapacity to sue”).

⁶⁶ See City of San Diego v San Diegans for Open Gov’t, 3 Cal. App. 5th 568 (2016) (denying private attorney general fees to successful defendant-corporation in validation action, when corporation filed its answer during suspension, both corporation and its attorney were aware of suspension, and corporation was not revived before deadline to appear; thus, its appearance constituted “unethical and unprofessional conduct”).

3.4(i) Suspension of the corporation may not prevent an officer and shareholder from suing to enforce a contract of the corporation if the officer or shareholder is a third party beneficiary of the contract.⁶⁷

◇ But the assignee of a suspended corporation cannot bring an action that the suspended corporation would be barred from bringing in its own name.⁶⁸

3.4(j) The United States Tax Court requires a corporation to be in good standing when it files a Tax Court petition within 90 days after the IRS sent its notice of deficiency.⁶⁹

3.5 No real property transfers

3.5(a) While the powers of a corporation or LLC are suspended or forfeited by the FTB or the Attorney General, the corporation “shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension.”⁷⁰

3.6 Contract voidability

3.6(a) If the suspension or forfeiture was initiated by the FTB, the contracts made in California by the corporation or LLC while

⁶⁷ Bozzio v EMI Group, 811 F.3d 1144 (9th Cir 2016) (applying California law).

⁶⁸ Casiopea Bovet v Chiang, 12 Cal. App. 5th 656 (2017) (assignment ordered under Enforcement of Judgments Law); Cal-Western Bus. Servs. v Corning Capital Group, 221 Cal. App. 4th 304 (2013).

⁶⁹ David Dung Le, M.D., 114 T.C. 268 (2000); Urgent Care Nurses Registry, 112 T.C.M. 480 (2016).

⁷⁰ Cal. Rev. & Tax. Code § 23302(d). Note that if the suspension or forfeiture is solely for failure to file a Statement of Information with the Secretary of State, this restriction does not apply. However, it might be implicit in the suspension or forfeiture of the corporation’s “powers, rights, and privileges” under Cal. Corp. Code § 5008.6(c).

it was subject to the suspension or forfeiture are **voidable** by any party to the contract other than the suspended or forfeited corporation.⁷¹

3.6(b) The only way for the other party to take advantage of this is to invoke the right to void the contract in a lawsuit.

◇ The other party cannot just send an email message or letter saying “We revoke that contract.”⁷²

3.6(c) The court must allow the suspended or forfeited corporation or LLC a reasonable period of time in which to obtain relief from contract voidability.⁷³

3.6(d) If the problem is not cured within the time allowed by the court, the court will declare that the contract is rescinded.

◇ The suspended or forfeited corporation must receive full restitution of the benefits that it conferred on the other party or parties to the rescinded contract.⁷⁴

3.7 **Summary of what a suspended/forfeited corporation or LLC can and cannot do:**

3.7(a) A suspended or forfeited nonprofit corporation *can* do any of the following:

- Apply for revivor
- Apply for relief from contract voidability

⁷¹ Cal. Rev. & Tax. Code § 23304.1(a), (d).

⁷² Cal. Rev. & Tax. Code § 23304.5.

⁷³ *Id.* See Section 4.4 below regarding relief from contract voidability.

⁷⁴ *Id.*

- Apply for a tax exemption
- Pay taxes, penalties and interest
- File delinquent tax returns necessary to revive
- Amend the articles of incorporation as required to revive (with a new name, if necessary) or to obtain tax-exempt status
- Amend statement of designation (for a foreign corporation, if required to revive).

3.7(b) A suspended or forfeited nonprofit corporation *cannot* do any of the following:

- Do business
- Enforce contracts
- File a complaint, seek a restraining order, evict a tenant or initiate other legal action
- Defend an action in court
- Defend the corporation's name
- Sell, transfer or exchange real property in California⁷⁵
- Prevent another party to a contract from voiding the contract in court (except by reviving the corporation and paying for relief from contract voidability).⁷⁶

⁷⁵ Applies only if the suspension was by the FTB, whether or not the corporation was also suspended by the Secretary of State.

3.7(c) The FTB in a September 2010 newsletter added the following to the list of things that a suspended corporation *cannot* do:

- “Be granted an extension of time to file.
- “File a claim for refund or an amended return.
- “File or maintain an appeal before the State Board of Equalization.
- “Begin or continue to protest an assessment.” ⁷⁷

4. FIXING THE PROBLEM – CALIFORNIA CORPORATIONS

4.1 Suspension by the Secretary of State

4.1(a) What it can and cannot do:

- ◇ The corporation’s name is not protected and it cannot file a certificate of dissolution or amend its articles of incorporation except as required to revive.
- ◇ If the corporation is *not* also suspended by the FTB, its contracts are *not* voidable and it *can* transfer real property.
- ◇ The corporation cannot use the courts without reviving.

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⁷⁶ Applies only if the suspension was by the FTB, whether or not the corporation was also suspended by the Secretary of State.

⁷⁷ See Suspension and Revivor 101, Part 2, Tax News (Sept. 2010), available at: https://www.ftb.ca.gov/Archive/Professionals/Taxnews/2010/September/Article_10.shtml.

4.1(b) If the corporation is compliant with the FTB, it can be revived simply by filing a Statement of Information with the Secretary of State, and paying any penalty required by the FTB.⁷⁸

4.1(c) If it is also suspended by the FTB, it must also comply with the FTB's rules for revivor.

4.2 Suspension by the Franchise Tax Board

4.2(a) An additional tax penalty can apply to those doing business in the name of a suspended corporation.⁷⁹

4.2(b) See Section 3.7(b).

4.3 Revivor

4.3(a) A corporation suspended by the FTB can be revived by filing an **Application for Revivor**, FTB Form 3557.⁸⁰

◇ The best practice is to call the FTB Revivor Unit at 886-635-0494 and to ask if the corporation has been suspended

⁷⁸ See the Secretary of State online form "Email Penalty Waivers for Failing to File Statement of Information" at <https://www.sos.ca.gov/business-programs/business-entities/filing-tips/email-penaltywaivers/>.

⁷⁹ Cal. Rev. & Tax. Code § 19719(a) provides, in pertinent part: "Any person who attempts or purports to exercise the powers, rights, and privileges of a corporation that has been suspended [by the FTB] or who transacts or attempts to transact intrastate business in this state on behalf of a foreign corporation, the rights and privileges of which have been forfeited pursuant to the section, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding one year, or both fine and imprisonment."

⁸⁰ Cal. Rev. & Tax. Code §§ 23776, 23305.

by the FTB and, if so, what exactly is required to revive the corporation.⁸¹

4.3(b) The application for revivor would typically be submitted by an officer of the corporation. It can also be submitted by any shareholder or creditor, by a majority of the directors, or by any other person who has interest in the relief from the suspension.⁸²

- ◇ However, only an officer can sign any tax returns that need to be filed to obtain the certificate of revivor, so the ability of others to file the application is not very helpful.

4.3(c) When the FTB is satisfied that the corporation is again compliant, it will issue a **Certificate of Revivor**.⁸³

- ◇ Before the FTB does so, it must check with the Secretary of State to determine that the name is still available.⁸⁴ If the name is no longer available, the corporation will be required to amend its articles of incorporation to change its name.
- ◇ The Revivor Unit processes the application in approximately six weeks, but the process can be expedited over

⁸¹ See *Suspension and Revivor 101*, Parts 1 through 4, in Tax News (a publication of the FTB) August, September, October, and November, 2010. The FTB will know if the corporation needs to file a Statement of Information. The FTB may require a nonprofit corporation to file a new exemption application. Cal. Rev. & Tax. Code § 23776(a)(2), (b).

⁸² Cal. Rev. & Tax. Code § 23305.

⁸³ Cal. Rev. & Tax. Code § 23305a. The FTB is authorized to accept an assumption of liability from another person or entity, a bond, a deposit, or other security for the amount due. Cal. Rev. & Tax. Code § 23305.2.

⁸⁴ *Id.*

10 to 14 days. A one-day “walk-through” process is also available in some compelling circumstances.⁸⁵

4.3(d) When the FTB issues the Certificate of Revivor, the corporation is “**reinstated**” and the Secretary of State will, if requested, issue a Certificate of Good Standing.⁸⁶ On its own initiative, the Secretary of State will note on its website that the corporation’s status is “**Active**,” although this might take a few days.

4.3(e) The “**reinstatement**” is “without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture.”⁸⁷

◇ A contract that was voided remains voided after the corporation is revived.

⁸⁵ See *Suspension and Revivor 101*, Part 2, in Tax News (a publication of the FTB) September, 2010.

⁸⁶ The FTB can revive the corporation without full payment of all taxes, interest and penalties if the FTB determines that the revivor will improve the prospects for collecting the full amount due. Cal. Rev. & Tax. Code § 23305b. This type of revivor can be limited as to time or can allow the corporation to perform only certain functions. The FTB can unilaterally suspend the corporation again if the FTB determines that the prospects for collection were not really improved. *Id.*

The FTB tells the Secretary of State about the revivor. Cal. Rev. & Tax. Code § 23305c(a).

⁸⁷ *Id.* “Reinstatement” must mean “revivor” in this statute. “Being in a position to move to dismiss an untimely appeal is not a ‘right’ under that statute.” *Bourhis v Lord*, 56 Cal. 4th 320, 329 (2013) . See also Justice Mosk’s dissent in *Peacock Hill Peacock Lagoon Constr.*, 8 C. 3d 369, 376 (1972) (“Obviously no rights could have accrued *to* the suspended corporation during the period of original suspension—it could not lawfully function for any purpose—so that the clause necessarily refers to rights accruing *against* the suspended corporation.” Emphasis added.).

- ◇ Generally, a contract that became voidable but was not voided during the suspension *can* be voided *after* the revivor.
- ◇ The suspended corporation can *cure* the voidability, but it requires more than just reviving the corporation. The corporation must apply for **relief from contract voidability**.

4.4 Relief from Contract Voidability (“RCV”)

4.4(a) The FTB has stated that “[i]f a suspended business entity makes any contracts while suspended, forfeited or in contract voidability status, they are voidable. They remain voidable and unenforceable unless they apply for and we grant relief from contract voidability.”⁸⁸

4.4(b) To obtain RCV, anyone who could have filed the Form 3557 can file a Form 2518 with the Revivor Unit.

4.4(c) The corporation must be revived before it can obtain RCV, but the forms can (and should) be filed at the same time.

4.4(d) RCV is granted for a period of time, which must *end* on the date that RCV is granted by the FTB.⁸⁹

- ◇ The period of time must *begin* on the first day of a tax year of the corporation.⁹⁰

⁸⁸ <https://www.ftb.ca.gov/businesses/faq/742.shtml>.

⁸⁹ Cal. Rev. & Tax. Code § 23305.1(b).

⁹⁰ Cal. Rev. & Tax. Code § 23305.1(b)(1). If the request for RCV is filed *after* the corporation is revived, the period must be the *entire time* that the corporation was suspended. Cal. Rev. & Tax. Code § 23305.1(b)(2)(A).

4.4(e) To obtain RCV for the requested period, the corporation must also pay a “penalty.” The penalty is \$100 per day (\$36,500 for each full year) or the amount of tax due for the year, whichever is *less*. For this purpose the “tax” does not include interest and penalties.⁹¹

4.4(f) The FTB issues a **Certificate of RCV**, indicating the period of time for which the RCV is granted.⁹² The issuance of the certificate is a matter of public record.⁹³

4.4(g) The RCV, when granted, applies to any contracts that have not already been rescinded by a final court order.⁹⁴

4.4(h) If the corporation sold any California real estate while it was suspended (which it had no power to do) and the sale was not rescinded, the sale is validated, as if the corporation was not suspended when it transferred the property.⁹⁵

4.5 **Nonprofit organization did not file a Form RRF-1 with the California Attorney General**

4.5(a) A nonprofit organization (including a corporation) active in California or holding property in California is generally required to register once with the California Attorney General

⁹¹ Cal. Rev. & Tax. Code § 23305.1(b)(1)(B), (2)(B). For a tax-exempt nonprofit corporation, the penalty cannot be more than the tax imposed on its unrelated business taxable income. Cal. Rev. & Tax. Code § 23305.1(b)(2)(C). The penalty does not accrue interest.

⁹² Cal. Rev. & Tax. Code § 23305.1(c)(2).

⁹³ Cal. Rev. & Tax. Code § 23305.1(d).

⁹⁴ Cal. Corp. Code § 23305.1(c)(1)(A).

⁹⁵ Cal. Rev. & Tax. Code § 23305.1(c)(1)(B).

and to file Form RRF-1 each year with the California Attorney General.⁹⁶

4.5(b) If the corporation fails to do either, its California tax exemptions can be disallowed.⁹⁷

- ◇ These are the exemptions from the corporate income tax (currently 8.84% of taxable income) and the corporate minimum tax (currently \$800 annually).⁹⁸
- ◇ The Attorney General must give notice to the corporation before the Attorney General gives the corporation's name to the FTB to disallow the tax exemption.⁹⁹
- ◇ If the Attorney General gives the notice to the corporation and the info to the FTB, and the FTB disallows the exemption, the corporation has an opportunity at any time to have its exemption from the corporate income and mini-

⁹⁶ Cal. Gov't. Code §§ 12582.1 (defining charitable corporations subject to these rules), 12583 (registration and filing exceptions for religious organizations, educational institutions, hospitals and a few others), 12585 (initial registration), 12586 (filing reports as required by the Attorney General); Cal. Code Reg. title 11, §§ 301, 305 (requirement to file RRF-1), 311 (annual filing fee based on gross revenue).

⁹⁷ The California tax exemptions are available only if the organization qualifies for the exemption, applies for it, pays the \$25 filing fee and obtains a favorable determination letter from the FTB. Cal. Rev. & Tax. Code § 23701. The exemption can be retroactive. For a corporation that was eligible for the tax exemption but was active in California before applying for it, "disallowed" in this sense probably means that the exemption would not be applied retroactively when the organization applied for its exemption.

⁹⁸ Cal. Rev. & Tax. Code § 23703(a).

⁹⁹ Cal. Rev. & Tax. Code § 23703(b).

num taxes reinstated, presumably back to the date it was disallowed.¹⁰⁰

5. FIXING THE PROBLEM – NON-CALIFORNIA FOR-PROFIT CORPORATIONS THAT DID BUSINESS IN CALIFORNIA BUT:

5.1 Did not register with the Secretary of State to do business in California

5.1(a) The foreign corporation can be sued in California.¹⁰¹

5.1(b) The California Attorney General or a local district attorney can impose misdemeanor criminal penalties on the corporation and the humans involved – a \$1,000 fine on the corporation and a \$600 fine on each human, plus a \$20 per day penalty.¹⁰²

5.1(c) Also, the corporation may not “maintain” in any California court any legal action about its business in California, until it registers with the Secretary of State, pays an extra \$250 penalty, and proves that it has paid all California taxes on its business or property in California that should have been paid for the period during which it did business in California.¹⁰³

¹⁰⁰ Cal. Rev. & Tax. Code §§ 23703(b), 23778. The prior rule that the exemption from the corporate *minimum* tax was *not* reinstated retroactively was changed (with retroactive effect) in 2013. Stats 2012, §2, 4, ch. 710. Note that Rule 23703 of Title 18 of the California Code of Regulations does not reflect this law change.

¹⁰¹ Cal. Corp. Code §§ 2203(a)

¹⁰² Cal. Corp. Code §§ 2203(a), 2258.

¹⁰³ Cal. Corp. Code §§ 2203(c). This does not apply to actions under federal law in federal court. *Harms v. Tops Music Enterprises*, 160 F. Supp 77 (S.D. Cal 1958). Also, a foreign corporation that does business in California, then registers with the Secretary of State, can maintain an action, even if the foreign corporation has not satisfied all of its California tax obligations before it files the law suit. *United Medical Mgmt. v. Gatto*, 49 Cal. App. 4th 1732, 1740-41 (1996) (“[This statute] simply forbids the exercise of a small part of the corporate

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5.1(d) *Without* registering with the Secretary of State, the foreign corporation can defend an action and can file a complaint.

- ◇ But if it files a complaint, the defendant can ask the court to determine if the foreign corporation is required to register with the Secretary of State before the case continues.
- ◇ If the court determines that the foreign corporation was active in California, the court will give the foreign corporation a limited amount of time to become compliant before the court will dismiss the action.¹⁰⁴

5.1(e) The foreign corporation's contracts *made in California* can be voided by any other party to the contract.¹⁰⁵

- ◇ This applies to contracts made from the first day that the corporation was *doing business* in California and ends on the day that the foreign corporation registers with the Secretary of State.¹⁰⁶
- ◇ The corporation can “purchase” relief from contract voidability and validate its real estate transfers.¹⁰⁷

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powers, except on the specified conditions.”), rehearing denied by California Supreme Court, 1997 LEXIS 561 (1997).

¹⁰⁴ United Medical Mgmt. v. Gatto, 49 Cal. App. 4th 1732 (1996), rehearing denied by California Supreme Court, 1997 LEXIS 561 (1997) (a for-profit corporation). If the court dismisses the action on these grounds, the foreign corporation can file the complaint again, but the statute of limitations continues to run. *Id.* at 1740. This is what happened in the United Medical Mgmt. case.

¹⁰⁵ Cal. Rev. & Tax. Code § 23304.1(b).

¹⁰⁶ Cal. Rev. & Tax. Code § 23304.1(c), (d).

¹⁰⁷ See text at footnotes 90 through 95 above.

5.2 After registering, did not file a Statement of Information with the Secretary of State

5.2(a) While forfeited, the corporation's name is not protected in California.

- ◇ It cannot file a Certificate of Surrender of Right to Transact Intrastate Business.
- ◇ It cannot use the courts without reviving.

5.2(b) If the corporation is not also forfeited by the FTB, (a) its contracts are *not* voidable, (b) it *can* transfer real property and (c) it can be revived simply by filing a Statement of Information with the Secretary of State.

5.3 Nonprofit foreign organization did not file a Form RRF-1 with the California Attorney General

5.3(a) The effects for a foreign nonprofit organization active in California are the same as for a domestic nonprofit corporation.¹⁰⁸

5.4 Nonprofit foreign corporation did not file a return with or pay the Franchise Tax Board

5.4(a) Foreign nonprofit corporations are subject to California corporate tax on their unrelated business taxable income sourced in California.¹⁰⁹

5.4(b) The tax that is imposed on this income is the greater of the corporate income tax or the corporate minimum tax.¹¹⁰

¹⁰⁸ See Section 4.5 above regarding a California nonprofit corporation that did not file Form RF-1 with the California Attorney General.

¹⁰⁹ Cal. Rev. & Tax. Code § 23731(a).

5.4(c) Failure to pay these taxes could trigger forfeiture by the FTB just as for a foreign for-profit corporation.¹¹¹

5.4(d) When the FTB is satisfied that the corporation is again compliant, it will issue a Certificate of Revivor.¹¹² Before it does so, it must check with the Secretary of State to determine that the name is still available.¹¹³ If the name is no longer available, the corporation will be required either to amend its articles of incorporation (in its home state) to change its name or to use an assumed name in California.

[End of outline.]

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¹¹⁰ *Id.*, Cal. Rev. & Tax. Code § 23151(f)(2) (income tax at 8.84%), 23153(d)(1) (\$800 annual minimum tax), 23501(c) (reference to Section 23151).

¹¹¹ Cal. Rev. & Tax. Code § 23301(a)(b).

¹¹² Cal. Rev. & Tax. Code § 23305a. The FTB is authorized to accept a assumption of liability from another person or entity, a bond, a deposit, or other security for the amount due. Cal. Rev. & Tax. Code § 23305.2.

¹¹³ *Id.*