

# California Non Profit Corporation Law

## Laws of Note for Religious Nonprofits Enacted in 2015

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### **New Law Streamlines Dissolution for Dormant Nonprofit Corporations in California**

Approximately 150,000 nonprofit corporations are registered in California. However, many of them are dormant. If these inactive corporations fail to make routine filings with the Secretary of State (SOS) and Franchise Tax Board (FTB), they risk triggering a series of events. First, they risk losing their good standing for failing to file a simple Statement of Information. If this filing is not attended to, they will lose any tax exemption they have with the FTB. At that point, minimum franchise taxes (\$800), penalties and interest will begin to accrue and will continue indefinitely until the corporation dissolves. The problem, however, is that nonprofit corporations must reinstate their good standing with the SOS and FTB (including paying all accrued fees, penalties and interest) before they have the privilege of dissolving in California. Furthermore, even if they pay back taxes, interest and penalties, many dormant corporations need to reappoint boards of directors and convene meetings simply to dissolve.

Because of these powerful disincentives, many nonprofit corporations simply walk away, neither reinstating their good standing nor paying a compounding bill to the State. Predictably, the State's system has become choked with inactive corporations with no intention of reinstating and no desire (or ability) to pay back taxes or dissolve.

Recognizing the situation a new law (AB 557) signed into existence by Governor Brown on September 30, 2015 to help resolve this. The bill will take effect in 2016. The administrative dissolution/surrender process will help clean up the State's records by removing numerous inactive corporations.

**Administrative Dissolution or Surrender.** Under current California law, nonprofit corporations that have been suspended by the FTB cannot dissolve until they reinstate their good standing with the FTB. Under the new law, any domestic nonprofit corporation that has been suspended by the FTB for *48 continuous months* will be "administratively dissolved" by the SOS. Likewise, any foreign nonprofit corporation qualified to do business in California whose corporate powers have been forfeited for 48 continuous months will have its qualification to do business in California "administratively surrendered."

Before administrative dissolution or administrative surrender takes effect, the FTB will notify the affected corporation. While most of these notices will likely go to corporations that have no interest in being resurrected, corporations that wish to remain in existence may object to the administrative dissolution or surrender. The corporation will have 60 days to object, and another 90 days from the date of the objection to resolve all outstanding requirements with the FTB. If the corporation files no objection, or if the outstanding requirements are not met, the corporation will be administratively dissolved or will have its qualification to do business in California administratively surrendered.

**Tax Amnesty.** Upon administrative dissolution or surrender, the nonprofit corporation's liabilities for qualified taxes, interest, and penalties will be abated. Qualified taxes includes any minimum franchise tax that might be due, but does not include taxes imposed on an organization's unrelated business taxable income. Qualified penalties include those assessed for failure to file a Statement of Information with the SOS. (*Caution:* this bill will not discharge nonprofit corporations' liabilities to creditors other than the FTB).

**Short-Form Dissolution.** AB 557 will also allow nonprofit corporations to enjoy a benefit already available to their for-profit counterparts. California law requires both nonprofit and for-profit corporations to file a Certificate of Dissolution with the SOS when they seek to dissolve; however, in lieu of this certificate, for-profit corporations that meet certain requirements may file a Short-Form Certificate of Dissolution within 12 months of filing of their articles of incorporation. AB 557 will make this option available to nonprofit corporations, as well, but the filing period will be 24 months from the date of filing. This period will give nonprofit corporations a reasonable time to determine that a new corporation does not really need to exist.

**Abatement of Taxes, Interest, and Penalties upon Loss of Exemption.** Under AB 557, nonprofit corporations that had their state or federal tax exempt status revoked, or that never did business in California, may request an abatement of unpaid qualified taxes, interest, and penalties for taxable years in which they did no business. "Doing business" is defined as "engaging in any transaction for the purpose of financial or pecuniary gain or profit." To take advantage of this abatement, the corporation must (1) show that it has ceased all business operations; and (2) dissolve within 12 months from the date of filing the request for abatement.

**Housecleaning Time?** If you have any corporations currently not operating, AB 557 now offers a way to simply and efficiently relieve the corporation of any accruing taxes and shut them down.

*If you have any questions or would like to discuss your specific tax needs, we recommend you contact your organizations' CPA or tax professionals. If you do not have a tax professional you can contact CMA at [info@cmanational.org](mailto:info@cmanational.org) or 408-568-0649 and we would be happy to answer any questions we can and then assist you in finding a qualified professional in your area to assist you.*