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Get Your Filings In On Time – California’s Regulatory Agencies Talk to Each Other!

“An ounce of prevention is worth a pound of cure.” – Benjamin Franklin

Most nonprofits in California must provide updated information and complete periodic regulatory filings with three California regulatory agencies: the Secretary of State (SOS), the Franchise Tax Board (FTB), and the Office of the Attorney General (AG). Over the past couple of years, we have noticed that these three agencies have become better at communicating with each other and at coordinating their efforts. The agencies’ databases periodically connect to provide automated updates to each other. This means that if a nonprofit entity misses a filing or fails to respond to a notice from one agency, it may end up facing severe consequences from another, or even all three! Consequences can include, for example, loss of the entity’s state-level tax-exempt status, loss of the right to operate in California, and loss of the right to solicit donations in California.

The following is a general overview of the filing requirements most nonprofit entities must meet in California, and some ways the SOS, the FTB, and the AG coordinate to impose consequences when the requirements are not met.

Secretary of State – Business Programs

1. Initial incorporating (domestic) or qualifying (foreign) document
2. Initial statement of information (due 90 days after incorporating or qualifying)
3. Periodic statement of information (biennial for domestic; annual for foreign)

If an entity’s statement of information remains unfiled 60 days after its due date, the SOS may impose a late fee, which the FTB automatically adds to the entity’s tax obligation. After 120 days beyond the due date, the SOS may issue an **SOS Suspension or Forfeiture**.

Suspended or forfeited status suspends (or for foreign corporations, causes the forfeiture of) an entity’s powers, rights, and privileges in California, including the right to defend itself in a lawsuit or use the entity’s name.

If an entity’s status is suspended/forfeited by both the FTB (discussed below) and the SOS, the SOS will not clear the suspension/forfeiture until the entity has met the revivor requirements of **both** the SOS and the FTB.

Franchise Tax Board – Exempt Organizations Unit

1. Application for state-level exemption
2. Annual tax returns (same due date as federal tax return)

RELATED CATEGORIES

- Attorney General, IRS, Franchise Tax Board, and Property Tax Proceedings
- Formation & Tax Exempt Status
- Private Foundations
- Public Charities
- Religious Institutions
- Unions, Associations, Clubs & Other Tax-Exempt Organizations

AUTHOR



Elisabeth M. Ponsano
Paralegal Supervisor

ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

EDITORS



Eric K. Gorovitz
Principal

The FTB reviews an entity's status with the AG and the SOS when evaluating an entity's application for state-level tax exemption. If the entity is not current with its AG or SOS filing obligations, the FTB will put the application on hold until those filings and registration are brought up to date. If filings are not brought current in the allotted time period, the FTB will deny the application.

The FTB will automatically revoke an entity's state-level tax-exempt status and report the entity to the SOS as **FTB Suspended /Forfeited** if the entity fails to:

- file state tax returns for three consecutive years;
- pay outstanding amounts owed to the FTB, such as the late fee imposed for failure to file a statement of information with the SOS;
- resolve its delinquent, suspended, or revoked status with the AG (as discussed below); or
- respond to notices from the FTB.

Attorney General's Registry of Charitable Trusts

1. Initial Registration (due within 30 days of first receipt of assets in California)
2. Annual Report (due annually; same due date as federal tax return)

The AG's Registry of Charitable Trusts may designate entities that fail to file annual reports as **delinquent**. Entities that are delinquent with the AG may not operate or solicit donations in California.

If a delinquent entity fails to respond to AG notices and remedy its delinquency, the AG may suspend the entity, revoke its registration, and direct the FTB to revoke the entity's state-level tax-exempt status. (As discussed above, this also results in the entity becoming FTB Suspended/Forfeited.)

As you can see, the consequences for missing required filings with any one of these agencies can be severe, and resolving the issues can become costly. The best way to avoid these pitfalls is to know what your organization's filing obligations are, and complete and file them on time.