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## New Law Eases Dissolution of Inactive California Nonprofit Corporations.

California's nonprofit sector is vibrant and lively. Nonprofit entrepreneurs form new entities in California every day, with great hopes for garnering support and tackling society's pressing problems or serving constituencies with specialized needs.

Nonetheless, despite good ideas and best intentions, sometimes things just don't work out as planned. When that happens, nonprofit founders are stuck with regulatory compliance obligations associated with maintaining a nonprofit corporation, or they must embark on a potentially cumbersome process of dissolution.

A new law in California, [AB 557](#), makes it easier to get out from under the consequences of a failed nonprofit enterprise in two ways: streamlined dissolution, and administrative dissolution/surrender.

### *Streamlined Dissolution*

To be eligible for streamlined dissolution, which is available as of January 1, 2016, the dissolving corporation must file the new Domestic Nonprofit Corporation **Short Form Certificate of Dissolution** (Form DSF NP) within **24 months** of the date of incorporation. In addition, the filer must declare, under penalty of perjury, all of the following (using statutory language set forth on the Form):

- › The corporation has no debts or other liabilities (other than tax liability, or as provided in California Corporations Code section 6610.5(d), 8610.5(d) or 9680.5(d));
- › The corporation's tax liability, if any, will be satisfied on a taxes-paid basis or assumed by a person, corporation, or other business entity;
- › The final tax return has been or will be filed with the Franchise Tax Board ("FTB");
- › The corporation was created in error;
- › The corporation has not issued memberships, and if the corporation has received payments for memberships, those payments have been returned to those making payments;
- › The majority of the directors (or incorporators, if directors were not named and none have been elected) authorized the dissolution and elected to dissolve the corporation; and
- › The assets have been distributed to the persons entitled thereto or no assets have been acquired.

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### 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.

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A nonprofit corporation that successfully dissolves using this process may also be entitled to abatement of taxes, interest, and penalties assessed for taxable years in which the nonprofit corporation certifies that it was not doing business. See new Section 23156 of the California Revenue and Taxation Code for more information about abatement.

The streamlined dissolution procedures are set forth in new Sections 6610.5 (public benefit), 8610.5 (mutual benefit), and 9680.5 (religious) of the California Corporations Code.

#### *Administrative Dissolution/Surrender*

AB 557 also establishes procedures for the administrative dissolution (for domestic corporations) or surrender (for foreign corporations) of an abandoned nonprofit corporation that, as of January 1, 2016, or later, has been suspended from doing business in California for at least **48 consecutive months**.

The new law requires the Franchise Tax Board (“FTB”) to mail written notice of the pending dissolution/surrender to the corporation’s last known address, and the California Secretary of State to post notice on the Secretary’s web site for 60 days.

If the corporation does not submit to the FTB a written objection to the proposed dissolution/surrender during the 60-day notice period, then it will be administratively dissolved or surrendered.

If the corporation objects in writing during the 60-day notice period, then it will have 90 days from the date of the written notice to pay any owed taxes, penalties, and interest and file a current Statement of Information (Form SI-100), or it will be administratively dissolved/surrendered at the end of the 90-day period. (The FTB is authorized to grant one 90-day extension.)

Upon administrative dissolution/surrender, any taxes, penalties, and interest owed by the corporation **shall be abated** (although liability to creditors is not discharged by virtue of the administrative dissolution/surrender).

The procedures for administrative dissolution/surrender are set forth in new Section 5008.9 of the Corporations Code.

**Correction:** The original post included an incorrect reference to a section of California law, which has now been corrected. The new abatement provision is in Section 23156 of California Revenue and Taxation Code, not of the California Corporations Code.