

The Law of Suspended Corporations in California

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In California, both the Secretary of State's office and the Franchise Tax Board have the authority to suspend a California corporation. The Secretary of State's office can suspend a corporation based upon the failure to file and pay the annual Statement of Information. This statement contains the identity of the officers and directors of the corporation, as well as its agent for service of

process. The failure to file a Statement of Information on time may result in a \$250.00 late fee.

The Franchise Tax Board has the authority to suspend a corporation based upon the failure to pay the minimum tax of \$800.00 a year or the failure to pay any taxes that are owed. In addition, a corporation may be suspended for the failure to file tax returns. Tax returns are required on an annual basis even if the corporation is not doing business.

The impact of a corporation being placed in suspended status is substantial. When a corporation is suspended, it has lost all rights and privileges as a corporation and cannot legally operate. In that regard, technically a suspended corporation is required to close its business and stop all business related activity. Moreover, a suspended corporation cannot sue or defend any action in court. Furthermore, a suspended corporation that provides a service, or goods, to third parties while suspended may not be able to collect payment for such services or goods since the suspended corporation technically was not permitted to engage in any business transactions.

A California corporation can be placed back in good standing after its has been suspended by being revived or reinstated. Until the corporation corrects its suspended status, the corporation is prohibited from transacting business and any contract executed by a suspended corporation is voidable at the demand of the other party. The only exceptions to the loss of corporate privileges upon suspension are that the corporation may (1) change its name by amendment to its Articles of Incorporation and (2) apply to the Franchise Tax Board for tax exempt status.

Once notification is received of the suspension, it is important to move as quickly as possible to have the corporation revived or reinstated. A corporation that was suspended by the Secretary of State because of the failure to file the required annual Statement of Information can be revived by sending a letter to the Secretary of State along with (1) the delinquent Statement of Information and (2) the payment of the overdue fees and/or penalties imposed. Provided that the corporate name is still available, the Secretary of State will send a "Notice of Reviver" to the corporation and notify the Franchise Tax Board. If the corporation's name was taken by another corporation during the suspension period, then the Secretary of State will advise the corporation that it must change its name by amending its Articles of Incorporation before the corporation can be revived.

In the event that the corporation was suspended by the Franchise Tax Board, the suspended corporation may have its corporate privileges reinstated only by filing all delinquent tax returns and statements, paying all applicable taxes, penalties, interest and fees, and filing an application for a Certificate of Revivor with the Franchise Tax Board. Before the Franchise Tax Board issues the Certificate of Revivor, the Secretary of State must again approve the corporate name to insure that another corporation did not take the name during the period of suspension.

In summary, the potential adverse consequences that can flow from the suspension of the California corporation dictate that both the required Statement of Information and the payment of the minimum annual franchise tax and tax return be transmitted on a timely basis. While a corporation can be revived or reinstated following a suspension, the danger exists that the corporation's name will be taken by another entity during the time of the suspension. Additionally, the risk of being unable to participate in litigation, as well as the risk of having a contract voided by the other party, greatly outweigh the burden of complying with the requirements of the Secretary of State and the Franchise Tax Board.