

“We’re closing the business”

Avoid these costly mistakes when dissolving clients’ corporations

Making the decision to end a business can be difficult. But once a client makes that decision, there are some things you can do to ensure that officially ending the business in California is completed smoothly and efficiently.

First, make them aware that simply checking the final return box on their next tax return will not officially dissolve their corporation. Next, carefully follow the Secretary of State’s, www.ss.ca.gov/business/corp/corp_stkdissinfo.htm, prescribed procedures for the proper dissolution of a corporation (located in the California Corporations Code).

Pay particular attention to the timing of the filing, and make sure all documents are filled out completely and signed by the appropriate parties so the Secretary of State can accept them the first time you submit them. Otherwise, under the current laws (California Revenue and Taxation Code Section 23151) your client may be required to file another tax return, and pay additional taxes, penalties, and interest. The date the Secretary of State receives a complete and qualified application will be the conditional date of dissolution. For example:

Corporation A, filing on an annual basis, submits a letter on Dec. 15, 2002, to the Secretary of State requesting a dissolution. None of the required forms are submitted (as outlined in the California Corporations Code). Upon review, the Secretary of State determines that the documents are incomplete and informs the corporation that it must submit specific forms (Certificate of Dissolution, statement of officer(s), etc.).

Corporation A delays in submitting the forms and as a result, they do not reach the Secretary of State until Feb. 5, 2003.

The Secretary of State accepts the submitted forms and completes the filing of *Corporation A*’s dissolution. The Secretary of State informs us that the *conditional dissolution date* is actually Feb. 5, 2003, not Dec. 31, 2002, as *Corporation A* had planned.

Corporation A will be required to file an additional tax return, even though it did not conduct business or earn income for the short period ending Feb. 5, 2003. *Corporation A* must pay at least the minimum tax (we would also assess penalties and interest for a late return, if applicable). The key to this example is submitting correct forms and establishing the *conditional date of dissolution*.

Conditional date of dissolution

A corporation continues to exist until the Secretary of State establishes its *conditional date of dissolution*. This date also serves as the end of the corporation’s final tax year. For example: *Corporation B* wants to dissolve. It has a filing period of Jan. 1, 2003 to Dec. 31, 2003. The corporation files accepted dissolution forms with the Secretary of State dated June 30, 2003. Its final tax year-end will be June 30, 2003. Its final tax return will be due *two months and fifteen days* from the date of conditional dissolution as established by the Secretary of State (Sept. 15, 2003). Even if the corporation did not conduct business, or operated at a loss, it is still subject to filing requirements with a tax year-end of June 30, 2003 (as established by the Secretary of State).

Tax Clearance Certificate

A dissolving corporation must submit a completed Form FTB 3555, *Request for Tax Clearance Certificate - Corporations* (except as provided by California Corporations Code Section 1900.5).

Corporations can submit the FTB 3555 to the Secretary of State with all the other required forms. The Secretary of State will forward it to us for completion. At this point, the corporation’s dissolution will be considered *conditional* pending our issuance of the *Tax Clearance Certificate*.

Once we verify that the corporation has filed all due tax returns and paid any taxes due at the time of application, we’ll notify the Secretary of State and issue the *Tax Clearance Certificate*. The dissolution will become *final* as of the date the corporation initially filed its *Certificate of Dissolution* with the Secretary of State.

When filing the corporation’s final tax return, be sure to complete the section indicating that it is final by filling in the correct status and the applicable date. Remember, this information is based on the status and date as filed with the Secretary of State. Often we receive tax returns containing the incorrect

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Ask the Advocate

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in issuing assistance payments will occur if the property tax bill is not included with the claim form.

You can always obtain detailed information about the program by visiting our *Homeowners and Renters Assistance Program* Webpage at www.ftb.ca.gov/individuals/hra/index.html.

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information (e.g. the date that the corporation ceased doing business, the end of their tax year, or the date they completed a merger).

A corporation is considered active, and thereby subject to filing and tax requirements, until it prepares and submits its *Certificate of Dissolution* with the Secretary of State.

Consequently, when we process a tax return with a *final return* indicator, we review the account to determine if the corporation submitted a *Certificate of Dissolution* with the Secretary of State. If it hasn't, we send the corporation a notice and instructions.

We issue a tax clearance when the corporation files a form FTB 3555, *Request for Tax Clearance Certificate-Corporations*. You can download form FTB 3555 from our Forms and Publications page. Send the completed form FTB 3555 to the Secretary of State along with the documents required to dissolve. The address for the Secretary of State's office is on form FTB 3555. You can get information regarding the required documents from the Secretary of State's website at www.ss.ca.gov or call (916) 657-5448.

A corporation can obtain a *Tax Clearance Certificate* using one of these four methods:

1. Furnish an assumer - either an individual, corporate, trust, Limited Liability Company or Limited Liability Partnership
2. Post a cash deposit (minimum amount \$2,000)
3. Post a surety bond (minimum amount \$2,000)
4. Request a tax clearance certification on the basis that taxes are paid (filing of all required returns and payment of all required taxes)

Assumer basis or taxes paid basis

If the corporation is dissolving using *taxes paid* basis, it must file all tax returns and pay all taxes prior to receiving a *Tax Clearance Certificate*. Corporations choosing this method should ensure that the final return is filed as soon as they receive verification from the Secretary of State that their forms have been accepted. We will not issue a tax clearance until we receive the final return.

If the corporation is dissolving on an *assumer* basis, it must certify that an individual, corporation or other qualified entity will assume responsibility for filing a final return and paying any future taxes due.

Corporations that dissolve on the *assumer* basis may be subject to filing requirements after they receive their *Tax Clearance Certificate*. The reason is due to timing differences. A final return may not yet be due when the *Tax Clearance Certificate* is issued.

For example, *Corporation B* has a January 31 tax year-end. It submitted its dissolution documents to the Secretary of State on December 1, and received its *Tax Clearance Certificate* the following January. *Corporation B's* final return is due *two months and fifteen days from the date of conditional dissolution as established by the Secretary of State (due date is February 15)*.

The *Tax Clearance Certificate* was issued when *Corporation B* met all our requirements for formal dissolution. The tax return would be filed for the period ending on the date of the *conditional dissolution*. Section 23334 of the Revenue and Taxation Code states in part that:

The issuance of a certificate shall not

relieve the taxpayer or any individual or corporation from liability for any taxes, penalties, or interest imposed...

All corporations must file a tax return through their final tax year-end (including short periods) and pay at least the minimum tax. We include a reminder to file on the *Tax Clearance Certificate*. Corporations/assumers may receive a statutory assessment if they fail to file the final return. *Note: All tax returns remain subject to audit through normal statutory periods.*

Foreign or domestic corporation?

The above explanation applies to *dissolving domestic* stock corporations only. Foreign qualified corporations cannot dissolve in California and do not receive a conditional dissolution. They can only surrender, withdraw or merge in California. For foreign corporations, the requirement to file returns and pay taxes continues through the date of termination in California.

Three-member Board has new members

Steve Westly is the state's new Controller and now serves as chair of the three-member California Franchise Tax Board.

Carole Migden, the new chair of the State Board of Equalization is the second new member of the three member board.

Steve Peace is the new Director of the Department of Finance and is the board's third new member.