

Things to ensure when dissolving corporation

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

First, be aware that simply checking the final return box on your next tax return will not officially dissolve the corporation. Next, carefully follow the Secretary of State's, (<http://www.ss.ca.gov/business/corp>) 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) you 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 Franchise Tax Board 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 Franchise Tax Board for completion. At this point, the corporation's dissolution will be considered conditional pending Franchise Tax Board issuance of the Tax Clearance Certificate.

Once Franchise tax Board verifies that the corporation has filed all due tax returns and paid any taxes due at the time of application, Franchise Tax Board will 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. 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.

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. Franchise Tax Board will not issue a tax clearance until they 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...

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.

The information mentioned here in above is of general nature and can not be regarded as tax or legal advice. For more information, please call Anne Tahim, CPA at 714-772-4744.