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AB-2503 Corporations: limited liability companies: dissolution: cancellation: abatement of taxes. (2017-2018)

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Assembly Bill No. 2503

CHAPTER 679

An act to add Sections 2205.5 and 17713.10.1 to the Corporations Code, and to add Sections 23310 and 23311 to the Revenue and Taxation Code, relating to business.

[Approved by Governor September 22, 2018. Filed with Secretary of State September 22, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2503, Irwin. Corporations: limited liability companies: dissolution: cancellation: abatement of taxes.

(1) The General Corporation Law sets forth procedures for the creation and dissolution of a corporation. The California Revised Uniform Limited Liability Company Act governs the formation, operation, and dissolution of limited liability companies.

This bill would make a domestic corporation and a limited liability company subject to administrative dissolution or administrative cancellation, as specified, if the corporation's or company's corporate powers are, and have been, suspended by the Franchise Tax Board for a specified period of time. Prior to the administrative dissolution or administrative cancellation of the corporation or company, the bill would require the Franchise Tax Board to provide notice to the corporation or company of the pending administrative dissolution or administrative cancellation. The bill would require the Franchise Tax Board to transmit to the Secretary of State the names and Secretary of State file numbers of the corporations and companies subject to administrative dissolution or administrative cancellation. The bill would also require the Secretary of State to provide notice of the pending administrative dissolution or administrative cancellation on its Internet Web site, as specified. The bill would authorize a corporation or limited liability company to provide the Franchise Tax Board with a written objection to the administrative dissolution or administrative cancellation. If there is no written objection or the written objection fails, the bill would require the corporation or company to be administratively dissolved or administratively canceled and would provide that the certificate of the Secretary of State is prima facie evidence of the administrative dissolution or administrative cancellation. Upon administrative dissolution or administrative cancellation, the bill would abate the corporation's or company's liabilities for qualified taxes, interest, and penalties, as provided.

This bill would authorize the Franchise Tax Board to abate, upon written request by a qualified entity, as defined, unpaid qualified taxes, interest, and penalties, as defined, for the taxable years in which the entity certifies, under penalty of perjury, that it was not doing business, as defined. The bill would make this abatement conditioned on the dissolution or cancellation of the qualified entity prior to the abatement. The bill would require the Franchise Tax Board to prescribe rules and regulations to carry out these abatement provisions and would exempt these rules and regulations from the Administrative Procedure Act.

(2) Existing state constitutional law prohibits the Legislature from making any gift, or authorizing the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation.

This bill would make certain legislative findings and declarations that its provisions serve a public purpose, as provided.

(3) By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2205.5 is added to the Corporations Code, to read:

2205.5. (a) A domestic corporation, as defined in Section 167, may be subject to administrative dissolution pursuant to this section if, as of January 1, 2019, or at any time thereafter, the corporation's corporate powers, rights, and privileges are, and have been, suspended by the Franchise Tax Board pursuant to Article 7 (commencing with Section 23301) of Chapter 2 of Part 11 of Division 2 of the Revenue and Taxation Code for a period of not less than 60 continuous months.

(b) Prior to administrative dissolution of the corporation, the corporation shall be notified of the pending administrative dissolution as follows:

(1) The Franchise Tax Board shall mail written notice to the last known address of the corporation.

(2) If the corporation does not have a valid address in the records of the Franchise Tax Board, the notice provided in subdivision (d) shall be deemed sufficient notice prior to administrative dissolution.

(c) The Franchise Tax Board shall transmit to the Secretary of State the names and Secretary of State file numbers of the corporations subject to administrative dissolution pursuant to this section.

(d) The Secretary of State shall provide 60 days' notice of the pending administrative dissolution on its Internet Web site by listing the corporation's name and the Secretary of State's file number. The Secretary of State shall also, in conjunction with the information above, provide instructions for a corporation to submit a written objection of the pending administrative dissolution to the Franchise Tax Board, before the expiration of the 60 day's notice.

(e) (1) A corporation may provide the Franchise Tax Board with a written objection to the administrative dissolution.

(2) The Franchise Tax Board shall notify the Secretary of State if a written objection has been received.

(f) If a written objection to the administrative dissolution is not received by the Franchise Tax Board during the 60-day period described in subdivision (d), the corporation shall be administratively dissolved pursuant to this section. The certificate of dissolution of the Secretary of State shall be prima facie evidence of the administrative dissolution.

(g) (1) If the written objection of a corporation to the administrative dissolution has been received by the Franchise Tax Board before the expiration of the 60-day period described in subdivision (d), that corporation shall have an additional 90 days from the date the written objection is received by the Franchise Tax Board to file returns, pay or otherwise satisfy all accrued taxes, penalties, and interest, file a current Statement of Information with the Secretary of State, fulfill any other requirements to be eligible, and apply for revivor.

(2) (A) If the conditions in paragraph (1) are satisfied, the administrative dissolution shall be canceled.

(B) If the conditions in paragraph (1) are not satisfied, the corporation shall be administratively dissolved pursuant to this section as of the later of the date that is 90 days after the receipt of the written objection or after the period in paragraph (3), if so extended.

(3) The Franchise Tax Board may extend the 90-day period in paragraph (1), but for no more than one period of 90 days.

(h) Upon administrative dissolution pursuant to this section, the corporation's liabilities for qualified taxes, interest, and penalties, as defined in paragraph (2) of subdivision (b) of Section 23310 of the Revenue and Taxation Code, if any, shall be abated. Any actions taken by the Franchise Tax Board to collect the abated liability shall be released, withdrawn, or otherwise terminated by the Franchise Tax Board and no subsequent administrative or civil action shall be taken or brought to collect all or part of that amount.

(i) If the corporation is administratively dissolved pursuant to this section, the liability to creditors, if any, is not discharged. The liability of the directors, shareholders, transferees, or other persons related to the administratively dissolved corporation is not discharged.

(j) The administrative dissolution of a corporation pursuant to this section shall not diminish or adversely affect the ability of the Attorney General to enforce liabilities as otherwise provided by law.

(k) No administrative appeal, writ, or other judicial action may be taken based on the Franchise Tax Board's or the Secretary of State's actions pursuant to this section, except pursuant to subdivision (h) if related to repayment of amounts erroneously received after administrative dissolution has occurred.

(l) Upon administrative dissolution, the corporate rights, powers, and privileges of the corporation shall cease.

SEC. 2. Section 17713.10.1 is added to the Corporations Code, to read:

17713.10.1. (a) A domestic limited liability company, as described in subdivisions (g) and (k) of Section 17701.02, may be subject to administrative cancellation pursuant to this section if, as of January 1, 2019, or at any time thereafter, the limited liability company's powers, rights, and privileges are, and have been, suspended by the Franchise Tax Board pursuant to Article 7 (commencing with Section 23301) of Chapter 2 of Part 11 of Division 2 of the Revenue and Taxation Code for a period of not less than 60 continuous months.

(b) Prior to administrative cancellation of the limited liability company, the limited liability company shall be notified of the pending administrative cancellation as follows:

(1) The Franchise Tax Board shall mail written notice to the last known address of the limited liability company.

(2) If the limited liability company does not have a valid address in the records of the Franchise Tax Board, the notice provided in subdivision (d) shall be deemed sufficient notice prior to administrative cancellation.

(c) The Franchise Tax Board shall transmit to the Secretary of State the names and Secretary of State file numbers of limited liability companies subject to administrative cancellation pursuant to this section.

(d) The Secretary of State shall provide 60 days' notice of the pending administrative cancellation on its Internet Web site by listing the limited liability company's name and the Secretary of State's file number. The Secretary of State shall also, in conjunction with the information above, provide instructions for the limited liability company to submit a written objection of the pending administrative cancellation to the Franchise Tax Board, before expiration of the 60 day's notice.

(e) (1) A limited liability company may provide the Franchise Tax Board with a written objection to the administrative cancellation.

(2) The Franchise Tax Board shall notify the Secretary of State if a written objection has been received.

(f) If a written objection to the administrative cancellation is not received by the Franchise Tax Board during the 60-day period described in subdivision (d), the limited liability company shall be administratively canceled pursuant to this section. The certificate of the Secretary of State shall be prima facie evidence of the administrative cancellation.

(g) (1) If the written objection of a limited liability company to the administrative cancellation has been received by the Franchise Tax Board before the expiration of the 60-day period described in subdivision (d), that limited liability company shall have an additional 90 days from the date the written objection is received by the Franchise Tax Board to file returns and pay or otherwise satisfy all accrued taxes, penalties, and interest, file a current Statement of Information with the Secretary of State, change the entity name if no longer available, and fulfill any other requirements to be eligible and apply for revivor.

(2) (A) If the conditions in paragraph (1) are satisfied, the administrative cancellation shall be withdrawn.

(B) If the conditions in paragraph (1) are not satisfied, the limited liability company shall be administratively canceled pursuant to this section as of the later of the date that is 90 days after the receipt of the written objection or after the period in paragraph (3), if so extended.

(3) The Franchise Tax Board may extend the 90-day period in paragraph (1), but for no more than one period of 90 days.

(h) Upon administrative cancellation in accordance with this section, the limited liability company's liabilities for qualified taxes, interest, and penalties, as defined in paragraph (2) of subdivision (b) of Section 23310 of the Revenue and Taxation Code, if any, shall be abated.

(i) Any actions taken by the Franchise Tax Board to collect the abated liability shall be released, withdrawn, or otherwise terminated by the Franchise Tax Board and no subsequent administrative or civil action shall be taken or brought to collect all or part of that amount. Any amounts erroneously received by the Franchise Tax Board in contravention of this section may be credited and refunded in accordance with Article 1 (commencing with Section 19301) of Chapter 6 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(j) An administrative appeal, writ, or other judicial action shall not be taken from the Franchise Tax Board's or the Secretary of State's actions under this section except as provided under subdivision (i) related to repayment of amounts erroneously received after administrative cancellation has occurred.

(k) Upon administrative cancellation, the limited liability company's rights, powers, and privileges shall cease.

SEC. 3. Section 23310 is added to the Revenue and Taxation Code, to read:

23310. (a) The Franchise Tax Board may abate, upon written request by a qualified entity, unpaid qualified taxes, interest, and penalties for the taxable years in which the qualified entity certifies, under penalty of perjury, that it was not doing business, within the meaning of subdivision (a) of Section 23101, has ceased doing business, and does not have any remaining assets in the business.

(b) For purposes of this section:

(1) "Qualified entity" means a domestic corporation subject to Division 1 (commencing with Section 100) of Title 1 of the Corporations Code or a domestic limited liability company subject to Title 2.6 (commencing with Section 17701.01) of the Corporations Code that satisfies either of the following conditions:

(A) Was never doing business, within the meaning of subdivision (a) of Section 23101, in this state at any time after the time of its incorporation in this state.

(B) Was previously doing business, within the meaning of subdivision (a) of Section 23101, and has filed all returns required under Section 18601, 18633, or 18633.5 for the tax years prior to cessation of doing business.

(2) "Qualified taxes, interest, and penalties" means tax imposed under Section 17941 or 23153, and associated interest and penalties, and any penalties imposed under Section 19141. "Qualified taxes, interest, and penalties" does not include tax imposed under Section 17942, 23501, or 23731, or associated interest or penalties, and does not include additional tax, penalties, or interest resulting from a final or pending state or federal audit.

(c) In no instance shall the taxes abated pursuant to subdivision (a) exceed the minimum or annual tax imposed under Section 17941 or 23153.

(d) A qualified entity shall establish that it has ceased all business operations and has no remaining assets at the time of filing the request for abatement pursuant to this section.

(e) The abatement of unpaid qualified tax, interest, and penalties pursuant to this section is conditioned on the dissolution of a corporation or the cancellation of a limited liability company of the qualified entity with the Secretary of State prior to the abatement.

(f) (1) The Franchise Tax Board may prescribe any regulations that may be necessary or appropriate to implement the purposes of this section.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.

SEC. 4. Section 23311 is added to the Revenue and Taxation Code, to read:

23311. (a) If a qualified entity, as defined by Section 23310, has been dissolved or canceled as described by Section 23310, but continues to do business within the meaning of subdivision (a) of Section 23101, or has any remaining assets which were not disclosed by the qualified entity at the time of request for abatement under Section 23310, the total tax, interest, and penalties that were abated pursuant to Section 23310 shall be immediately due and payable. In addition, a penalty in an amount equal to 50 percent of the total tax abated pursuant to Section 23310, plus accrued interest payable pursuant to Section 19101 on that amount for the period or periods beginning on the last date prescribed by law for the payment of that tax, determined without regard to extensions, and ending on the date the tax was abated, shall be imposed.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401) and Part 11 (commencing with Section 23001).

(c) Article 3 (commencing with Section 19031) of Chapter 4 of Part 10.2, relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a) or to previously abated tax, interest, and penalties that are due and payable pursuant to this section.

SEC. 5. The Legislature finds and declares that this act, and its retroactive application, serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.