



If you have any questions regarding this Alert, please contact any of the Venable lawyers listed below.

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## California Franchise Tax Board to Implement LLC Suspension Process Similar to Corporate Suspension Process

The California Franchise Tax Board (the "FTB") recently announced that it plans to implement a suspension process for limited liability companies ("LLCs") similar to the suspension process that currently exists for corporations that have not complied with their California state tax payment and filing requirements. Even though not specifically addressed in the FTB's announcement, it is also likely that the FTB will step up the enforcement of its existing suspension process against corporations, given the need to raise state tax revenue to offset the State of California's impending budget crisis.

### Key State Tax Payment and Filing Requirements

In light of the FTB's announcement, both LLCs and corporations that are formed or do business in California should ensure that they comply with all California state tax payment and filing requirements. The following summarizes some of these key requirements:

- Sections 17941 and 23153 of the California Revenue and Taxation Code (the "Code") require all LLCs and corporations, respectively, that are formed or doing business in California to pay an annual franchise tax of \$800.
- For an LLC, in addition to the annual franchise tax, Section 17942 of the Code requires the LLC to pay a progressive fee (commonly referred to as the "gross receipts" tax) in the event that its total income derived from or attributable to California sources is at least \$250,000. LLCs are also required to file an annual informational tax return on FTB Form 568.
- For a corporation, in addition to the annual franchise tax, Section 23151 of the Code requires each corporation (other than banks and financial corporations) that is doing business in California to pay a state income tax equal to 8.84% (2.5% for "S" corporations) of the corporation's net income derived from or attributable to California sources. Corporations are also required to file an annual tax return on FTB Form 100 (FTB Form 100S for "S" corporations).

### The Suspension Process and Its Impact

If an LLC or corporation has failed to pay any required state taxes or file any required state tax returns, the FTB will send a notification to the delinquent entity at its last known address sixty (60) days prior to any proposed suspension. If the entity does not cure its failure to file or failure to pay by the end of the sixty (60)-day period, the FTB will notify the California Secretary of State (the "SOS") of such failure, and the SOS will suspend the entity's rights and privileges.

If an LLC or corporation's rights and privileges are suspended, the entity will be disqualified from exercising its rights, powers and privileges in California during the period of suspension. In particular, contracts that the entity enters into in California during the period of suspension will be subject to voidability by any other party to the contract. In addition, during the period of suspension, the entity will not be entitled to sell, transfer, or exchange real property in California, nor will it be entitled to initiate legal claims by bringing a lawsuit in California against any third parties.

### What Steps Should You Take Now?

Given the potentially adverse consequences of suspension and the likelihood that the FTB will pursue suspensions of both LLCs and corporations more aggressively, all LLCs and corporations that are formed, or that do business, in the State of California should undertake a comprehensive review of their records to confirm that they have complied with all California state tax payment and filing requirements. If an LLC or corporation is not currently in compliance with these requirements, it should immediately address any payment or filing deficiencies so that it does not become subject to suspension by the SOS.

Venable's Business Transactions group is here to help. If you any questions regarding the foregoing California state tax payment and filing requirements, or if you need assistance in reviewing your records or taking remedial action to address any payment or filing deficiencies, please contact [David C. Meyer, Esq.](#) or [Brandt U. Mori, Esq.](#) located in Venable's Los Angeles, California office.

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