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What can you do if your suspended corporation receives a check?

A corporation may pay a penalty and receive forgiveness for entering into contracts that otherwise would be voidable -- but it's unclear what happens to the person who acts for the corporation.

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When a corporation has finished its useful life, California provides a legal mechanism and procedure to wind down the corporation and dissolve it. If a corporation properly dissolved unexpectedly receives a check, large or small, as part of its winding down process, that check may be cashed and distributed.

However, many people simply stop maintaining the corporation. This leads to the corporation being suspended. A suspended corporation cannot conduct business; the company has lost corporate powers, rights and privileges, including not only the voidability of contracts formed during suspension, but the right to maintain a lawsuit in the state as well as the right to defend against a law suit. *Damato v. Slevin*, 214 Cal. App. 3d 668, 673 (1989).

California goes one step farther and makes it a misdemeanor for any person to transact or attempt to transact business through a corporation that has been suspended by the Franchise Tax Board. Violations are punishable by up to a $1,000 fine and/or up to a year in prison. *See* Cal. Rev. & Tax. Code Section 19719. This prohibition also extends to lawyers, but there is a carve out for insurance defense counsel.

So what can you do if your suspended corporation receives an unexpected check? Your only option is to reinstate the corporation, which will require, among other things, the payment of all unpaid taxes and associated penalties.

Fortunately, California has generous provisions for corporations to be relieved from suspension or forfeiture. Corporations suspended by the FTB may be relieved from suspension of forfeiture by applying to the FTB for revivor of the corporation by: (1) filing all delinquent tax returns; (2) paying all delinquent tax balances, including penalties, fees and interest; and (3) filing an application for certificate of revivor (Form FTB 3557 BC). See Cal. Corp. Code Section 23305.

California not only allows suspended or forfeited corporations to be revived, the state also allows the corporation at the time of the filing of the revivor application to apply for and receive relief from contract voidability. Cal. Corp. Code Section 23305.1. Most of the requirements for relief from contract voidability are the same as for revivor; however, pursuant to subsection (b)(1)(B), the FTB may assess a daily penalty of $100 for each day of the period for which relief from voidability is granted, not to exceed the total amount of the tax for the period for which relief is requested. This often means a double tax payment for reinstatement and revivor. The application for relief from contract voidability (FTB Form 2518 BD C2) and is available on the FTB's website. However, a call to determine the fee/penalty is required.

In short, a corporation may pay a penalty and receive forgiveness for entering into contracts that otherwise would be voidable. This is much in the nature of paying for a civil indulgence.

What remains unclear is what happens to the person who, in violation of Section 19719 of California Revenue and Taxation Code, attempts to transact business while the corporation is suspended, but then the corporation is subsequently revived and the civil indulgence of relief from contract voidability paid for and obtained. This appears to be a question of first impression should it ever reach the courts.

One the one hand, a corporation only "acts" through persons acting on its behalf. So, if the corporation is forgiven or granted relief from the consequences of that action, then it seems that individuals acting on behalf of the corporation should receive similar relief. The public's interest in collecting funds from a penalty or fee for relief from contract voidability supports the argument. On the other hand, allowing flow-through relief could reduce the deterrent effect of Section 19719 of the California Revenue and Taxation Code, so the public policy reasons of having a such a deterrent may carry the day.

Until the courts or lawmakers act to clarify the situation, we are left with speculation.