



GUIDE FOR REINSTATEMENT OF GOOD STANDING WITH CORPORATE AND TAX REGULATORY AGENCIES FOR CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATIONS

A California nonprofit public benefit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code and section 23701d of the California Revenue and Taxation Code needs to be properly and currently qualified and registered as a nonprofit tax-exempt organization with the various federal and state agencies regulating its activities. If a nonprofit fails to comply with the registration and/or reporting requirements of one or more of the relevant state and federal agencies, it may lose its corporate and/or tax-exempt status.

Depending on the agency or agencies with which the nonprofit organization is no longer in good standing, an out-of-compliance nonprofit may be subject to state or federal income tax, be prohibited from soliciting funds from the public, be unable to enter into contracts, and/or no longer be able to engage in charitable activities. Moreover, donations contributed to the nonprofit during the period in which the nonprofit is out of compliance may not be tax deductible. Therefore, it is critical for a nonprofit that is out of compliance to rectify the situation immediately.

Public Counsel's Community Development Project has designed this guide to assist directors and executive management staff of California nonprofit public benefit corporations, as well as attorneys who are assisting such corporations on a *pro bono* basis, in understanding how to bring a corporation back into compliance with relevant state and federal agencies – specifically, the California Secretary of State, California Attorney General, California Franchise Tax Board, and Internal Revenue Service.



This publication should not be construed as legal advice. It is very important to consult with an attorney to ensure that the general rules described in this guide are appropriately applied to an organization's specific circumstances.

Public Counsel's **Community Development Project** builds strong foundations for healthy, vibrant and economically stable communities through its comprehensive legal and capacity building services for nonprofits that assist low income neighborhoods in Los Angeles County. If your organization needs legal assistance, or to access the latest version of this document, call (213) 385-2977, extension 200 or visit www.publiccounsel.org/practice_areas/community_development.

I. What Is Good Standing?

A California nonprofit public benefit corporation exempt from taxation under section 501(c)(3) of the Internal Revenue Code and section 23701d of the California Revenue and Taxation Code¹ needs to maintain good standing with the California Secretary of State, Internal Revenue Service (IRS), California Franchise Tax Board (FTB), and California Attorney General (AG). This means that it must be properly and currently registered with each of these regulatory agencies. In order to maintain its good standing, a nonprofit must comply with each of the above agency's registration and ongoing reporting requirements. Failing to do so may subject the organization to an automatic suspension or revocation of status.² The specific registration and filing requirements and the consequences for failure to file are discussed below for each agency. In order to avoid revocation or suspension, or to respond to revocation or suspension promptly, it is important for a nonprofit to ensure that its current mailing address is on file with each agency – otherwise, it may not receive notices from a regulatory agency informing it that revocation or suspension has occurred or is imminent.

A. California Corporate Status

The California Secretary of State may suspend a nonprofit's "corporate powers, rights, and privileges" for failure to file the Statement of Information (Form SI-100), which is due within ninety days of filing articles of incorporation and every two years from the date of incorporation.³ After a sixty-day grace period (in which the nonprofit is given a chance to file the missing Statement of Information), the Secretary of State "certifies" the nonprofit for suspension by giving notice to the FTB, which then assesses a \$50 penalty on the organization. The suspension of the nonprofit's corporate powers becomes effective when the Secretary of State notifies the FTB and the nonprofit of the suspension.⁴

The FTB may also suspend a nonprofit's corporate status (in addition to revoking tax-exempt status, as discussed below in [Section I.C](#)) if the nonprofit fails to file an annual return or pay an

¹ The term "nonprofit public benefit corporation" is a specific corporate classification as defined under California nonprofit corporation law in section 5111 of the California Corporations Code. The term "tax exempt" refers to an organization's income tax status under federal and state tax codes. Although not all nonprofit corporations are tax exempt, this guide is written for nonprofit corporations operating in California that have obtained tax-exempt status under section 501(c)(3) of the Internal Revenue Code and section 23701d of the California Revenue and Taxation Code. This guide will refer to such corporations as "nonprofits" or "nonprofit organizations."

² A nonprofit may also lose its corporate or tax-exempt status for other reasons, including but not limited to misuse of charitable assets, intervention in political campaigns, or failure to engage in charitable activities. This guide focuses on reinstatement when a nonprofit loses its good standing due to failure to register and report with federal and state corporate and tax agencies.

³ Cal. Corp. Code §§ 5008.6(a); 6210. The Statement of Information can be filed online at: <http://www.sos.ca.gov/business-programs/business-entities/statements> (information page) and <https://businessfilings.sos.ca.gov/> (filing page). Send hard copies to Secretary of State, Statement of Information Unit, P.O. Box 944230, Sacramento, CA 94244. A filing fee of \$20 is required.

⁴ Cal. Corp. Code §§ 5008.6; 6810.

amount due,⁵ or pay the penalty for failure to file the Statement of Information within eleven months.⁶ Although the FTB is not required to give notice before suspension, corporations have reported receiving at least one notice of delinquency before suspension is effective.⁷

Consequence of loss of corporate good standing with California: If a nonprofit has been suspended by the Secretary of State and/or FTB, its name can be adopted by another corporation.⁸ A suspended corporation is unable to participate in litigation (e.g., file a lawsuit or answer a complaint)⁹ or transfer real property.¹⁰ Further, contracts made while the corporation was suspended are voidable by the other party.¹¹ Moreover, the FTB has the power to revoke the state tax exemption of a suspended nonprofit – in fact, the FTB has stated that it will automatically revoke state tax exemption for any suspended nonprofit.¹² See [Section I.C.](#) below for more information on revocation of California tax exemption.

How do I check an organization's corporate status? To check compliance with the Secretary of State, conduct an entity search online at <https://businesssearch.sos.ca.gov/CBS/Detail> – the status will be listed as “Active” if the nonprofit is in good standing. If the nonprofit has lost corporate status with either the Secretary of State or the FTB, it will be listed as “SOS Suspended” or “FTB Suspended.”

How do I update my address with the Secretary of State? A nonprofit's address can be confirmed through an entity search at <https://businesssearch.sos.ca.gov/CBS/Detail>. If the address is out of date, a nonprofit should file a new Statement of Information.¹³

B. Federal Tax Exemption

Nonprofits are required to file an annual return or notice with the IRS. If an organization's gross receipts are equal to or less than \$50,000, it can file Form 990-N, which is a simple form filed electronically. If its gross receipts are less than \$200,000, and its total assets at the end of the year are less than \$500,000, it may file Form 990-EZ. Otherwise, it must file Form 990. (However, all private foundations, regardless of gross receipts, must file a Form 990-PF).¹⁴ These forms or

⁵ Cal. Rev. & Tax. Code § 23775; 18 Cal. Code Reg. § 23775(a).

⁶ Cal. Rev. & Tax. Code § 23301(c).

⁷ See 18 Cal. Code Reg. § 23775(b).

⁸ *Boyer v. Jones*, 88 CA 4th 220, 226 (2001).

⁹ *Palm Valley Homeowners Ass'n v. Design MTC*, 85 CA 4th 553, 559 (2000)

¹⁰ Cal. Rev. & Tax. Code §23302(d).

¹¹ Cal. Rev. & Tax. Code §§ 23304.1(a)(d); 23038 (a).

¹² 18 Cal. Code Reg. § 23775(c); see also Franchise Tax Board (FTB), Suspended Exempt Entities, at https://www.ftb.ca.gov/businesses/Exempt_organizations/Suspended.shtml [hereinafter FTB, Suspended Exempt Entities].

¹³ See note 3 for instructions on filing a Statement of Information.

¹⁴ Internal Revenue Service (IRS), 2015 Instructions for Form 990, pp. 2-4, available at <https://www.irs.gov/pub/irs-pdf/i990.pdf>. All organizations exempt from taxation under section 501(c)(3) are designated as either a public charity or a private foundation. A private foundation is funded from one source (e.g., an individual or a corporation) and its ongoing funding is in the form of investment income, rather than contributions, grants, or program-related income. Private foundations are subject to additional regulations and excise taxes.

notices must be filed on the fifteenth day of the fifth month after the organization's accounting period ends.¹⁵ If a nonprofit fails to file the required return or notice for three consecutive years, it will automatically lose its federal tax exemption.¹⁶ The IRS will send a letter to the nonprofit informing it that it has lost its federal tax exemption – the effective date of the revocation will be the date the third annual return was due.

Consequences of loss of federal tax-exempt status: Loss of federal tax-exempt status subjects the organization to federal income tax. Also, donors will not be able to receive a charitable income tax deduction for their donations to the nonprofit after its tax-exempt status has been revoked (although, as discussed in [Section III](#) below, it may be able to reinstate its tax-exempt status retroactively to the date of revocation).

How do I check if an organization is exempt with the IRS? Federal tax-exempt status can be confirmed through an IRS online tool called EO Select Check at <http://apps.irs.gov/app/eos/>. An Employee Identification Number (EIN) is necessary to complete the search. A donor may rely on EO Select, which is updated weekly, to determine whether an organization is eligible to receive tax-deductible donations.¹⁷

How do I update my address with the IRS? A nonprofit must report address changes on its annual return (such as Form 990, 990-EZ, or 990-N). An organization may also report a change of address by filing Form 8822-B, available at <https://www.irs.gov/pub/irs-pdf/f8822b.pdf> or calling the IRS Customer Service Center at (877) 829-5500.

C. California Tax Exemption

A nonprofit may lose its California charitable tax exemption under a variety of circumstances. First, a nonprofit faces an automatic revocation of its state tax exemption if it fails to file a yearly return with the FTB – specifically, the Form 199 or Form 199-N (if gross receipts are normally equal to or less than \$50,000) – three years in a row.¹⁸ These forms are similar to the Form 990 and must be filed by the fifteenth day of the fifth month after the organization's accounting period ends.¹⁹ Second, if a nonprofit obtained state tax-exemption by filing FTB Form 3500A (rather than Form 3500) and its federal tax exemption is revoked, the nonprofit must notify the FTB, which will then revoke the state tax exemption.²⁰

¹⁵ Treas. Reg. § 1.6033-2(e); IRS, Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), at <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>

¹⁶ I.R.C. § 6033(j)(1).

¹⁷ IRS, “Exempt Organizations Select Check Frequently Asked Questions,” updated April 23, 2012, 1, available at http://www.irs.gov/pub/irs-tege/faqs_eo_selectcheck.pdf; see also Rev. Proc. 2011-33, 2011-1 C.B. 887 (allowing a donor to rely on Publication 78 data for determining tax-deductibility of donation).

¹⁸ Cal. Rev. & Tax. Code § 23772((b)(14).

¹⁹ Cal. Rev. & Tax. Code § 23772(a)(1), (b)(13)(A)(i); FTB, Filing Requirements – FTB 199N, at https://www.ftb.ca.gov/businesses/Exempt-organizations/Filing_Requirements_Form_199N.shtml#Due_date

²⁰ Cal. Rev. & Tax. Code § 23701(d)(3).

Third, the current policy of the FTB is to automatically revoke a nonprofit's tax exemption if its corporate status has been suspended.²¹ Simply failing to file a Statement of Information with the Secretary of State could therefore potentially lead to Secretary of State and FTB suspension and revocation of exempt status. Fourth, the FTB may also revoke a nonprofit corporation's exemption for failure to maintain registration with the Attorney General and failure to file a return or pay an amount due before the last day of the twelfth month following the close of the taxable year – however, these revocations are not automatic.²²

If a nonprofit's state tax exemption is revoked, it will be subject to California income tax and California's \$800 annual franchise tax, which is imposed even if a corporation has no income.

How do I check if an organization is exempt in CA? A nonprofit can check to see if it is currently exempt and in good standing with the FTB through the Self Serve Entity Status Letter tool at <https://webapp.ftb.ca.gov/eletter/Search.aspx>. The FTB also maintains a list of all exempt organizations at https://www.ftb.ca.gov/businesses/Exempt_organizations/Entity_list.shtml.

How do I update my address with the FTB? A nonprofit can confirm whether FTB has a current address on file through the Self Serve Entity Status Letter tool on the FTB website. If the address is incorrect, a nonprofit can update its address online through the FTB's online portal – MyFTB (https://www.ftb.ca.gov/online/Access_Your_Account/Check.asp?path=Login). MyFTB requires a one-time registration. Alternatively, a nonprofit can inform the FTB of its change of address through the annual return (Form 199 or 199N) or by filing FTB Form 3533, available at https://www.ftb.ca.gov/forms/2015/15_3533.pdf.

D. California Attorney General

A nonprofit corporation that is active or holding assets in California is generally required to register with the AG within thirty days of receiving assets by filing the form CT-1 and then filing an Annual Registration Renewal Fee Report (Form RRF-1) with the AG each year.²³ The nonprofit must include a copy of its Form 990, 990-EZ, or 990-PF with the RRF-1, if required to file one with the IRS.²⁴ If the IRS has granted the nonprofit an extension to file the annual return, the AG will honor that extension – the nonprofit should file the RRF-1 and the required 990 series form simultaneously with the AG at the time the 990 filing is due with the IRS.²⁵

²¹ 18 Cal. Code Reg. § 23775(c); FTB, Suspended Exempt Entities, *supra*, note 12.

²² Cal. Rev. & Tax. Code §§ 23703(b); 23777(a). If a nonprofit fails to maintain its registration, the Attorney General must inform the FTB which then most inform the nonprofit and provide an opportunity for the organization to file the past and currently due documents before revoking its tax exemption. § 23703(b). Revocation for failure to pay an amount due is discretionary, rather than required. § 23777(a). The FTB may also revoke tax exemption if a nonprofit does not respond to an FTB subpoena or engages in activities that fall outside the scope of its charitable exemption. § 23772(b), (c).

²³ Cal. Gov. Code §§ 12582.1, 12585, 12586. There are several exceptions to the registration and annual filing requirement, including religious organizations, educational institutions, and hospitals. Cal. Gov. Code § 12583.

²⁴ 11 Cal. Code Reg. § 301.

²⁵ 11 Cal. Code Reg. § 305.

If an organization fails to file its annual report to the AG or its annual report is defective, the AG will consider that organization to be *delinquent*. A delinquent organization is prohibited from engaging in any conduct for which registration is required, including solicitation for charitable purposes.²⁶ A delinquency may also lead to revocation of tax-exempt status with the FTB,²⁷ although we have not seen any cases in which the AG triggered this revocation process with the FTB merely for failure to file a single RRF-1.

Chronic delinquency can lead to *suspension* of registration with the AG. The AG will automatically suspend the registration of a charitable organization if it fails to file the RRF-1 together with a copy of its annual IRS return for three consecutive years.²⁸ The AG will also suspend a nonprofit if its federal or state tax exemption has been revoked or if the nonprofit's corporate status has been suspended by the California Secretary of State.²⁹ Prior to suspending an organization, the AG will first mail a notice to the charity identifying what is needed to resolve the suspension. If the AG does not receive the information needed to resolve the suspension within thirty days of issuing the notice, the registration will be suspended.³⁰

If a nonprofit's registration has been continuously suspended for one year, its registration will be automatically revoked.³¹ Unlike suspension, *revocation* is permanent (as will be discussed in [Section V](#) below). Reinstatement after revocation is left to the discretion of the AG.

Consequences of suspension or revocation by AG: A suspended or revoked nonprofit may not distribute or expend any charitable assets without the written approval of the AG; moreover, board members may face personal liability for spending charitable assets while a nonprofit is suspended or revoked (although this is more likely to happen in egregious cases).³² Suspended and revoked nonprofits are also prohibited from making charitable solicitations.³³ Suspension or revocation by the AG will also likely result in revocation of tax-exempt status with the FTB.

How Do I Check AG Registration? An organization can check its AG compliance status at <http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y> – the status should be listed as “Current.” If an organization is no longer in good standing with the AG, its status will be listed as “Delinquent,” “Suspended,” “Revoked,” or “Unregistered” (if the organization never registered initially). It is easiest to conduct this search using the organization's EIN or state corporation number (which can be retrieved from the Secretary of State at the website referenced in [Section I.A](#)).

²⁶ 11 Cal. Code Reg. § 999.9.4.

²⁷ Cal. Rev. & Tax. Code § 23703(b).

²⁸ 11 Cal. Code Reg. § 999.9.1(a)(2).

²⁹ 11 Cal. Code Reg. § 999.9.1(a)(1), (3).

³⁰ 11 Cal. Code Reg. § 999.9.1(b). The AG may also suspend or revoke the registration of a nonprofit for other reasons, including misuse of charitable assets or making a false statement while fundraising. 11 Cal. Code Reg. § 999.9.1(a).

³¹ 11 Cal. Code Reg. § 999.9.1(d).

³² 11 Cal. Code Reg. § 999.9.3.

³³ 11 Cal. Code Reg. § 999.9.4.

How Do I Update My Address with the AG? If the address in the online registry search tool is incorrect, a nonprofit should inform the AG of its most current address by telephone at (916) 445-2021 or by mail to Registry of Charitable Trusts, P.O. Box 903447, Sacramento, CA 94203-4470.

II. Reinstatement of Corporate Status with California Secretary of State

If a nonprofit has lost its corporate status with the Secretary of State, it should reinstate its corporate status before beginning any other reinstatement processes. The federal tax exemption application (Form 1023 and Form 1023-EZ) asks whether the applicant is a corporation – the nonprofit will not be able to truthfully answer “yes” if it is out of compliance with the Secretary of State. The FTB also requires a nonprofit to reinstate its corporate status before reinstating its state tax-exempt status.³⁴

It is a good idea to call the Secretary of State at (916) 657-5448 to determine what needs to be done to reinstate corporate status. Usually, the corporation can be revived simply by filing a Statement of Information with the Secretary of State (assuming that another corporation has not taken the corporation’s name while the corporation has been suspended). The Secretary of State then certifies to the FTB that the nonprofit has filed the Statement of Information and the suspension of corporate status is lifted.³⁵ The Statement of Information can be filed online at <https://businessfilings.sos.ca.gov/>, or by hard copy. The hard copy form is available at http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf. Send hard copies to Secretary of State, Statement of Information Unit, P.O. Box 944230, Sacramento, CA 94244. A filing fee of \$20 is required.

Since suspension of corporate status by the FTB automatically results in revocation of state tax-exempt status, reinstatement of FTB corporate status and tax exemption are discussed together in [Section IV](#).

III. Reinstatement of Federal Tax-Exempt Status with IRS

If a nonprofit has lost its federal tax exemption due to failing to file an annual paper return (Forms 990, 990-EZ, or 990-PF) or electronic notice (990-N) for three years in a row, it will have to reapply for federal tax-exempt status in order to reinstate its status. To do so, the nonprofit will be required to complete either the Form 1023 or the shorter Form 1023-EZ (if eligible). As discussed in [Section II](#), a nonprofit should wait until after its corporate status has been reinstated before sending in its application for reinstatement.

Depending on when the organization applies for reinstatement, the reasons it failed to file an annual return, and the annual gross receipts of the organization, a nonprofit may be able to have its tax-

³⁴ FTB, *Suspended Exempt Entities*, *supra*, note 12.

³⁵ Cal. Corp. Code § 5008.6(d).

exempt status retroactively reinstated to the date of revocation. If not, reinstatement will be effective on the post-mark date of the federal tax-exemption application (i.e., Form 1023 or Form 1023-EZ). Retroactive reinstatement would be important for organizations that accrued income or collected donations during the period of time that the organization's tax-exempt was revoked in order to minimize the likelihood that the organization would have to pay income tax applicable to that time period, and to preserve the deductibility of charitable donations made during that time. If the organization was inactive and not taking in any revenue, retroactive reinstatement is less necessary. In general, retroactive reinstatement is easier to obtain if the nonprofit is applying for reinstatement within fifteen months from the date in which its tax-exempt status was revoked; therefore, a nonprofit should apply for reinstatement as soon as it discovers it has lost its tax-exempt status.

The IRS has put forth four different procedures a nonprofit may use to apply for reinstatement, which are described in detail below:

A. Streamlined Retroactive Reinstatement Process for Small Organizations within Fifteen Months of Revocation

An organization is eligible for the "Streamlined Retroactive Reinstatement Process" if:

- 1) the organization was eligible to file either Form 990-EZ (i.e., gross receipts were less than \$200,000, and its total assets at the end of the year were less than \$500,000) or Form 990-N (i.e., gross receipts normally equal to or less than \$50,000) for each of the three consecutive years that it failed to file;
- 2) the organization has not previously had its tax-exempt status automatically revoked; and
- 3) the organization applies for reinstatement no later than fifteen months after the date of the revocation letter or the date on which the IRS posted the organization's name on the revocation list.³⁶

If all of the above requirements apply, the nonprofit should do the following to apply for federal tax-exemption reinstatement:

- 1) Apply for Federal Tax Exemption. Fill out Form 1023 and write "Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement" on the top of the form. Include a user fee of \$850 (if gross receipts exceed or will exceed \$10,000 annually over a four-year period) or \$400. Mail the form to Internal Revenue Service, P.O. Box 12192, Covington, KY 41012-0192.³⁷

OR

If a nonprofit is eligible to file the Form 1023-EZ (e.g., annual gross receipts of \$50,000 or less per year and assets of \$250,000 or less), fill out Form 1023-EZ online and check off

³⁶ Rev. Proc. 2014-11, 2014-1 C.B. 411, § 1.02.

³⁷ *Id.* § 4.01; IRS Form 1023, p. 2, available at <https://www.irs.gov/pub/irs-pdf/f1023.pdf>.

Box 1 under Section V, Reinstatement After Automatic Revocation.³⁸ The user fee for the 1023-EZ is \$275 as of July 1, 2016.³⁹

- 2) File the Form 990-EZ for each year during the three consecutive years that a Form 990-EZ was required to be filed – this will ensure that the IRS does not impose any penalties for failing to file these forms. The organization does not need to file an annual filing for years that the organization was eligible to file a Form 990-N. Write “Retroactive Reinstatement” on each Form 990-EZ. Paper forms must be mailed to: Department of Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.⁴⁰

B. Retroactive Reinstatement Process within Fifteen Months of Revocation

If an organization was not eligible to file a 990-N or 990-EZ for each of the three years it failed to file a return or if its tax-exempt status had been previously automatically revoked, it may apply for retroactive reinstatement using the following procedure within fifteen months from the date its tax-exempt status was revoked:⁴¹

- 1) File Form 1023 with user fee (as noted above in [Section III.A](#)). Write “Revenue Procedure 2014-11, Retroactive Reinstatement” on the top of the form. Include a “Reasonable Cause Statement” for one of the three consecutive years that the organization failed to file an annual return or notice. (See [Section III.C](#) below for more information on the Reasonable Cause Statement.). Include a statement with the Form 1023 confirming that the organization has filed a paper annual return for all years in the consecutive three-year period in which a paper annual return was required and for any other taxable years after such period and before the post-mark date of the application for which returns were due and not filed.⁴² Note that a nonprofit may not file a Form 1023-EZ to reinstate its tax-exempt status if it is not eligible for streamlined retroactive reinstatement.⁴³
- 2) File the Form 990, 990-EZ, or 990-PF for all years in the consecutive three-year period in which the organization was required and failed to file and for any other years since then that the organization has failed to file. Write “Retroactive Reinstatement” on each return. Mail returns to: Department of Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.⁴⁴

³⁸ IRS, Instructions for Form 1023-EZ (Rev. August 2015), 10, available at <https://www.irs.gov/pub/irs-pdf/i1023ez.pdf>. The Form 1023-EZ can only be filed electronically by going to <https://www.irs.gov/uac/about-form-1023> or www.pay.gov (enter the term “Form 1023-EZ” in the search box). To determine whether an organization is eligible to file the Form 1023-EZ, consult the Form 1023-EZ eligibility worksheet, on pages 11-17 of the Instructions for Form 1023-EZ.

³⁹ Rev. Proc. 2016-32, 2016-22 I.R.B. 1019.

⁴⁰ Rev. Proc. 2014-11, § 4.03.

⁴¹ *Id.* § 1.03.

⁴² *Id.* §§ 5.01; 8.01.

⁴³ See IRS, Instructions for Form 1023-EZ, 10.

⁴⁴ *Id.* §§ 5.01(5); 5.02.

If the organization is granted retroactive tax exemption, the IRS will not impose a penalty for failure to file an annual return.⁴⁵ If the application for retroactive reinstatement is denied, the organization will need to pay a penalty for failure to file (other than for years in which the organization was required to file Form 990-N, for which a penalty does not apply).⁴⁶

C. Retroactive Reinstatement Process More than Fifteen Months after Revocation

If an organization applies for retroactive reinstatement more than fifteen months after the effective date of revocation, it must use the same process as in [Section III.B](#) of this guide, except that its Reasonable Cause Statement must address all three years that the nonprofit failed to file annual returns or notices.⁴⁷ Note that even if an organization would otherwise be eligible to file a Form 1023-EZ, retroactive reinstatement more than fifteen months after revocation requires filing the full Form 1023.⁴⁸

The purpose of the Reasonable Cause Statement is to establish that the nonprofit had reasonable cause for failing to file one annual return (if applying within fifteen months) or all three annual returns (if applying after fifteen months). The Reasonable Cause Statement must show that the organization exercised ordinary business care, but nonetheless failed to file its annual returns or notices. Essentially, the IRS wants to know why the organization failed to file the required returns. The Statement should explain the facts leading up to the failure, the discovery of the failure, and steps that have been taken since the failure.⁴⁹ The more detailed the explanation, the better.

The IRS has proclaimed that the following factors weigh in favor of finding reasonable cause and granting retroactive reinstatement:

- 1) The organization relied on written information from the IRS, which stated that the organization was not required to file a return, provided that the IRS had all of the relevant information;
- 2) The failure was due to circumstances out of the organization's control, which made the filing of a return impossible;
- 3) The organization took steps to avoid, mitigate, and/or correct the failure to file and to prevent similar failures in the future, including, but not limited to:
 - i. Attempting to prevent the failure, or the circumstances causing the failure, if they were foreseeable;
 - ii. Acting promptly to correct the failure or change the circumstances that caused the failure, once it was discovered; and
 - iii. After discovering the failure, implementing safeguards to ensure future compliance with reporting requirements; and

⁴⁵ *Id.* § 6.02.

⁴⁶ *Id.* § 3.07; I.R.C. §§ 6033(i); 6652(c)(1)(E).

⁴⁷ *Id.* §§ 6, 8.02.

⁴⁸ See IRS, Instructions for Form 1023-EZ, 10.

⁴⁹ Rev. Proc. 2014-11, §§ 8.03, 8.04.

- 4) The organization has established a history of complying with its reporting requirements under any part of the Internal Revenue Code.⁵⁰

The organization should include supporting documentation and evidence that substantiates the factors above.⁵¹ An official authorized to sign on behalf of the organization must sign the Reasonable Cause Statement under penalty of perjury.⁵² The signature must succeed the following declaration:

“I, (Name), (Title) declare, under penalties of perjury, that I am authorized to sign this request for retroactive reinstatement on behalf of [Name of Organization], and further declare that I have examined this request for retroactive reinstatement, including the written explanation of all the facts of the claim for reasonable cause, and to the best of my knowledge and belief, this request is true, correct, and complete.”⁵³

D. Post-Mark Date Reinstatement

Any organization whose exempt status has been automatically revoked can apply for reinstatement of tax exemption effective the post-marked date of the organization’s new Form 1023 or Form 1023-EZ (if eligible to file). The organization should write “Revenue Procedure 2014-11, Reinstatement Post-Mark Date” on the top of the Form 1023 or, if filing Form 1023-EZ, check Box 2 under Section V, Reinstatement After Automatic Revocation.⁵⁴ The organization must include the appropriate user fee as noted above in [Section III.A](#).

IV. Reinstatement with Franchise Tax Board

If an organization has its California tax-exempt status revoked, it must file Form 3500 to apply for reinstatement and also file the Form 199 or Form 199-N for each year it failed to file.⁵⁵ An organization applying for reinstatement may not file the shorter Form 3500A.⁵⁶ The organization must include a copy of its bylaws and articles of incorporation with the Form 3500 only if they have been amended since tax-exempt status was originally granted by the FTB. The Form 3500, plus the \$25 fee, should be mailed to Exempt Organizations Unit MS F-120, Franchise Tax Board, P.O. Box 1286, Rancho Cordova, CA 95741-1286.⁵⁷ Although not required, it is a good idea to include a cover letter with the Form 3500, explaining that the organization is applying for

⁵⁰ *Id.* § 8.05.

⁵¹ *See* Notice 2011-44, 2011-25 IRB 883, § 5.01(3) (superseded by Rev. Proc. 2014-11) (supporting documentation would probably still help the organization’s case for reinstatement, even if supporting documentation is no longer required).

⁵² Rev. Proc. 2014-11, § 8.06.

⁵³ *Id.*

⁵⁴ *Id.* §§ 1.05, 7.01; IRS, Instructions for Form 1023-EZ, p. 10.

⁵⁵ Cal. Rev. & Tax. Code §23778(a).

⁵⁶ Cal. Rev. & Tax. Code § 23701(d)(5).

⁵⁷ FTB, 2015 Instructions for Form 3500, p. 3, available at <https://www.ftb.ca.gov/forms/misc/3500bk.pdf>.

reinstatement of tax-exempt status and that it has separately filed the Forms 199 and/or Forms 199-N for the years in which it failed to file.

The missing Forms 199, if any, should be mailed to Franchise Tax Board, PO Box 942857, Sacramento, CA 94257-0501. The filing fee for a late Form 199 is \$25, plus a penalty of \$5 for each month the return is late, not to exceed \$40.⁵⁸ There is no fee or late penalty for the Form 199-N. Form 199 can be found online at https://www.ftb.ca.gov/forms/2015/15_199.pdf. Form 199-N can be filed online at <https://webapp.ftb.ca.gov/epostcard/pages/login.aspx?Lang=en-US>.

The organization does not have to wait until it receives notice of reinstatement from the IRS before applying for reinstatement of state tax exemption. Unless an organization was inactive during the time in which its tax-exempt status was revoked,⁵⁹ reinstatement will be retroactive to the date of revocation. A nonprofit should make sure that the Form 3500 reflects that the organization has been active in order to obtain retroactive reinstatement and avoid being subject to the \$800 minimum CA franchise tax.

If an organization has never applied for and received state tax-exempt status, then, in lieu of filing the Form 3500 it may instead file a Form 3500A,⁶⁰ a two-page form which asks for basic information about the organization and a copy of a letter from the IRS confirming its federal tax exemption. The Form 3500A, available online at <https://www.ftb.ca.gov/forms/misc/3500a.pdf>, should be mailed to the same address as the Form 3500. Exemption via the Form 3500A is dependent on an organization receiving federal tax exemption – therefore, a nonprofit whose federal tax exemption was revoked must wait until receiving a letter confirming reinstatement before applying for state tax exemption with Form 3500A. State tax exemption will be retroactive to the date of federal tax exemption for organizations using Form 3500A.

The FTB has created a process for reviving exempt organizations which have been FTB suspended. Revivor usually requires filing an Application for Certificate of Revivor (FTB Form 3557E). The Revivor Unit generally takes several weeks to process the application, although a 10-14 day rush revivor is possible if the application is filed at one of the FTB district offices.⁶¹ However, if an organization is also applying for reinstatement of exempt status, the Forms 3500 or 3500A will be treated by the FTB as a request to revive. Since the FTB currently revokes tax-exempt status for every nonprofit which has been suspended, a separate application for revivor is rarely, if ever, necessary. In fact, revivor without reinstatement will subject an organization to the minimum franchise tax. Even so, it is a good idea to call the FTB Revivor Unit at 888-635-0494 and ask if the nonprofit has been suspended by the FTB and, if so, what is required to revive the corporation.

⁵⁸ FTB, 2015 Instructions for Form 199, p. 3, available at https://www.ftb.ca.gov/forms/2015/15_199ins.pdf.

⁵⁹ California Revenue and Taxation Code requires that an organization be active in order to maintain its exemption. 18 Cal. Code Reg. § 23701(d)(2)(A).

⁶⁰ FTB, 2015 Instructions for Form 3500A, available at <https://www.ftb.ca.gov/forms/misc/3500ains.pdf>.

⁶¹ *Suspension and Revivor 101, Part 2*, Tax News (Sept. 2010), available at https://www.ftb.ca.gov/Archive/Professionals/Taxnews/2010/September/Article_10.shtml.

V. Reinstatement with the Attorney General

If a nonprofit is no longer in good standing with the Attorney General, it should first contact the AG Delinquency Unit at (916) 445-2021 or by email at delinquency@doj.ca.gov for information on which forms and documents must be submitted in order to correct the delinquency. Charitable organizations subject to the AG's registration rules, whether or not they are tax exempt, are required to be registered with the AG. As such, an organization out of compliance with the AG should not wait until its federal and/or state tax exemption has been reinstated before contacting the AG. If the delinquency or suspension is due to failure to file a properly completed CT-1 or RRF-1s, the charity will likely have to file the completed forms, together with the renewal fees and any penalties that have accrued. The forms, along with filing instructions, are available at <https://oag.ca.gov/charities/forms>. The AG may also require the nonprofit to address its lack of good standing with other agencies (e.g., Secretary of State or FTB).

If the AG has revoked a nonprofit's registration, reinstatement is left to the discretion of the Attorney General. A revoked nonprofit must petition the AG for reinstatement in writing. If the AG determines that "there is no threat to the public or to charitable assets," then it may, but is not required to, grant the petition for reinstatement. The AG may also impose terms and conditions of reinstatement.⁶²

⁶² 11 Cal. Code Reg. § 999.9.5.

Appendix 1

Resources

Internal Revenue Service

<http://www.irs.gov/>

http://www.irs.gov/irb/2014-3_IRB/ar08.html (Revenue Procedure 2014-11, outlining process for federal tax-exemption reinstatement)

California Franchise Tax Board

<http://www.ftb.ca.gov/>

<https://www.ftb.ca.gov/forms/misc/1068.pdf> (FTB Publication 1068, Exempt Organization Filing Requirements)

Secretary of State

<http://www.sos.ca.gov/>

http://bpd.cdn.sos.ca.gov/corp/pdf/so/corp_so100.pdf (SI-100)

California Attorney General

<http://oag.ca.gov/>

http://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide_for_charities.pdf (Attorney General's Guide for Charities describes Attorney General's Role in overseeing California charities)

Appendix 2

Reinstatement Checklist

I. CHECK STATUS AT FEDERAL AND STATE AGENCIES

- IRS: <http://apps.irs.gov/app/eos/>
- Secretary of State: <https://businesssearch.sos.ca.gov/CBS/Detail>
- Franchise Tax Board Exemption: <https://webapp.ftb.ca.gov/eletter/Search.aspx>.
- Attorney General Registration:
<http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>

II. SECRETARY OF STATE REINSTATEMENT

- Call Secretary of State at (916) 657-5448
- File Statement of Information (Form SI-100)
- Include \$20 filing fee

III. IRS REINSTATEMENT

A. Streamlined Retroactive Reinstatement for Small Organizations within Fifteen Months of Revocation

- File Form 1023 by mail
- Write “Revenue Procedure 2014-11, Streamlined Retroactive Reinstatement” on top of form
- File Form 990-EZ for each year during the three consecutive years that a Form 990-EZ was required to be filed
 - Write “Retroactive Reinstatement” on each Form 990-EZ
 - Paper forms must be mailed to: Department of Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027

Or, if eligible to file Form 1023-EZ:

- File Form 1023-EZ online
- Check off Box 1 under Section V, Reinstatement After Automatic Revocation
- File Form 990-EZ if required in any of the three years

B. Retroactive Reinstatement within Fifteen Months of Revocation

- File Form 1023 by mail
 - Write “Revenue Procedure 2014-11, Retroactive Reinstatement” on top of Form 1023
 - Include Reasonable Cause Statement for one of the three consecutive years organization failed to file an annual return
- Complete Form 990, 990-EZ, or 990-PF for each year in the consecutive three-year period in which it was required but failed to file a Form 990, 990-EZ, or 990-PF
 - Write “Retroactive Reinstatement” on each return.

- Mail returns to Department of Treasury, Internal Revenue Service Center, Ogden, Utah 84201-0027
 - C. Retroactive Reinstatement after Fifteen Months
 - File Form 1023 by mail (may not file 1023-EZ)
 - Write “Revenue Procedure 2014-11, Retroactive Reinstatement” on top of Form 1023
 - Include Reasonable Cause Statement for all three consecutive years organization failed to file an annual return
 - Include statement that paper returns have been filed for all three consecutive years
 - Complete Form 990, 990-EZ, or 990-PF for each year in the consecutive three-year period in which it was required but failed to file a Form 990, 990-EZ, or 990-PF.
 - Write “Retroactive Reinstatement” on each return.
 - Mail returns to Department of Treasury, Internal Revenue Service Center, Ogden, Utah 84201-0027
 - D. Post-Mark Date Reinstatement
 - File Form 1023 by mail
 - Write “Revenue Procedure 2014-11 Reinstatement Post-Mark Date” on top
- Or, if eligible to file Form 1023-EZ:**
- File Form 1023-EZ online
 - Check Box 2 under Section V, Reinstatement After Automatic Revocation

IV. FTB REINSTATEMENT AND REVIVOR

- A. Tax Exemption Revoked by FTB
 - File Form 3500 by mail
 - File Forms 199 (if any), with fees and late penalties
 - File Forms 199-N (if any) online
 - Call the Revivor Unit at 888-635-0494 to determine if an Application for Certificate of Revivor is necessary.
- B. Organization Never Received FTB Tax Exemption
 - Reinstate federal tax exemption
 - File Form 3500A by mail, including copy of federal determination letter
 - Call the Revivor Unit at 888-635-0494 to determine if an Application for Certificate of Revivor is necessary.

V. ATTORNEY GENERAL REINSTATEMENT

- Contact Delinquency Unit at (916) 445-2021 or by email at delinquency@doj.ca.gov
- File CT-1 and/or Forms RRF-1 for missing years
- If revoked, file petition with Attorney General for reinstatement