LEGISLATIVE PROPOSAL 23-01
EXECUTIVE SUMMARY

Title

Conditional Revivors for Limited Liability Companies (LLC's)

Problem

Under current statutory authority, corporations and LLC's that are classified as associations, who are suspended, are granted an opportunity to revive without payment in full if the Franchise Tax Board (FTB) determines that the revivor will improve collection prospects. However, LLC's that are classified as partnerships or disregarded entities, are not provided the same opportunity because the definition of "corporation" does not include those entities.

Proposed Solution

Amend the following sections in the Revenue and Taxation Code (RTC) to include all LLC's by removing the term "corporation" or "corporate," and replacing them with the terms "taxpayer" or "entity" as well as other technical changes needed:

- Section 23301
- Section 23301.5
- Section 23301.6
- Section 23302
- Section 23303
- Section 23305.1
- Section 23305a
- Section 23305b
- Section 23305c
- Section 23305e

Major Concerns/Issues

None noted.

Fiscal Impact

No departmental costs are associated with this proposal.

Economic Impact

This proposal would result in the following revenue gain:
Estimated Revenue Impact of LP 23-01

($ in Millions)

Fiscal Year	Revenue
2024-2025	$9.2
2025-2026	$9.4
2026-2027	$9.6

This proposal does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Questions for the GC to Consider

None noted.

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- Section 23305e

Program History/Background

There are many reasons why a business may be suspended by either the FTB or by the Secretary of State (SOS), or by both. A business may be suspended by the FTB for failing to file a return, failing to pay taxes, penalties, fees, or interest. A business may be suspended by the SOS for failing to file a timely Statement of Information. The Statement of Information must be filed in a timely manner, every two years or when there are changes in the business information.

Current Federal Law

No comparable provision in federal law.

Current State Law

Current state law provides that taxpayers who are suspended may file an application with the FTB to be revived to good standing. The taxpayer must do the following:

- File all tax returns
- Pay taxes and fees due, including any additions to tax, penalties, interest, and any other amounts for nonpayment of which the suspensions or forfeiture occurred
- File form FTB-3557BC, Application for Certificate of Revivor (for Corporations)
- File form FTB-3557LLC, Application for Certificate of Revivor (for LLC's)
- Contact the SOS to ensure all their requirements are met, and availability of name.

Conditional Revivors for Corporations

The FTB may revive a corporation or LLC that is classified as an association, to good standing without full payment of the taxes, penalties, and interest due, if the FTB determines that the revivor will improve the prospects of collection of the full amount due. This type of revivor may be limited as to the function the revived corporation or LLC that is classified as an association, may perform. The entity may be suspended again, if the FTB determines that the prospects for collection of the full amount due have not improved by the revivor.

Current state law does not allow an LLC classified as a partnership or a disregarded entity, a conditional reviver, since the law was written in 2006, prior to when FTB first began suspending LLC's in 2010.

Effective/Operative Date of Solution

If enacted in the 2023 legislative session, this proposal would be operative on and after the date the act takes effect.

Justification

The proposed changes would provide equal treatment amongst all LLC's seeking a revivor. This would increase taxpayer compliance, improve accounts receivable collections, and reduce taxpayer burden.

Implementation

Implementing this proposal would occur during the department's annual update.

Fiscal Impact

No departmental costs are associated with this proposal.

Economic Impact

Revenue Estimate

This proposal would result in the following revenue gain:

Estimated Revenue Impact of LP 23-01
Assumed Enactment after June 30, 2023

($ in Millions)

Fiscal Year	Revenue
2024-2025	$9.2
2025-2026	$9.4
2026-2027	$9.6

This proposal does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Using current accounts receivable inventory statistics, it is estimated that in taxable year 2024 there will be approximately 65,000 active LLC accounts that are treated as partnerships or disregarded entities. Approximately 50 percent, or 32,500 accounts are anticipated to be suspended. Of those, an estimated 5 percent, or 1,600 entities, will be granted revival under this proposal. Using an average liability of $8,000 and accounting for taxpayers that would pay their balances in full, it is assumed the total impact is $9 million for taxable year 2024.

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

Policy Considerations

None noted.

Other Agency/Industry Impacted

Secretary of State.

Other States

The states surveyed include Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York. These states were selected due to their similarities to California's economy, business entity types, and tax laws. Of the six states reviewed, none of them provided a conditional revivor as the one that is offered by the FTB.

In the state of Florida, corporations, LLC's, limited partnerships (LP's) or limited liability partnerships (LLP's) can submit a reinstatement application if their status was revoked or administratively dissolved. Depending on the reason their status was revoked or dissolved, the business must pay different fees to be reinstated.

In the state of Illinois, corporations, LP's, LLP's, and LLC's may file an application to be to be reinstated and pay fees.

In the state of Massachusetts, corporations may apply for reinstatement if they submit a certificate from the Department of Revenue, which demonstrates they have paid all corporate taxes and related penalties.

In the state of Michigan, corporations that have been dissolved may renew their corporate existence or certificate of authority by filing the reports and paying the required fees and penalties.

In the State of Minnesota, a corporation must file with the SOS a renewal with required information. A corporation that does not file the renewal is dissolved and must pay a fee and comply with other requirements before it is restored to good standing.

In the state of New York, corporations that have been delinquent for two consecutive years may be dissolved by proclamation or annulled by proclamation. There is a process for the corporation to be reinstated. Amongst other requirements, the corporation must file all outstanding taxes due and pay applicable interests and penalties

Potential Compromises

None noted.

Additional Comments

None noted.

Legislative Contact

FTBLegislativeServices@ftb.ca.gov

Franchise Tax Board's
Proposed Amendments to LP 23-01

Amendment #1

Amend Section 23305b of the Revenue and Taxation Code to read:

23305b. Notwithstanding Section 23305, the Franchise Tax Board may revive a ~~corporation~~ *taxpayer* to good standing without full payment of the taxes, penalties, and interest due if it determines that the revivor will improve the prospects for collection of the full amount due. This revivor may be limited as to time or may limit the functions the revived ~~corporation~~ *taxpayer* can perform, or both. The ~~corporate~~ *taxpayer's* powers, rights, and privileges may again be suspended or forfeited if the Franchise Tax Board determines that the prospects for collection of the full amount due have not been improved by the revivor of the ~~corporation~~ *taxpayer*.

Amendment #2

Amend Section 23301 of the Revenue and Taxation Code to read:

23301. Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the ~~corporate~~ powers, rights and privileges of a domestic taxpayer may be suspended, and the exercise of the ~~corporate~~ powers, rights and privileges of a foreign taxpayer in this state may be forfeited, if any of the following conditions occur:
(a) If any tax, penalty, or interest, or any portion thereof, that is due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, either at the time the return is required to be filed or on or before the 15th day of the ninth month following the close of the taxable year, is not paid on or before 6 p.m. on the last day of the 12th month after the close of the taxable year.
(b) If any tax, penalty, or interest, or any portion thereof, due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, upon notice and demand from the Franchise Tax Board, is not paid on or before 6 p.m. on the last day of the 11th month following the due date of the tax.
(c) If any liability, or any portion thereof, which is due and payable under Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2, is not paid on or before 6 p.m. on the last day of the 11th month following the date that the tax liability is due and payable.

Amendment #3

Amend Section 23301.5 of the Revenue and Taxation Code to read:

23301.5. Except for the purposes of filing an application for exempt status or amending the articles of incorporation as necessary either to perfect that application or to set forth a new name, the ~~corporate~~ powers, rights, and privileges of a domestic taxpayer may be suspended, and the exercise of the ~~corporate~~ powers, rights, and privileges of a foreign taxpayer in this state may be forfeited, if a taxpayer fails to file a tax return required by this part.

Amendment #4

Amend Section 23301.6 of the Revenue and Taxation Code to read:

23301.6. Sections 23301, 23301.5, and 23775 shall apply to a foreign taxpayer only if the taxpayer is qualified to do business in California. A taxpayer that is required under Section 2105 *or 17708.02* of the Corporations Code to qualify to do business shall not be deemed to have qualified to do business for purposes of this article unless the taxpayer has in fact qualified with the Secretary of State.

Amendment #5

Amend Section 23302 of the Revenue and Taxation Code to read:

23302. (a) Forfeiture or suspension of a taxpayer's powers, rights, and privileges pursuant to Section 23301, 23301.5, or 23775 shall occur and become effective only as expressly provided in this section in conjunction with Section 21020, which requires notice prior to the suspension of a taxpayer's ~~corporate~~ powers, rights, and privileges.
(b) The notice requirements of Section 21020 shall also apply to any forfeiture of a taxpayer's ~~corporate~~ powers, rights, and privileges pursuant to Section 23301, 23301.5, or 23775 and to any voidability pursuant to subdivision (d) of Section 23304.1.
(c) The Franchise Tax Board shall transmit the names of taxpayers to the Secretary of State as to which the suspension or forfeiture provisions of Section 23301, 23301.5, or 23775 are or become applicable, and the suspension or forfeiture therein provided for shall thereupon become effective. The certificate of the Secretary of State shall be prima facie evidence of the suspension or forfeiture.
(d) If a taxpayer's powers, rights, and privileges are forfeited or suspended pursuant to Section 23301, 23301.5, or 23775, without limiting any other consequences of such forfeiture or suspension, the taxpayer shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension.

Amendment #6

Amend Section 23303 of the Revenue and Taxation Code to read:

23303. Notwithstanding the provisions of Section 23301 or 23301.5, any ~~corporation~~ *taxpayer* that transacts business or receives income within the period of its suspension or forfeiture shall be subject to tax under the provisions of this chapter.

Amendment #7

Amend Section 23305.1 of the Revenue and Taxation Code to read:

23305.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 23304.1. To be relieved from voidability, the taxpayer shall do all of the following:

(1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.

(2) Include on the application the period for which relief is requested in accordance with subdivision (b).

(3) File any tax returns required to be filed under this part with the Franchise Tax Board, including returns for the period for which relief is requested.

(4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any liability attributable to the period for which relief is requested.

(5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.

(6) In the case of a taxpayer that applies for and enters into an approved voluntary disclosure agreement in accordance with Article 8 (commencing with Section 19191) of Chapter 4 of Part 10.2, for purposes of this section, the taxpayer shall be considered to have met the requirements of paragraphs (3), (4), and (5) if the taxpayer fulfills to the satisfaction of the Franchise Tax Board all the specifications of the voluntary disclosure agreement within the meaning of paragraph (2) of subdivision (d) of Section 19191 and if the Franchise Tax Board has not found that any of the circumstances described in Section 19194 has rendered the voluntary disclosure agreement null and void.

(b) (1) Except as provided in paragraph (2), both of the following shall apply:

(A) The period for which relief is requested shall begin on the date that one of the taxpayer's taxable years begins and ends on the date that relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.

(2) If an application for relief from voidability is filed for a period in which an application for revivor has been filed and the certificate of revivor has been issued, all of the following shall apply:

(A) The period for which relief is requested shall begin on the date the taxpayer's powers, rights, and privileges had been suspended or forfeited and ends on the date relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars ($100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to that amount of the tax that would be imposed under Section *17941, 17942 or* 23151 and, except as provided in subparagraph (C), that penalty shall be equal to no less than the amount of the minimum tax provided under Section *17941 or* 23153 for the period for which relief is requested.

(C) In the case of an exempt organization or trust subject to Article 2 (commencing with Section 23731) of Chapter 4 (the tax on unrelated business taxable income), the daily penalty provided in subparagraph (B) shall not exceed a total penalty equal to the amount of tax imposed upon its unrelated business taxable income for the period for which relief is requested.

(3) Any penalty imposed under this subdivision shall, subject to Section 23305.2, be due and payable on demand by the Franchise Tax Board.

(c) (1) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 23305.2, the following shall apply:

(A) All contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 23304.5 may be enforced in the same manner and to the same extent, with regard to both the parties to the contract and any third parties, as if the contract had never been voidable.

(B) Any sale, transfer, or exchange of real property in California during the period for which relief is granted and which the taxpayer at that time was not entitled to sell, transfer, or exchange by reason of subdivision (d) of Section 23302 and which has not been rescinded by a final court order pursuant to Section 23304.5, shall be as valid as if the taxpayer had not been subject to subdivision (d) of Section 23302 at the time of the sale, transfer, or exchange.

(2) Upon being granted relief from voidability, the Franchise Tax Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, or as directed by the taxpayer, and shall indicate the period for which relief is granted.

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this state.
(e) Subject to limitations set forth in Section 17 of Chapter 926 of the Statutes of 1990, a taxpayer that received a certificate of revivor between January 1, 1990, and January 1, 1991, may apply for relief from voidability under this section.

Amendment #8

Amend Section 23305a of the Revenue and Taxation Code to read:

23305a. Before the certificate of revivor is issued by the Franchise Tax Board, it shall obtain from the Secretary of State an endorsement upon the application of the fact that the name of the taxpayer then meets the requirements of subdivision (b) of Section 201*, or subdivision (b) of Section 17701.08,* of the Corporations Code in the case of a domestic taxpayer or of subdivision (b) of Section 2106*, or Section 17708.05,* of the Corporations Code in the case of a foreign taxpayer that has qualified to do business. The reference to amendment of the articles of incorporation to set forth a new name contained in Sections 23301, 23301.5, and 23775 includes in the case of a foreign taxpayer the filing of an amended statement and designation to set forth its new name or to set forth an assumed name under subdivision (b) of Section 2106*, or Section 17708.05*, of the Corporations Code. Upon the issuance of the certificate by the Franchise Tax Board the taxpayer therein named shall become reinstated but the reinstatement shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture, except that contracts which were voidable pursuant to Section 23304.1, but which have not been rescinded pursuant to Section 23304.5, may have that voidability cured in accordance with Section 23305.1. The certificate of revivor shall be prima facie evidence of the reinstatement and the certificate may be recorded in the office of the county recorder of any county of this state.

Amendment #9

Amend Section 23305c of the Revenue and Taxation Code to read:

23305c. (a) Upon issuance of the certificate of revivor, the Franchise Tax Board shall transmit to the Secretary of State the revived taxpayer's name and its ~~corporate~~ *entity* number.
(b) The taxpayer's name and number, the fact that the taxpayer's ~~corporate~~ powers, rights, and privileges have been revived and the effective date of the revivor shall be a matter of public record.
(c) If the Franchise Tax Board determines that a suspension or forfeiture was in error by the Franchise Tax Board, the Franchise Tax Board shall, in connection with the revivor, indicate that the taxpayer is "restored." The status of the restored taxpayer shall be

retroactive to the date of suspension or forfeiture as if there had been no suspension or forfeiture.
(d) If the Franchise Tax Board determines that the mailing of the 60-day demand notice referred to in subdivision (d) of Section 23304.1 was in error or that the Franchise Tax Board's original determination as to compliance with the 60-day demand notice was in error, the Franchise Tax Board's revised conclusions also shall be part of the public record referred to in that subdivision.

Amendment #10

Amend Section 23305e of the Revenue and Taxation Code to read:

23305e. (a) The Franchise Tax Board may provide letters of good standing, verifying a ~~corporation's~~ *taxpayer's* status for doing business in California, at a charge reflecting the reasonable costs to the department of responding to these requests.
(b) Fees received under this section shall be handled in accordance with Section 19604.