

RESOLUTION 01-01-2018

DIGEST

Revenue and Taxation: Exclusion of Teacher’s Housing Allowance from Gross Income
Adds Revenue and Taxation Code section 17131.3 to provide that the “gross income” for a public school teacher shall not include the housing allowance paid to the teacher.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE WITH RECOMMENDED AMENDMENTS

History:
No similar resolutions found.

Reasons:
This resolution adds Revenue and Taxation Code section 17131.3 to provide that the “gross income” for a public school teacher shall not include the housing allowance paid to the teacher. This resolution should be approved in principle with recommended amendments because it will provide a means to recruit qualified teachers to areas with high housing costs.

The purpose of Revenue and Taxation Code section 17131.3 is to provide an incentive to public school teachers to accept employment in school districts with high housing costs, which are often communities consisting of a higher percentage of students of color. The high cost of housing often is an impediment for such school districts in attracting and retaining qualified teachers. This amendment would allow a public school teacher to exclude a housing allowance from “gross income” for purposes of reducing the income tax burden of qualified teachers in school districts that offer housing allowances to teachers.

The resolution proposes to add Section 17131.3 to the Revenue and Taxation Code. However, this numerical section already exists in the Code. The resolution should be amended to add a different code section that is not already in use.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Revenue and Taxation Code section 17131.3 to read as follows:

- 1 §17131.3
- 2 In the case of a full-time, accredited teacher at a public primary or secondary educational
- 3 institution, gross income does not include:
- 4 (1) the rental value of a home furnished to the teacher as part of her or his compensation;
- 5 or
- 6 (2) the housing allowance paid to the teacher as part of her or his compensation, to the
- 7 extent used by the teacher to rent or provide a home and to the extent such allowance does not
- 8 exceed the fair rental value of the home, including furnishings and appurtenances such as a
- 9 garage, plus the cost of utilities.

10 The school district shall provide each teacher with an annual written notice stating the
11 housing allowance, which shall be a good faith estimate based upon the fair rental value of the
12 home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: California is facing a critical shortage of qualified public school teachers, particularly in high-needs fields such as math and science. A 2016 survey of over 200 California school districts revealed that three out of four districts reported having a shortage of qualified teachers and that this shortage has gotten worse in the preceding two years. Districts reported having to hire untrained teachers and substitutes, assign teachers out of field, cancel courses, and increase class sizes. They also report efforts to respond to shortages with a variety of policies to strengthen teacher preparation partnerships and pathways into the district, increase compensation, improve hiring and management, and enhance working conditions. In urban districts, which often have a higher percentage of students of color, the high cost of living was one of the most frequently cited problems in engaging and retaining qualified teachers.

The Solution: This resolution reduces the income tax on public school teachers by excluding from gross income either the value of housing furnished by the school district or the rental allowance, which shall be based upon the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities. In areas with a high cost of living, the amount excluded from income will be higher, enabling public school teachers to live in the communities in which they work.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 01-02-2018

DIGEST

Revenue and Taxation: Sole Proprietorship Deductions

Amends Revenue and Taxation Code section 17201 to allow a sole proprietor in the marijuana business to deduct operating expenses.

RESOLUTIONS COMMITTEE RECOMMENDATION:

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Revenue and Taxation Code section 17201 to allow a sole proprietor in the marijuana business to deduct operating expenses. This resolution should be approved in principle because it would allow sole proprietorships in the marijuana/cannabis industry to be able to deduct operating expenses, as is already allowed for a corporation but not a sole proprietorship.

Revenue and Taxation Code section 17201, subdivision (c), expressly provides that “Part IX of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code” applies to *personal income tax* for determining what items are not deductible. Included in that part of Part IX of the Internal Revenue Code (IRC) is section 280E. That section provides that no deduction or credit shall be allowed for any amount paid or incurred for any trade or business that consists of trafficking in “controlled substances” which is prohibited by federal law. Section 280E further defines “controlled substances” as substances “within the meaning of schedule I and II of the Controlled Substances Act.” Marijuana is a controlled substance prohibited by Federal law. (21 U.S.C. § 812, subd. (c).) Therefore, an individual cannot deduct operating expenses related to their marijuana business.

However, Revenue and Taxation Code section 24343, governing deductions for *corporations*, provides that “Section 162 of the Internal Revenue Code” applies. IRC section 162 lists “the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business” which are included as allowed deductions. Revenue and Taxation Code section 24343 does not reference IRC section 280E and IRC section 162 does not list controlled substances as items which are not deductible. Consequently, under California law, a corporation may deduct operating expenses related to its marijuana business.

Since it is legal to operate a marijuana business in California as an entity or an individual, both types of business owners should be treated equally with regards to authorized business deductions. The resolution corrects an undue disparity in such treatment. However, because IRC section 280E is not limited to marijuana/cannabis, and refers to all controlled substances, including IRC section 280E in its entirety could have the unintended consequence of allowing deductions for an individual’s illegal drug business in California as well.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 17201 as follows:

- 1 § 17201
2 (a) Part VI of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue
3 Code, relating to itemized deductions for individuals and corporations, shall apply, except as
4 otherwise provided.
5 (b) Part VII of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue
6 Code, relating to additional itemized deductions for individuals, shall apply, except as otherwise
7 provided.
8 (c) Part IX of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue
9 Code, relating to items not deductible, shall apply, except as otherwise provided. Internal
10 Revenue Code Section 280E is specifically excluded.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: Existing law allows a cannabis or marijuana business that is a corporation to deduct non-operating expenses because California corporate law does not conform to Internal Revenue Code (IRC) Section 280E. California Revenue and Tax Code (CRT) § 17201, however, conforms to IRC §280E. Under current law, a corporation in the marijuana/cannabis industry can deduct operating expenses, but sole proprietorships cannot.

The Solution: This resolution would make the treatment of corporations and sole proprietorships equal with respect to being able to deduct operating expenses.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE: Christina Weed

RESOLUTION 01-03-2018

DIGEST

Sales Tax: Exemption for Used Clothing

Amends Revenue and Taxation Code section 6363.3 and adds section 6363.9 to provide that used clothing is not subject to sales tax.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Revenue and Taxation Code section 6363.3 and adds section 6363.9 to provide that used clothing is not subject to sales tax. This resolution should be disapproved because there is no reason to carve out an exemption for clothing from the collection of sales tax on used goods.

Under current law, used clothing, household items, and other retail merchandise are exempt from sales tax only when sold by thrift stores run by nonprofit organizations that use at least 75 percent of their net income to fund medical, hospice, or social services to chronically ill individuals. The resolution would make the sales tax exemption for used clothing available to all consumers and retailers. The purported reason for this exemption is that all people need clothing and placing a sales tax on such items disproportionately burdens the poor. However, there is a vast difference between a person spending five dollars on a used shirt at a for-profit thrift store and one paying fifty dollars on a vintage skirt at a Melrose Avenue consignment shop. If a person truly cannot afford to pay sales tax, they need only go to a store that meets the criteria for the existing exemption.

Sales tax is a significant source of income for the state and may provide up to 45 percent of a local government's revenue. It is the second-largest revenue source for the State's General Fund (after personal income tax). These monies are used in part to provide service for the economically disadvantaged. The proponent has provided insufficient justification for creating a broad exemption for used clothing alone.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 6363.3 and add section 6363.9 to read as follows:

- 1 § 6363.3
- 2 (a) There are exempted from the taxes imposed by this part, the gross receipts
- 3 from the sale in this state of, and the storage, use, or other consumption in this state of,
- 4 ~~used pieces of clothing~~, household items, or other retail items sold by thrift stores

5 operated by a nonprofit organization if the purpose of that thrift store is to obtain revenue
6 for the funding of medical, hospice, or social services to chronically ill individuals, and at
7 least 75 percent of the net income derived from operations of the thrift store are actually
8 expended for the purpose of providing medical, hospice, or social services to the
9 chronically ill.

10 (b) For purposes of this section, “nonprofit organization” means an organization
11 that provides medical, hospice, or social services to individuals with a chronic, life-
12 threatening illness, as defined in subdivision (c) of Section 1568.01 of the Health and
13 Safety Code, and is exempt from taxation under Section 23701d.

14 (c) This section shall remain in effect only until January 1, 2019, and as of that
15 date is repealed.

16
17 § 6363.9

18 (a) There are exempted from the taxes imposed by this part the gross receipts
19 from the sale of, and the storage, use, or other consumption in this state of, used clothing.

20 (b) For purposes of this section, the following definitions shall apply:

21 (1) “Clothing” means all human wearing apparel suitable for general use.

22 (2) “Used” means either of the following

23 (A) When originally bought in California, clothing in which the taxes imposed by
24 this part have been previously paid.

25 (B) When originally bought outside of California, clothing that has been bought
26 as a consumer good.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Clothing is a necessity for all humans outside their home, and often even inside the home. The sales tax is a regressive tax, affecting people in greater proportions the less income they have. The reason is richer people tend to invest more of their income, while the poor and middle class spend most of their income. The disproportionate tax burden is especially true with a necessity like clothing, because people cannot opt-out of buying it. Right now, the only time buying used clothing is exempt from the sales tax is if sold at a thrift store operated by a nonprofit organization (particularly Goodwill Industries).

The Solution: This resolution gets rid of the special exemption for Goodwill and exempts all used clothing from the sales tax regardless where it is sold. Everyone, including Goodwill will be able to sell used clothing free of a sales tax. By exempting all used clothing from the sales tax, this resolution eases the tax burden for people when buying the clothing they need. People who can afford the luxury of new clothing will still be paying the tax.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTION 01-04-2018

DIGEST

Medical Marijuana: Tax Exemption for Retail Sales of Cannabis for Medicinal Use

Amends Revenue and Taxation Code section 34011 to create a tax exemption for retail sales of cannabis to persons who have an attending physician's recommendation for medicinal use.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Revenue and Taxation Code section 34011 to create a tax exemption for retail sales of cannabis to persons who have an attending physician's recommendation for medicinal use. This resolution should be disapproved because it would allow cannabis users to avoid the sales and use taxes that are imposed on cannabis sales by obtaining a simple recommendation from a friendly physician.

Before recreational use of cannabis became lawful, individuals could establish their right to obtain and use medical cannabis either through a written recommendation from an attending physician or through a State identification card. (Health & Saf. Code, §§ 11362.5, 11362.71, eff. January 1, 2004 through June 26, 2017.) Under current law, medical cannabis users can still use either a State identification card or a physician's written recommendation to demonstrate the right to use medical cannabis. However, when recreational cannabis use became lawful, a 15% sales and use tax was imposed. (Health & Saf. Code, § 34011, subd. (a).) Current law exempts medicinal cannabis users only if the patient has a valid State identification card establishing her or his right to use medical cannabis. (Health & Saf. Code, § 34011, subd. (f).) The State identification card provides a consistent way for cannabis sellers to identify those patients who are exempt from sales and use taxes.

In contrast, a physician's recommendation may be a handwritten slip of paper, which need not be dated and which could be easily forged and difficult to verify. The difficulty of verifying a physician's recommendation may well encourage some recreational cannabis users to create a false document to avoid the sales and use taxes.

The cost of obtaining a state identification card is not a significant barrier. Because these identification cards are issued by the county health departments or their designees, the prices vary from county to county. However, Health and Safety Code section 11362.775 caps the fee at \$100, requires counties to give a 50% discount to Medi-Cal beneficiaries, and to waive fees for indigent persons. To obtain a medical cannabis card, patients must submit the state application form to their county health department, together with (1) a government-issued photo identification card; (2) proof of county residence, such as a rent/mortgage receipt, utility bill, or motor vehicle registration; (3) written documentation from the applicant's doctor recommending the use of medical cannabis; and, (4) the application fee.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Revenue and Taxation Code section 34011 to read as follows:

1 § 34011

2 (a) (1) Effective January 1, 2018, a cannabis excise tax shall be imposed upon purchasers
3 of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market
4 price of any retail sale by a cannabis retailer. A purchaser's liability for the cannabis excise tax is
5 not extinguished until the cannabis excise tax has been paid to this state except that an invoice,
6 receipt, or other document from a cannabis retailer given to the purchaser pursuant to this
7 subdivision is sufficient to relieve the purchaser from further liability for the tax to which the
8 invoice, receipt, or other document refers.

9 (2) Each cannabis retailer shall provide a purchaser with an invoice, receipt, or other
10 document that includes a statement that reads: "The cannabis excise taxes are included in the
11 total amount of this invoice."

12 (3) The department may prescribe other means to display the cannabis excise tax on an
13 invoice, receipt, or other document from a cannabis retailer given to the purchaser.

14 (b) (1) A distributor in an arm's length transaction shall collect the cannabis excise tax
15 from the cannabis retailer on or before 90 days after the sale or transfer of cannabis or cannabis
16 product to the cannabis retailer. A distributor in a non arm's length transaction shall collect the
17 cannabis excise tax from the cannabis retailer on or before 90 days after the sale or transfer of
18 cannabis or cannabis product to the cannabis retailer, or at the time of retail sale by the cannabis
19 retailer, whichever is earlier. A distributor shall report and remit the cannabis excise tax to the
20 department pursuant to Section 34015. A cannabis retailer shall be responsible for collecting the
21 cannabis excise tax from the purchaser and remitting the cannabis excise tax to the distributor in
22 accordance with rules and procedures established under law and any regulations adopted by the
23 department.

24 (2) A distributor shall provide an invoice, receipt, or other similar document to the
25 cannabis retailer that identifies the licensee receiving the product, the distributor from which the
26 product originates, including the associated unique identifier, the amount of cannabis excise tax,
27 and any other information deemed necessary by the department. The department may authorize
28 other forms of documentation under this paragraph.

29 (c) The excise tax imposed by this section shall be in addition to the sales and use tax
30 imposed by the state and local governments.

31 (d) Gross receipts from the sale of cannabis or cannabis products for purposes of
32 assessing the sales and use tax under Part 1 (commencing with Section 6001) shall include the
33 tax levied pursuant to this section.

34 (e) Cannabis or cannabis products shall not be sold to a purchaser unless the excise tax
35 required by law has been paid by the purchaser at the time of sale.

36 (f) The sales and use taxes imposed by Part 1 (commencing with Section 6001) shall not
37 apply to retail sales of medicinal cannabis, medicinal cannabis concentrate, edible medicinal
38 cannabis products, or topical cannabis as those terms are defined in Division 10 (commencing
39 with Section 26000) of the Business and Professions Code when a qualified patient or primary
40 caregiver for a qualified patient provides an attending physician's recommendation as defined in
41 Section 11362.7 of the Health and Safety Code or his or her card issued under Section 11362.71

42 of the Health and Safety Code and a valid government-issued identification card.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: The advent of legal, regulated, recreational marijuana is a financial boon for California, as well as a reducing incarceration for nonviolent crimes. While a 15% sales and use tax to those purchasing marijuana for recreational purposes seems appropriate, that same tax has placed an undue financial burden for those purchasing marijuana for medicinal use. The current exception to the sales and use tax applies only to those carrying a card issued under Section 11362.71 of the Health and Safety Code. That card is regulated on a county basis and can cost upwards of \$150 a year. Essentially, a patient would have to spend out of pocket \$1000 for their card to pay for itself. The current law, disproportionately affects people of color and those of low to moderate incomes that heretofore had been able to acquire their medicinal marijuana with a prescription from a medical doctor and while paying only local sales tax.

The Solution: This resolution simply restores the ability of those with medical marijuana prescriptions to be treated as they were prior to legalization of marijuana for recreational use. By adding “an attending physician’s recommendation” patients will be exempt from the sales and use tax, without having to spend needless amounts of time and energy obtaining an ID card. This resolution does not change the requirements upon attending physicians in their issuance of medical marijuana recommendations. This resolution will reduce the financial and physical barriers to access, and returns medical marijuana patients to same position they were in prior to the passage of recreational marijuana.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR LEGISLATION

None known.

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RESOLUTION 01-05-2018

DIGEST

Corporations: Authorization for Conversion into a Foreign Entity

Amends Corporations Code sections 1150, 1151, 1152 and 1155 to authorize a California corporation to convert into an entity under the laws of another state.

RESOLUTIONS COMMITTEE RECOMMENDATION:

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Corporations Code sections 1150, 1151, 1152 and 1155 to authorize a California corporation to convert into an entity under the laws of another state. This resolution should be disapproved because California does not have authority or jurisdiction to authorize the formation of a corporation in another state.

California law authorizes business entities, such as limited liability companies (“LLC”), to convert to a foreign entity. But such conversions require that the individual members or managers who make up the LLC, or partners and general partners, who make up a partnership or limited partnership, sign the necessary documents. (Corp. Code, §§ 17710.06, subd. (b), 17702.07, subd. (c), 15911.06, subd. (b), and 15902.08, subd. (b).) In other words, the individuals who make up those business entities in California, and have some level of liability for those entities, have all agreed to convert to a foreign business entity. This gives a foreign jurisdiction confidence that there is someone who is responsible for that business’s conduct.

Corporations, on the other hand, are separate entities whose liability and existence is distinct from its shareholders, and whose ownership can be readily transferred. As such, unlike individuals, or businesses made up of individuals, a corporation can only exist in a state if the laws of the state authorize it to do so. Therefore, a foreign corporation that wants to move to and convert into a California corporation, must comply with strict requirements proving it is in compliance with the laws under which it was organized, that the required majority of its shareholders approve the conversion, and that it has a plan of conversion. (Corp. Code, § 1157.) While California can control its own requirements for approving the conversion of a foreign corporation to a California corporation, it cannot unilaterally determine the requirements for another state and unilaterally authorize a California corporation to become a foreign corporation. Whether another state is willing to accept a California corporation within its borders rests solely with that other state and its corporate requirements. Authorizing California to convert one of its corporations into a foreign corporation of another state would infringe on the authority of that sovereign state. If a California corporation wants to move to a different state, it must comply with the laws and corporate formation requirements of that other state.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code sections 1150, 1151, 1152 and 1155 to read as follows:

1 § 1150

2 For purposes of this chapter, the following definitions shall apply:

3 (a) “Converted corporation” means a corporation that results from a conversion of an
4 other business entity or a foreign other business entity or a foreign corporation pursuant to
5 Section 1157.

6 (b) “Converted entity” means a domestic other business entity that results from a
7 conversion of a corporation under this chapter.

8 (c) “Converting corporation” means a corporation that converts into a domestic other
9 business entity or foreign corporation or a foreign other business entity pursuant to this chapter.

10 (d) “Converting entity” means an other business entity or a foreign other business entity
11 or foreign corporation that converts into a corporation pursuant to Section 1157.

12 (e) “Domestic other business entity” has the meaning provided in Section 167.7.

13 (f) “Foreign other business entity” has the meaning provided in Section 171.07.

14 (g) “Other business entity” has the meaning provided in Section 174.5.

15
16 § 1151

17 (a) A corporation may be converted into a domestic other business entity, including, but
18 not limited to, a limited liability company or a partnership, or a foreign corporation or a foreign
19 other business entity pursuant to this chapter if, pursuant to the proposed conversion, (1) each
20 share of the same class or series of the converting corporation shall, unless all the shareholders of
21 the class or series consent, be treated equally with respect to any cash, rights, securities, or other
22 property to be received by, or any obligations or restrictions to be imposed on, the holder of that
23 share, and (2) nonredeemable common shares of the converting corporation shall be converted
24 only into nonredeemable equity securities of the converted entity unless all of the shareholders of
25 the class consent; provided, however, that clause (1) shall not restrict the ability of the
26 shareholders of a converting corporation to appoint one or more managers, if the converted entity
27 is a limited liability company, or one or more general partners, if the converted entity is a limited
28 partnership, in the plan of conversion or in the converted entity’s governing documents.

29 (b) Notwithstanding this section, the conversion of a corporation into a domestic other
30 business entity or a foreign other business entity, including, but not limited to, a limited liability
31 company or a partnership, may be effected only if both of the following conditions are complied
32 with:

33 (1) The law under which the converted entity will exist expressly permits the formation
34 of that entity pursuant to a conversion.

35 (2) The corporation complies with any and all other requirements of any other law that
36 applies to conversion to the converted entity.

37
38 § 1152

39 (a) A corporation that desires to convert to a domestic other business entity or a foreign
40 other business entity shall approve a plan of conversion. The plan of conversion shall state all of
41 the following:

42 (1) The terms and conditions of the conversion.

43 (2) The jurisdiction of the organization of the converted entity and of the converting
44 corporation and the name of the converted entity after conversion.

45 (3) The manner of converting the shares of each of the shareholders of the converting
46 corporation into securities of, or interests in, the converted entity.

47 (4) The provisions of the governing documents for the converted entity, including the
48 partnership agreement or limited liability company articles of organization and operating
49 agreement, to which the holders of interests in the converted entity are to be bound.

50 (5) Any other details or provisions that are required by the laws under which the
51 converted entity is organized, or that are desired by the converting corporation.

52 (b) The plan of conversion shall be approved by the board of the converting corporation
53 (Section 151), and the principal terms of the plan of the conversion shall be approved by the
54 outstanding shares (Section 152) of each class of the converting corporation. The approval of the
55 outstanding shares may be given before or after approval by the board. Notwithstanding the
56 foregoing, if a converting corporation is a close corporation, the conversion shall be approved by
57 the affirmative vote of at least two-thirds of each class, or a greater vote if required in the
58 articles, of outstanding shares (Section 152) of that converting corporation; provided, however,
59 that the articles may provide for a lesser vote, but not less than a majority of the outstanding
60 shares of each class.

61 (c) If the corporation is converting into a general or limited partnership or into a limited
62 liability company, then in addition to the approval of the shareholders set forth in subdivision
63 (b), the plan of conversion shall be approved by each shareholder who will become a general
64 partner or manager, as applicable, of the converted entity pursuant to the plan of conversion
65 unless the shareholders have dissenters' rights pursuant to Section 1159 and Chapter 13
66 (commencing with Section 1300).

67 (d) Upon the effectiveness of the conversion, all shareholders of the converting
68 corporation, except those that exercise dissenters' rights as provided in Section 1159 and Chapter
69 13 (commencing with Section 1300), shall be deemed parties to any agreement or agreements
70 constituting the governing documents for the converted entity adopted as part of the plan of
71 conversion, irrespective of whether or not a shareholder has executed the plan of conversion or
72 those governing documents for the converted entity. Any adoption of governing documents made
73 pursuant thereto shall be effective at the effective time or date of the conversion.

74 (e) Notwithstanding its prior approval by the board and the outstanding shares or either of
75 them, a plan of conversion may be amended before the conversion takes effect if the amendment
76 is approved by the board and, if it changes any of the principal terms of the plan of conversion,
77 by the shareholders of the converting corporation in the same manner and to the same extent as
78 was required for approval of the original plan of conversion.

79 (f) A plan of conversion may be abandoned by the board of a converting corporation, or
80 by the shareholders of a converting corporation if the abandonment is approved by the
81 outstanding shares, in each case in the same manner as required for approval of the plan of
82 conversion, subject to the contractual rights of third parties, at any time before the conversion is
83 effective.

84 (g) The converted entity shall keep the plan of conversion at (1) the principal place of
85 business of the converted entity if the converted entity is a domestic partnership or (2) at the
86 office at which records are to be kept under Section 15901.11 if the converted entity is a
87 domestic limited partnership or at the office at which records are to be kept under Section

17701.13 if the converted entity is a domestic limited liability company. Upon the request of a shareholder of a converting corporation, the authorized person on behalf of the converted entity shall promptly deliver to the shareholder, at the expense of the converted entity, a copy of the plan of conversion. A waiver by a shareholder of the rights provided in this subdivision shall be unenforceable.

§ 1155

(a) To convert a corporation:

(1) If the corporation is converting into a domestic limited partnership, a statement of conversion shall be completed on the certificate of limited partnership for the converted entity.

(2) If the corporation is converting into a domestic partnership, a statement of conversion shall be completed on the statement of partnership authority for the converted entity, or if no statement of partnership authority is filed then a certificate of conversion shall be filed separately.

(3) If the corporation is converting into a domestic limited liability company, a statement of conversion shall be completed on the articles of organization for the converted entity.

(4) If the corporation is converting into a foreign corporation or foreign other business entity, a certificate of conversion shall be filed with the Secretary of State.

(b) Any statement or certificate of conversion of a converting corporation shall be executed and acknowledged by those officers of the converting corporation as would be required to sign an officers' certificate (Section 173), and shall set forth all of the following:

(1) The name of the converting corporation and the Secretary of State's file number of the converting corporation.

(2) A statement of the total number of outstanding shares of each class entitled to vote on the conversion, that the principal terms of the plan of conversion were approved by a vote of the number of shares of each class which equaled or exceeded the vote required under Section 1152, specifying each class entitled to vote and the percentage vote required of each class.

(3) The name, form, and jurisdiction of organization of the converted entity.

(4) The name, mailing address, and street address of the converted entity's agent for service of process. If a corporation qualified under Section 1505 is designated as the agent, no address for it shall be set forth.

(c) For the purposes of this chapter, the certificate of conversion shall be on a form prescribed by the Secretary of State.

(d) The filing with the Secretary of State of a statement of conversion on an organizational document or a certificate of conversion as set forth in subdivision (a) shall have the effect of the filing of a certificate of dissolution by the converting corporation and no converting corporation that has made the filing is required to file a certificate of election under Section 1901 or a certificate of dissolution under Section 1905 as a result of that conversion.

(e) Upon the effectiveness of a conversion pursuant to this chapter, a converted entity that is a domestic partnership, domestic limited partnership, or domestic limited liability company shall be deemed to have assumed the liability of the converting corporation (1) to prepare and file or cause to be prepared and filed all tax and information returns otherwise required of the converting corporation under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) and (2) to pay any tax liability determined to be due pursuant to that law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: A California corporation is allowed to convert to any other domestic (California) entity. California law authorizes other business entities, such as LLCs, to convert to a foreign entity, and also allows foreign entities, including corporations, to convert to a California corporation. However, existing California law does not allow for a California corporation to convert to a corporation of another state. This becomes problematic when the corporation and all of its operations move out of state and no longer have any connection with California.

The Solution: Right now, for a California corporation to convert to a foreign corporation, it has to convert to a California LLC, convert the California LLC to either a foreign LLC or a foreign corporation (depending on the laws of the other state). This is ridiculous to have to take several extra steps to convert the California entity to a foreign corporation. There is no rational policy reason behind this because it is not stopping corporations from leaving California. This resolution would allow California corporations to convert to a foreign corporation or other business entity.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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RESOLUTION 01-06-2018

DIGEST

Limited Liability Corporations: Certificate of Cancellation Does Not Abate Lawsuits

Amends Corporations Code section 17707.08 to clarify that a cancelled limited liability company retains the power to sue and be sued while winding up.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Corporation Code section 17707.08 to clarify that a cancelled limited liability company retains the power to sue and be sued while winding up. This resolution should be approved in principle because it would make clear a limited liability company still has the power to sue and be sued notwithstanding the filing of a certificate of cancellation or proceedings for its wind-up and dissolution.

Subdivision (a) of Corporations Code section 17707.06 states that a limited liability Company (LLC) can continue to exist for the purpose of winding-up its affairs, prosecuting and defending actions to collect and discharge its obligations and to collect, dispose and divide-up its assets after the filing of a certificate of cancellation. Subdivision (b) further confirms that no action or proceeding to which an LLC is a party abates by reason of the filing of a certificate of cancellation or proceedings for winding up and dissolution. Further, subdivision (d) expressly provides that an LLC can wind up its affairs after cancellation.

However, subdivision (c) of section 17707.08 provides that once the certificate of cancellation is filed, the powers, rights and privileges of the LLC cease. With this language, California federal district courts have interpreted section 17707.08 to mean that an LLC cannot file or defend a lawsuit after cancellation. (See *Hullinger v. Anand* (C.D. Cal. Dec. 22, 2015) 2015 U.S. Dist. LEXIS 187188, 2015 WL 11072169, at *9; *Mirshafiei v. Legal Recovery Law Offices, Inc.* (C.D. Cal. Oct. 5, 2016) 2016 U.S. Dist. LEXIS 143625, at *20; *Best Tire & Serv. Ctrs., LLC v. Goodyear Tire & Rubber Co.* (C.D. Cal. Feb. 14, 2017) 2017 U.S. Dist. LEXIS 39743, 2017 WL 1017642, at *8-9.) Since these federal decisions show that there is confusion over what powers and rights an LLC has while it is winding up, adding a cross-reference between Corporations Code sections 17707.08 and 17707.06 will eliminate any conflict or ambiguity, and will make clear that after cancellation, the LLC still retains power to sue and defend itself in court.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code section 17707.08 to read as follows:

1 § 17707.08

2 (a) (1) The managers shall sign and cause to be filed in the office of, and on a form
3 prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the
4 limited liability company pursuant to Article 7 (commencing with Section 17707.01), unless the
5 event causing the dissolution is that specified in subdivision (c) of Section 17707.01, in which
6 case the persons conducting the winding up of the limited liability company's affairs pursuant to
7 Section 17707.04 shall have the obligation to sign and cause to be filed the certificate of
8 dissolution.

9 (2) The certificate of dissolution shall set forth all of the following:

10 (A) The name of the limited liability company and the Secretary of State's file number.

11 (B) Any other information the persons filing the certificate of dissolution determine to
12 include.

13 (C) The event listed in Section 17707.01 causing dissolution.

14 (3) If a dissolution pursuant to subdivision (b) of Section 17707.01 is made by the vote of
15 all of the members and a statement to that effect is added to the certificate of cancellation of
16 articles of organization pursuant to subdivision (b), the separate filing of a certificate of
17 dissolution pursuant to this subdivision is not required.

18 (b) (1) The managers shall sign and cause to be filed in the office of, and on a form
19 prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon
20 the completion of the winding up of the affairs of the limited liability company pursuant to
21 Section 17707.06, unless the event causing the dissolution is that specified in subdivision (c) of
22 Section 17707.01, in that case the persons conducting the winding up of the limited liability
23 company's affairs pursuant to Section 17707.04 shall have the obligation to sign and cause to be
24 filed the certificate of cancellation of articles of organization.

25 (2) The certificate of cancellation of articles of organization shall set forth all of the
26 following:

27 (A) The name of the limited liability company and the Secretary of State's file number.

28 (B) That a final franchise tax return, as described by Section 23332 of the Revenue and
29 Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and
30 Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part
31 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

32 (C) That upon the filing of the certificate of cancellation, the limited liability company
33 shall be canceled and its powers, rights, and privileges shall cease.

34 (D) Any other information the persons filing the certificate of cancellation of articles of
35 organization determine to include.

36 (3) The Secretary of State shall notify the Franchise Tax Board of the filing.

37 (c) Except as provided in Section 17707.06, upon ~~Upon~~ filing a certificate of cancellation
38 pursuant to subdivision (b), a limited liability company shall be canceled and its powers, rights,
39 and privileges shall cease.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Corporations Code section 17707.06 allows an LLC that has filed a certificate of

cancellation to continue to exist for the purpose of winding up its affairs, including prosecuting and defending actions by or against it. However, Section 17707.08(c) provides that once the certificate of cancellation is filed, all of the LLC's powers, rights and privileges cease. Federal case law has interpreted Section 17707.08 to mean that an LLC cannot file suit after cancellation, but this conflicts with the clear language in Section 17707.06(a). There are no published state cases on point.

The Solution: This resolution provides an exception for the powers that are eliminated when an LLC files its certificate of cancellation, by referencing the statute which authorizes an LLC to continue its ability to sue and defend itself in court.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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