

# Consequences of Corporate Status Suspension: *Arbor Vita Corp. v. Commissioner*

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Originally Published in the New York Law Journal

A corporation that fails to maintain its corporate status under state law may be prohibited from transacting business and may be unable to assert other corporate rights, including its right to protest and litigate tax assessments. Such a failure can thus have adverse and sometimes irreversible consequences, as illustrated by the recent decision of the Tax Court in *Arbor Vita Corp. v. Commissioner* (166 T.C. No. 5 (2026)).

## **Facts in *Arbor Vita***

Arbor Vita Corp. was incorporated in 1998 under California law. The IRS determined that Arbor Vita had failed to pay its unemployment tax liability for 2017 and assessed a penalty against Arbor Vita for failure to file Form W-2 Wage and Tax Statements for 2017 with the Social Security Administration. Thereafter, the IRS notified Arbor Vita that the IRS had filed a notice of federal tax lien (NFTL) to collect the tax and penalty allegedly due. Arbor Vita requested, and appeared at, a collection due process (CDP) hearing with the IRS to contest the collection action.

The Commissioner sustained the filing of the NFTL in a notice of determination dated March 6, 2025. Arbor Vita filed a petition with the Tax Court on April 5, 2025, for review of that determination.

Meanwhile, by operation of the California Revenue and Taxation Code, the powers and privileges of Arbor Vita as a California corporation had been suspended as of July 1, 2024, because of Arbor Vita's failure to file state tax returns. Arbor Vita's corporate status remained suspended until, on September 17, 2025, it obtained a Certificate of Revivor from California and was thereby restored to good standing in that state.

The Commissioner moved to dismiss Arbor Vita's Tax Court case for lack of jurisdiction, on the basis that the corporate status of Arbor Vita had been suspended under state law at the time it filed its petition with the Tax Court and, indeed, throughout the period provided under the Internal Revenue Code to apply for review of a determination in a CDP case.

## Discussion

Under Tax Court Rule 60(c), the capacity of a corporation to litigate in the Tax Court is determined by the law under which the corporation was organized. Arbor Vita did not dispute that California law was controlling as to its capacity to seek review of the Commissioner's notice of determination sustaining the NFTL. It also did not dispute that its corporate status was suspended when it received the notice of determination and when it filed its petition with the Tax Court. Arbor Vita argued, however, that, under California law, revival of its corporate status under the Certificate of Revivor on September 17, 2025, related back to the date on which its Tax Court petition was filed.

The California Revenue and Taxation Code provides that reinstatement of a corporation by the California Franchise Tax Board "shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension" (subject to an exception not relevant to the context before the court). The Tax Court opinion discussed California state court cases and *Community Electric Service of L.A., Inc. v. National Electrical Contractors Assoc.* (869 F.2d 1235 (9<sup>th</sup> Cir. 1989)), a Court of Appeals decision applying California law. The opinion summarized those cases as indicating that "procedural acts" taken by a corporation in a lawsuit are validated retroactively by the revival of corporate status, and that most litigation activity is characterized as procedural for purposes of determining the effect to be given to revival of corporate status. However, "substantive acts" are not validated by the revival.

Under *Community Electric* and California state court cases discussed in *Community Electric*, a statute of limitations defense is considered to accrue on the date the statute of limitations period lapses, and thus is not overridden by the revival of corporate status.

The Tax Court concluded that the 30-day period allowed under the Internal Revenue Code for filing a Tax Court petition to review a determination sustaining a NFTL gave rise to a statute of limitations defense on the 31<sup>st</sup> day after notice of the determination was provided to Arbor Vita. As Arbor Vita's status as a corporation had been suspended at the time it filed its petition for review and remained suspended at the time the 30-day period lapsed, Arbor Vita's petition for review was invalid when filed. Because the statute of limitations is a "defense" within the meaning of the California Revenue and Taxation Code, the issuance of a Certificate of Revivor by California after the Tax Court petition was filed did not revive Arbor Vita's rights to seek review of the determination sustaining the NFTL.

Arbor Vita also argued that the limitations period should be extended under the doctrine of "equitable tolling." The Tax Court opinion references other cases characterizing that doctrine as "effectively extend[ing] an otherwise discrete limitations period set by Congress." The court agreed with Arbor Vita that, under *Boechler, P.C. v. Commissioner* (596 U.S. 199 (2022)), the relevant limitations period was a non-judicial deadline that could be subject to equitable tolling. However, this did not help Arbor Vita, since its petition was filed within the limitations period specified by the Internal Revenue Code. By contrast, the effect to be given to a revival of corporate status was a matter purely of state law. The Tax Court concluded that it could not grant any extension under equitable tolling that would preserve Arbor Vita's petition for review, and granted the Commissioner's motion to dismiss the case.

## Observations

It is not unusual for attorneys to encounter situations where the corporate status of a corporation has been suspended or terminated because of the failure to file a form or to pay a tax or fee required by applicable law to maintain its status. Indeed, clients often ask attorneys whether any issue will arise if the active status of a corporation is intentionally terminated or allowed to lapse. Sometimes, the consequences of termination or lapse are mere nuisances that can be remedied by satisfaction of any relevant filing and payment obligations and taking such other steps as are required under state law to revive corporate status.

*Arbor Vita* indicates that, in other situations, suspension of corporate status may ultimately have significant consequences that are not reversible even after considerable effort. While the nature and scope of any problem and the steps needed to remedy it will vary on a state-by-state basis, the likelihood of overcoming any such potential obstacle to a corporation's challenging a tax assessment will generally be improved by identifying the issue at the earliest possible time.

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