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7.0 GENERAL (Liens/Warrants)

7.0.1 Liens

7.0.1.1 Lien Introduction, Definitions, And Extension Guidelines

Background

A lien is a charge upon real or personal property to satisfy debt or duty ordinarily arising by operation of law. A lien legally encumbers California property, preventing the property from being sold or transferred through escrow as long as it exists. Franchise Tax Board (FTB) files liens if a non-compliant taxpayer or business entity has a delinquent liability. ((****)).

Revenue and Taxation Code Section 19221 provides that if a tax liability is not paid at the time that it becomes "due and payable" and due process is served; an enforceable state tax lien is created for the amount of the tax liability. Since the lien arises by operation of law, it is termed a "statutory lien".

Revenue and Taxation Code Section 19221 also defines when a tax liability becomes "due and payable" for purposes of creating a state tax lien also known as the statutory lien date. The conditions vary for different types of assessments. For the types of assessments listed below, state tax liens arise on the following dates:

- The state tax lien arises on the date the amount is established on the records of the department (generally, the return status date of the assessment) for the amount of any liability disclosed on a return filed on or before the date payment is due and for the amount of any liability disclosed on a return filed after the date payment is due.

- The state tax lien arises on the date a Jeopardy Assessment (J/A) notice is mailed or issued for amounts of any liability determined by the J/A. See Section 7.2.4.1 Jeopardy Assessments.

Note: The Franchise Tax Board, Internal Revenue Service, Board of Equalization, and the Employment Development Department have an agreement to compare statutory lien dates to determine priority for payment on competing liens. Refer all requests for statutory lien date comparison to the Collection Advisory Team (CAT).

Statutory lien dates are determined by the following:

- For self-assessed returns- the date the liability is established on the records of the department. The SLD is the posting date of a return. In TI this information is on the return display screen ((****)) under return status date. In BETS this information is found in conversation ((****)) on the transaction list screen.
- For a Notice of Proposed Assessment (NPA)- the date the assessment goes final (the legal effective date). In TI this information is on the proposed assessment

information display screen ((****)). In BETS view the NPA in conversation ((****)) and the SLD is 60 days after the issuance of the NPA unless it is protested.

- For a protested NPA- 30 days after the Notice of Action (NOA) is issued. In TI this information is also found on the ((****)) screen. In BETS this information is found in conversation ((****)).

- For Jeopardy Assessments- the date the notice is mailed or issued. In TI this information is on the PA and comments screen. In BETS this information is found in conversation ((****)) and ((****)).

- Multiple liabilities for one tax year- its possible to have multiple SLD's for a single tax year. Example: A self-assessed no pay return is filed (SLD is posting date of return) and subsequently a NPA is issued for the same tax year. (SLD is final date of NPA or legal effective date).

Liens are either general or specific in nature.

- A general lien is enforceable by the holder for all obligations that exist against the owner of the property. For example, FTB will issue a general lien for outstanding tax liabilities against property owned by the taxpayer or entity.

- A specific lien is enforceable for a specific obligation existing against the owner of the property and is dependent upon possession of the property by the lienor. For example, when an automobile is taken to a repair shop, the proprietor can hold the automobile until the repair bill is satisfied. The expense of repair is the basis of the lien and the possession of the automobile by the proprietor makes the lien effective.

A state tax lien is a general lien, which arises by operation of law (Revenue and Taxation Code Section 19221) and continues in effect for 10 years from the date of its creation. It attaches to all property and rights to property, whether real or personal, belonging to the taxpayer or entity located in California. The lien attaches to property owned by the taxpayer or entity at the time the lien arises and property subsequently acquired by the taxpayer or entity.

Government Code Section 7170 describes the force and effect of a state tax lien. From the date of its creation, the state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer or entity located in this state. A state tax lien attaches to any dwelling despite the prior recording of a homestead declaration as defined in Code of Civil Procedure Section 704.910. When the department sells a dwelling, whether through foreclosure of the state tax lien or as the result of a warrant action, the state tax lien is paid prior to the homestead exemption.

Exception: Taxpayers may transfer their interest in real property via a QuitClaim Deed or other reconveyance document despite a FTB lien having been filed. This usually occurs when title to the property is transferred without an escrow. FTB's lien will continue to encumber the property, although the liable taxpayer or entity no longer retains ownership. If the new owner sells the property through escrow, the proceeds will be attached to pay the outstanding liability in order to clear the property's title from the lien.

FTB staff may discover situations where a taxpayer or entity sells real property and an escrow closes without satisfaction of our Notice of State Tax Lien (NSTL). A nominee lien against the purchaser would not be appropriate or necessary in this instance since our lien would still encumber the property. (See Liens Missed in Escrow)

Alternatively it may be discovered that the taxpayer or entity has transferred property into the name of an entity or person other than the taxpayer or entity, but still exercises complete domination and control over the property. In these instances the filing of a nominee lien may be appropriate.

A nominee lien is a general lien. The filing of a nominee lien is an administrative method of establishing a public record of FTB's lien against real property held in the name of a third party, but belonging to the taxpayer or entity.

NOTE: If a taxpayer or entity transfers property to a third party to evade collections, CAT can pursue a nominee lien to encumber the property. For more information regarding Nominee liens refer to Section 9.0.3.6 Nominee Actions.

Purpose

A state tax lien protects California's interest on accounts with outstanding liabilities by attaching real property and rights to property belonging to the taxpayer or entity.

Responsibility

FTB staff are responsible for filing liens in the appropriate county to protect California's interest on collection assigned cases when the unliened accumulative case balance due is ((****)) not including unliened tax year liabilities ((****)) and should be issued in accordance with the Taxpayer's Bill of Rights. A lien should not be filed on balances older than 10 years from the effective date of the liability.

Action

Taxpayers should be advised of lien requirements and the impact it might have on their credit. Extenuating circumstances, which warrant an exception to the policy, must be noted on the Accounts Receivable Collection System (ARCS) in the History text.

The following should be considered before issuing a lien:

- On Personal Income Tax (PIT) accounts where an Installment Agreement (I/A) is granted, liens are usually filed on accounts with balances ((****)) to close, or when there is a history of non-payment. Taxpayers must be notified when establishing the I/A and prior to filing the lien. Notification should allow adequate time for taxpayer response before filing the lien. Owe $10,000 or less of tax, not including penalties and interest, see Revenue and Taxation Code Section 19008(b1)

- If no lien has previously been filed, a lien should generally be issued ((****)) or a reason why the case is not liened should be indicated. For example: The taxpayer is already in an I/A status.

- Liens should not be issued simultaneously with other involuntary legal actions such as Earnings Withholding Orders for Taxes (EWOT), Orders To Withhold (OTW), or Continuous Order to Withhold for Taxes (COTW).

- Sufficient time should be allowed after the issuance of a lien to allow the taxpayer or entity adequate time to respond before another action is taken ((****)). Exceptions should be substantiated and documented on the case.

A lien should not be issued within ((****)) days of the Statement of Tax Due (STD) or a Notice of Balance Due issuance on a new liability. Supervisors or leads should be consulted for exceptions. (Revenue and Taxation Code Sections 21015.5 and 21019)

- If a taxpayer has an "also known as" (AKA), an AKA lien should be issued through ARCS ((****)) listing all known alias names.

((****))

((****))

A lien should be filed with the Secretary of State (SOS) when the taxpayer entity owns or has an interest in any the following:

- Partnership
- Accounts receivable
- Chattel paper (tangible assets)
- Equipment
- Farm products
- Inventory
- Negotiable documents of title

Lien Extension Guidelines:

A NSTL is extinguished 10 years after the date of its recording unless an Extended Notice of State Tax Lien is recorded in a county recorder's office or filed with the Secretary of State as an extension of the original lien. Section 7.0.1.2 describes the recording and filing of notices of state tax lien.

Liens should be extended on a case-by-case basis, after consideration of all facts and circumstances of each case. A lien should be considered for extension only if all the following conditions are met:

- ((****))
- The assessments are on filed tax returns, affirmed audits or filing enforcement assessments where the facts of the case indicate a reasonable expectation that the filing of tax return(s) would result in a balance due, including tax, penalties, and interest ((****)).
- There is a reasonable expectation that the lien will result in payment because the taxpayer or entity owns, or is likely to acquire real property in the future.

Additional factors that may be considered before extending a lien are:

- Taxpayer's age (PIT only)
- Taxpayer's health (PIT only)
- Taxpayer's or entity's future earnings potential and ability to acquire real property in the future
- Taxpayer's or entity's current financial condition
- Basis of assessment
  - Filed returns
  - Affirmed audits
  - Filing Enforcement assessment(s) reporting W-2 wages, K-1 information, 1099 payments, pension and retirement distributions, or other filing enforcement assessments that would likely have a balance of ((****)) or more if the return(s) were filed. (PIT only)
- Taxpayer's occupation or entity's business is in the real estate areas, such as a realtor, developer or contractor, especially if 1099 payments are also present
- Taxpayer or entity owns real property of value

Review and approval by a supervisor is required before filing a lien extension.

((****)) ((****)) ((****)) ((****))

NOTE: A SOS lien extension can only be filed within six months of the lien expiration date.

Expired Lien(s)

Liens expire 10 years from the date of recording or filing and are no longer valid, unless they are extended. ((****)) County recorders will reject a lien released on an expired lien.

If the taxpayer is requesting a lien release on an expired lien, send the Notice of Expired State Tax Lien ((****)) for their records only.

Reference

((****))
((****))
((****))
((****))
((****))
Code of Civil Procedure Section 704.910
Government Code Section 7170
Revenue and Taxation Code Section 19221
Revenue and Taxation Code Sections 21015.5 and 21019

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.1.2 Recording And Filing Notices Of State Tax Lien

Background

Government Code Section 7171 authorizes both the recording of a Notice of State Tax Lien (NSTL) in the office of a county recorder and the filing of a NSTL with the Secretary of State (SOS) at any time after the state tax lien is created and before it is extinguished. Unless an extended notice of state tax lien is recorded or filed, a state tax lien is extinguished 10 years from the date of its creation.

When a NSTL is "recorded" with a county recorder or "filed" with the SOS, the state tax lien remains in effect for 10 years from the date of recording or filing. The effectiveness of a state tax lien may be extended further by recording an Extended Notice of State Tax Lien within 10 years from the date of the previous recording. (SOS Lien Extensions can only be filed within six months of the expiration date.)

Filing and recording a NSTL in a county recorders' office or with the SOS establishes a public record of the state tax lien against all real property, personal property, and rights to personal property belonging to the taxpayer or entity that is located in California. It fixes the priority of the state tax lien against other subsequent liens and encumbrances created by filing with the SOS such as financing statements filed by lenders and judgment liens against personal property filed by judgment creditors. Refer to Section 7.0.1.3 Priority of state tax liens.

Purpose

Filing a NSTL with the county recorders' office or the SOS establishes a public record of the state tax lien and protects the state's interest on outstanding liabilities.

Responsibility

Franchise Tax Board (FTB) staff must ensure state and out of state tax liens have been filed and recorded for all appropriate outstanding tax liabilities.

Action

Government Code Section 7171(c) states a NSTL must include the following information:

- The last name, first name, middle initial or entity name
- The name of the department giving notice of the lien
- The amount of unpaid tax
- A statement that the amount of the unpaid tax is a lien on all real or personal property and rights to such property, including all after-acquired property and rights to property belonging to the taxpayer

- A statement that the department has complied with all of the provisions of the applicable law for determining and assessing the tax

Automated Notices of State Tax Lien -

The Personal Income Tax (PIT) Accounts Receivable Collection System (ARCS) and Business Entities (BE) ARCS automatically issue a NSTL to the county recorders' office in the county containing the account address when all the following conditions are met:

- The account address is a valid address; it does not matter if mail has been returned undeliverable. A valid address is described by the FTB as the last known address supplied by the taxpayer or entity.
- ((****))
- The case is not assigned to a Manual Process (MP) or CART (CT) unit.
- The case does not reflect a previously recorded NSTL that is still in effect for that tax year and in the same county.
- ((****))

NOTE: PIT and BE ARCS will not automatically issue a NSTL for filing with the SOS. This transaction must be performed manually. ((****))

Whenever it is determined that a NSTL was issued incorrectly, (e.g., the surname or entity is truncated, the entities "doing business as" (DBA) is not included, the first name is incomplete or the middle initial is missing), a corrected NSTL must be filed on the year(s) in question. This is called "perfecting a lien". In most cases, the lien fee should be waived. ((****))

Policy for Recording Notice of State Tax Lien in A County -

- Government Code Section 7171 authorizes the recording of a NSTL in the office of a county recorder. The recording of the notice establishes a public record of the existence of the state tax lien against all real property including crops, timber to be cut, mineral rights. **NOTE:** A SOS lien must be filed to attach consumer goods, fixtures, and bulk sales.

- Generally, the recording date serves to fix the priority of the state tax lien against other types of liens and encumbrances that creditors can obtain against real property. This same priority is also established when filing a SOS tax lien.

- A NSTL should be recorded if the taxpayer or entity accumulated unliened case balance ((****)), the taxpayer or entity has refused to comply, and is:

    - Known to own real property
    - Self-employed (applies to individual taxpayers only)
    - Contemplating filing bankruptcy
    - Terminally ill (applies to individual taxpayers only)

  - Involved in judicial proceedings where failure to establish a public record of the state tax lien may jeopardize collection of the liability
  - The Taxpayers' Bill of Rights (Revenue and Taxation Code Section 21019, effective January 1, 1989) requires notification be sent to the taxpayer or entity at least 30 days prior to the filing of a lien. The notification must include the statutory authority for issuing a NSTL, the earliest date on which the lien may be filed or recorded, and the remedies available to the taxpayer or entity to prevent the filing of the NSTL.
  - If a lien was filed after January 1, 1989 and the taxpayer demonstrates that 30 days notice was not provided, the lien is to be released as "filed in error".
  - The preliminary notice required by Revenue and Taxation Code Section 21019 does not apply to jeopardy assessments.

- A NSTL should be issued on any case with an accumulated unliened case balance due ((****)) providing that the 30-day pre-lien notification requirements have been met. If an exception is made (e.g., Installment Agreement), the reasons for delaying or omitting recording should be noted on ARCS in the History Text.

- A NSTL should be recorded in the county where the taxpayer resides, or was last known to reside. Additional notices should be recorded in any county where the taxpayer transacts business or owns real property.

- A NSTL should be recorded in the county where the entity owns property and transacts business.

- A NSTL should be recorded for the entire balance due for each liable taxpayer or entity on an account. In some cases, this may require the recording of multiple notices in a county. Accounts on which ARCS has automatically produced a NSTL for recording should be reviewed to determine if additional notices should be recorded to secure the entire balance due from all liable taxpayers.

  - If a new tax liability consolidates to an existing case, a NSTL should be recorded for the new tax liability.
  - If there are balances due for multiple tax years and spouses are jointly liable for only some of the years, two notices of state tax lien should be recorded. One notice should name both spouses and the balances due for the joint tax years. The other notice should name the spouse liable for the remaining tax years and the balances due for those separate years. (Applies to individual taxpayers only.)

- ((****)) ((****))

- Whenever a NSTL is recorded, a Notification of Tax Lien ((****)) should be sent to the taxpayer or entity unless mail to the last known address has been returned undeliverable.

- "Doing business as" (DBA) liens are no longer filed for PIT liabilities against sole proprietors without supervisor approval. If the taxpayer is the sole proprietor of a business, a lien filed against the taxpayer's name will reach assets that are held in the DBA name. In rare instances when a DBA lien is approved, the lien must be manually initiated on ARCS using ((****)) and will indicate the fictitious business name (e.g., John Doe DBA J. D. Trucking)

The filing of a DBA lien is a precautionary procedure since assets held in a fictitious business name are reachable to satisfy the liability of the sole proprietor. Whenever possible, a copy of the Fictitious Business Name Statement should be obtained from the city or county where filed and attached to the lien prior to filing. This will result in the Fictitious Business Name Statement being filed as a part of the lien certificate, thus establishing the relationship between the business and the taxpayer. ((****)) (Applies to individual taxpayers only.)

NOTE: A DBA lien against a corporation may be filed when a business is being operated by a corporation in a name other than that of the corporation.

- If a taxpayer is known to use a name other than the one on the Taxpayer Information (TI) Display, an AKA lien should be filed. The lien can be issued manually. Manually prepared liens will indicate the second name as follows:
    - Jane Doe AKA Jane Nonfiler

It may be necessary to prove that the AKA is in fact the taxpayer once an asset has been affected by the lien. Social Security Numbers or California Drivers License numbers may be compared. ((****))

NOTE: AKA liens do not apply to business entities.

Policy for Filing Notice of State Tax Lien with SOS -

- Government Code Sections 7171 and 7220 authorize the filing of a NSTL with the SOS. The filing of the notice establishes a public record of the existence of the state tax lien against all personal property belonging to the taxpayer and located in this state. Generally, the filing date serves to fix the priority of the state tax lien against other types of liens and encumbrances creditors can obtain against personal property by filing a financing statement, a notice of judgment, etc.

- A NSTL should be filed with the SOS when information indicates the taxpayer may own or have an interest in any of the types of personal property commonly subject to the liens of other creditors. Such property includes:
    - Accounts receivable - the amount owned to a business by a taxpayer or entity (usually for goods or services)

- Chattel paper - legal paper to secure a person's interest in a movable item of personal property (a piece of furniture, automobile, a head of livestock, etc.)
- Equipment - special items needed for a particular purpose (supplies, furnishings, apparatus, work machines, etc.)
- Farm products/equipment - products from and equipment used on a farm (hay, backhoes, tractors, etc.)
- Inventory - goods in a store or business (liquor, clothing, food, etc.)
- Negotiable documents of time - negotiated or legally transferable to another by endorsement or by proper delivery (promissory notes, checks, bonds)
- Partnerships - association of two or more partners in a business enterprise.

A NSTL should be filed with the SOS when information indicates the taxpayer has an interest in a partnership or limited liability partnership. The state tax lien attaches personal property and, consequently, a taxpayer or entity's interest in a partnership may not be sold, assigned or otherwise conveyed free of a state tax lien. Procedures for issuing an SOS lien to encumber one's interest in a partnership are:

- Identify name of partnership and/or FEIN
- Request the partnership return, using the FEIN as the account number
- The tax representative (if applicable) will send the taxpayer and partners copies of the endorsed lien attached to Notice to Taxpayer and Notice to Partnership

NOTE: Notice to Taxpayer and Notice to Partnership are used to notify the taxpayer and partners of the force and effect of the state tax lien.

Although the state tax lien attaches to a taxpayer's interest in a partnership, it does not attach to specific partnership distributions of profits and surplus. The prescribed means of reaching partnership distributions of profits and surplus is a partnership Charging Order.

Whenever a NSTL is filed with the SOS, a Notice of Tax Lien, ((****)) for PIT accounts should be sent to the taxpayer unless mail to the last known address has been returned undeliverable.

Request To Issue Notices of State Tax Lien -

- ((****)) ((****))

- For Corporation accounts, liens can be FTB staff initiated ((****)) or issued manually using ((****)), Request For Issuing Notice of State Tax Lien.

- ((****)) ((****))

Lien Recording and Filing Fees -

- California resident liens: There is no fee for recording a NSTL in a county (Government Code Section 27383). Fees are charged for recording a release of lien in a county. (Government Code Sections 27361.3 and 27361.4). ((****)).

- Nonresident liens: Effective January 1, 1988 there is a fee for recording or releasing Nonresident NSTL(s) in a county. (Government Code Sections 27361 and 27361.4).

- SOS Liens: There is no fee for filing a NSTL with the SOS. The fee for filing a release of lien is $2.00 (Government Code Section 7227).

- The appropriate fee(s) is charged to the taxpayer's account when the NSTL is issued.

NOTE: When a second lien is filed against a taxpayer for the same tax years in the same county for the purpose of correcting information (e.g., J. Doe to John P. Doe), an additional lien fee must **not** be charged. ((****)) ((****))

If the department certifies that the NSTL was recorded or filed in error, then the county or the SOS will record the release without a fee (Government Code Sections 27361.3(c) and 7227). In those cases the fee charged to the taxpayer's account is abated.

Manual Lien Data Base -

- A master lien database is maintained in the Lien Group of the Special Procedures Section for all manually prepared NSTLs (pre-ARCS from January 1994 – December 1999) recorded in a county office and filed with the SOS. The lien database contains the following information:

    - Taxpayer's social security number
    - Entity's corporation number
    - Taxpayer's or entity's name and address at the time the lien was issued
    - Date the Notice of State Tax Lien was actually recorded or filed
    - Book and page, or instrument number assigned to the Notice of State Tax Lien by the county recorders' office or the SOS to designate its location in their records
    - Lien Certificate Number assigned by department
    - The tax years included on the NSTL
    - Date a release of lien was recorded or filed
    - Book and page or instrument number assigned to the release of lien by the county recorders' office or the SOS

- All liens issued through ARCS are maintained in the Enterprise Wide Lien System (EWLS).

- Copies of Federal Aviation Administration (FAA) and Coast Guard liens will continue to be maintained by the Lien Group.

Procedure for Filing Notice of State Tax Liens with the FAA -

FAA-

- Title 14 of the Code of Federal Regulations (CFR), Section 49.31 and Section 49.33, authorizes the filing of a NSTL with the FAA against individuals or corporations owning aircraft. The filing of a NSTL establishes a public record of the existence of the lien with the agency charged with the licensing and registration.

- To affect the filing of the NSTL with the FAA, the following steps are to be taken by the person requesting the lien:

  - ((****))
  - Route the completed form FTB 6814 to the lien group

Certified Copy of Notice of State Tax Lien -

- Occasionally, the Attorney General's Office will request the department provide a certified copy of a recorded or filed NSTL. The copies reflect recording or filing information that is frequently used as exhibits in court actions to document the existence and validity of the lien.

- Copies of NSTLs obtained from a county recorder’s office can be certified by the recorders' office as true copies of the documents. A copy of a NSTL must be obtained from the county recorders' office. The copy may be requested by mail or obtained in person.

- A copy of a NSTL filed with the FAA is available in the Lien Group.

Reference

County Recorders
Revenue and Taxation Code Section 21019
((****))
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.1.3 Priority Of State Tax Liens

Background

The priority of a state tax liens, relative to other types of liens on the taxpayer or entity's property, and the rights of persons who acquire the taxpayer or entity's property after creation of the state tax lien, vary depending upon whether or not the existence of the state tax lien has been established as a public record by the recording of a Notice of State Tax Lien (NSTL) with the county recorders office or with the Secretary of State (SOS). (See Section 7.0.1.2 Recording and Filing Notices of State Tax Lien)

Generally, prior to the recording or filing of the notice, the state tax lien is only valid against other governmental statutory liens created after the state tax lien. After recording or filing, the state tax lien is valid against additional kinds of liens and encumbrances attaching to the taxpayer or entity's property after the date the NSTL is recorded or filed.

Purpose

The purpose of the "priority of a state tax lien" is to determine a ranking of which judgment creditor or lien holder gets paid.

Responsibility

Franchise Tax Board (FTB) staff is responsible for knowing how to determine the priority of state tax liens.

Action

State tax liens are prioritized based on the following situations:

Competing With Other State Tax Liens-

Government Code section 7170.5 provides that between competing state tax liens, or as between a state tax lien and a federal lien, the lien that first comes into existence (based on the statutory lien date) has priority over the lien that later comes into existence. The priority is not affected by the recording or filing of a NSTL.

Competing With Federal Tax and Other State Agency Liens -

It is the department's position that between competing state and federal tax liens, the lien that first comes into existence has priority over the lien that later comes into existence. The recording or filing of a NSTL or notice of federal tax lien does not affect the priority.

The date a federal tax lien comes into existence (statutory lien date) is the Internal Revenue Service's (IRS) "assessment" date (See Sections 6321 and 6322 of the IRS Code). Generally, the "assessment" date is noted on notices of a federal tax lien.

For federal tax assessments made before July 1, 1978, the FTB compares the date of assessment by the IRS with the recordation of the lien in the county recorder's office. For federal tax assessments made on or after July 1, 1978, the date of assessment by the IRS is compared to the date the FTB's assessment became final under the assessment statutes.

These procedures may not apply in certain situations; including, but not limited to:

- Bankruptcy
- Insolvency proceedings
- Federal estate and gift tax liens

The IRS and FTB have agreed to explore and pursue procedures when the assessment date of the tax for the IRS and FTB fall on the same day. In situations where the assessment time has not been noted by the taxing authorities claiming the same day, a pro rata division of the amount allocated from the taxpayer will be performed. The division will be based on the total amount (including all accruals to date of receipt of payment) of the respective liens compared to the amount collected from the taxpayer that are available to satisfy the liens.

When a potential lien priority dispute with the IRS, Board of Equalization (BOE), or Employment Development Department (EDD) arises and cannot be readily resolved on the local level in accordance with the law, FTB staff should immediately refer the matter to the Collection Advisory Team (CAT). The CAT advisor will confirm lien dates, assessment dates, the amounts in dispute, and the circumstances involved.

The CAT advisor will contact IRS, BOE, and EDD to compare the state and federal statutory lien dates, assessment dates, and the amount in dispute. Resolution of the dispute will be consistent with available federal and state guidelines.

Competing With Judgment Creditors and Other Liens and Encumbrances -

Priority is determined by the recording or file date of the NSTL when comparing to other liens and encumbrances.

Regarding real property, Government Code Section 7170(b) provides that a state tax lien will not have priority over the right, title or interest of certain persons unless a NSTL was recorded in the county where the real property is located before the person acquired or perfected their right, title or interest. The persons specified are:

- A successor in interest of the taxpayer without knowledge of the state tax lien
- A holder of a security interest
- A mechanics lien holder

- A judgment lien creditor

Real property acquired after the state tax lien has been filed, Civil Code Section 2898 states that a mortgage or deed of trust given for the price of real property, at the time of its reconveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws. This includes state tax liens recorded prior to the execution of the mortgage or deed of trust. Subsequent mortgages or deeds of trust against the same property would not have priority over earlier recorded state tax liens.

Regarding personal property, Government Code Section 7170(c) describes certain persons whose interest will have priority over a state tax lien ***unless*** a NSTL was filed with the SOS before the person acquired or perfected their interest. The persons described are:

- The holder of a security interest perfected pursuant to Commercial Code Section 9303
- Any person who acquires an interest in the property under California law without knowledge of the state tax lien or who perfects an interest under California law
- A judgment lien creditor

Regarding personal property, Government Code Section 7170(c) describes certain persons whose interests will have priority over a state tax lien ***even though*** a NSTL was filed with the SOS before the person obtained their interest. The persons described include:

- Certain buyers in the ordinary course of business
- A holder in due course of a negotiable instrument and a holder of a negotiable document of title
- A bona fide purchaser of a security
- A purchaser of chattel paper or an instrument who gives new value and takes possession in the ordinary course of business
- A holder of a purchase money security interest
- A collecting bank holding a security interest in items being collected
- A person who acquires a security interest in a deposit account or in the beneficial interest in a trust or estate
- A person who acquires any right or interest in letters of credit, advises of credit or money
- A person who acquires a security interest or claim in or under any policy of insurance without actual knowledge of the state tax lien
- A person who acquires any right or interest in property subject to a certificate of title statute where the law requires perfection of a security interest by indication on the certificate of title; (e.g., a motor vehicle)

Reference

((****))
((****))
Enterprise Wide Lien System (EWLS)
Civil Code Section 2897
Government Code Section 7170

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.1.4 Release Of Lien

Background

Once a Notice of State Tax Lien (NSTL) has been recorded or filed to create a public record of the existence of the state tax lien, a release of lien ((****)), must be recorded or filed to establish a public record that the state tax lien has been satisfied and no longer encumbers the taxpayer or business entity's property.

A lien can be released without being satisfied under the following situations:

- Franchise Tax Board (FTB) staff determines the amount due is sufficiently secured by a state tax lien on other property or the release of lien will not jeopardize collection

- FTB staff finds the liability underlying the state tax lien is legally unenforceable. For instance, in certain circumstances a liability may become legally unenforceable as a result of a discharge in bankruptcy proceedings under federal law

- FTB has determined that the state tax lien has been recorded in error. In those instances FTB must send a copy of the lien release to the three major credit reporting companies

- A partial release of lien fully removes a state tax lien from a specific piece of property as described in the partial release. Other property owned by the entity, or subsequently acquired by the entity, remains subject to the state tax lien.

Note: Through a subordination of lien, FTB permits another lien on a specific property to take priority over FTB's state tax lien, although the other lien may not otherwise have priority over the state tax lien. (See Section 7.0.1.5 Subordination of Lien)

Purpose

A lien release establishes a public record showing the state tax lien was satisfied and no longer encumbers the taxpayer or entity's property.

Responsibility

FTB staff are responsible for performing procedures to initiate a release of a lien once a tax liability has been satisfied or has been determined the lien was issued in error. Revenue and Taxation Code Section 21019 (c) requires FTB to issue a filed in error lien release as soon as possible, but no later than seven working days, after the determination or the receipt of the lien recording information is received, whichever is later.

Action

A lien release will automatically be issued by the Personal Income Tax (PIT) and Business Entities (BE) Accounts Receivable Collection Systems (ARCS) for recordation when tax years included on the NSTL are paid in full and:

- The PIT ARCS and BE ARCS automatically issued the NSTL
- NSTL was issued by the PIT ARCS and BE ARCS upon FTB staff request
- ((****))

((****))

Mandatory Release of Lien

If the FTB has recorded a NSTL in a county recorder's office and the liability secured by the lien is satisfied in full, Government Code Section 7174(c) requires the department to issue a release of lien not later than 40 days after the liability is satisfied.

If the department has filed a NSTL with the Secretary of State (SOS) and the liability secured by the lien is satisfied in full, Government Code Section 7174(e) requires the FTB do one of the following not later than 40 days after the liability is satisfied:

- File a release of lien with the SOS
- Deposit in the mail, or otherwise deliver, a release of lien to the taxpayer

Discretionary Release of Lien

Government Code Section 7174(a) permits the release of all or any portion of the property subject to a state tax lien if the department determines the amount due is sufficiently secured by a state tax lien on other property or the release of lien will not jeopardize collection.

Government Code Section 7174(b) permits the release of a state tax lien if the FTB finds the liability underlying the state tax lien is legally unenforceable. A liability can become legally unenforceable as a result of a discharge in bankruptcy proceedings under federal law. See Section 9.1.1.1 for General Bankruptcy Information for Business Entities and Section 9.2.1.1 for General Bankruptcy Information for Individuals.

Release of Liens Recorded in Error

A NSTL is considered recorded in error if any of the following circumstances exist:

- Notice was recorded after the effective date of payment of the liability
- Notice was recorded using an incorrect name or Social Security Number (SSN) (a typographical error or an SSN used by the taxpayer does not invalidate the lien)

- Liability underlying the state tax lien was established in error
- Notice was recorded using an incorrect entity name, Federal Employer Identification Number (FEIN), or corporation number

Upon finding a NSTL recorded in error, a release of lien will be issued and mailed to the entity recording the lien as soon as possible, but not later than seven working days, after this determination or the receipt of the lien recording information, whichever is later (Revenue and Taxation Code Section 21019c). The release of lien should bear the statement "Release without fee" recorded in error (Government Code Section 27361.3). The section of the Government Code noted provides that no fee shall be charged the state for recording a release of lien if the NSTL was recorded in error.

Liens Filed In Error - Credit Bureau Notification

In those instances when a lien is issued in error, Revenue and Taxation Code Section 21019 states, that upon request from the taxpayer, the department **must** send a copy of the lien release to the three major credit reporting companies in the county where the lien was filed.

Upon receiving a request from the taxpayer or entity to notify a credit reporting company that a lien was issued in error, FTB staff will do the following:

- Prepare and mail the credit bureau notification letters using ((****))

Release of Lien on Protested Assessment

FTB issues numerous assessments based upon adjustments made by the Internal Revenue Service (IRS) to the taxpayer or entity's federal tax return. These adjustments are reported to the department on Revenue Agent's Reports (RAR's). Occasionally, after FTB has issued an assessment based on an RAR and the assessment has become final (no timely protested filed), it is discovered that the IRS adjustments have been protested and are not yet final. If a NSTL has been recorded or filed, it should be released.

If a NSTL was recorded in a county, the release of lien should indicate the notice was recorded in error.

Release of One Spouse Only

A NSTL should be recorded or filed showing both spouses' names based upon a joint tax liability. If one spouse is granted relief from liability, the state tax lien should be released with respect to that one spouse only. ((****)) (Applies to individual taxpayers only.)

Release of Lien through Escrow

One way for a taxpayer to satisfy a lien is through the sale or re-financing of real property.

Title to real property is normally passed under a title insurance policy that requires a title search. This search will uncover liens recorded against the seller and buyer in the county where the property is located. Liens discovered during title searches must be resolved before clear title can be conveyed.

The term "demand and release" pertains to situations where a preliminary title search discloses a lien and the escrow company, title company, financial institution, or attorney wishes to obtain clear title.

When a demand request is received, FTB staff (on associated cases) or the lien group (on unassociated cases) will prepare the Demand for Payment ((****)), instructing the escrow holder to pay the tax liability including collection and lien release fees, in order to obtain a lien release. This payment is usually made at the close of escrow. The lien will automatically release after payment in full has posted to the case. ((****))

((****))

Immediate Release of Lien

A release of lien should be requested on an immediate basis based on the following scenarios:

- Liens recorded in error - upon taxpayer or entity demand
- Protested assessments - upon taxpayer or entity demand
- Liens recorded to secure a state tax liability - upon taxpayer or entity demand after payment in full, in cash or certified funds

Should these or similar circumstances occur, the FTB representative should:

- Investigate to insure that an immediate release is warranted.
- If warranted, release the lien through ARCS ((****)). If the lien is not in ARCS, prepare a lien release using ARCS ((****)).
- Provide the taxpayer or entity a copy of the lien release or the copy of a filed in error release.
- Mail the original lien release (if required - a billing transmittal) to the appropriate county recorders' office for recording.

Partial Release of Lien

A partial release of lien fully removes a state tax lien from a specific piece of property as described in the partial release. Other property owned by the taxpayer or entity, or subsequently acquired by the taxpayer or entity, remains subject to the state tax lien.

The determination to issue a partial release must be made by a collection supervisor or designee. The partial release must bear the signature of the Collection Division Chief.

Government Code Section 7174 authorizes the department to issue a partial lien release when it is determined that the liability is sufficiently secured by a lien on other property or that the partial release will not jeopardize the collection of the liability. Requests for partial releases are common in cases when the taxpayer or entity no longer owns property that is somehow encumbered by the state tax lien. This can occur as a result of a transfer of title by way of foreclosure or, in some cases, a Grant Deed in Lieu of Foreclosure. A partial release should also be appropriate when the taxpayer is selling property for an amount insufficient to satisfy the liability and it is in the best interest of the department to permit the sale and accept less than the full amount due from the taxpayer. In many cases a partial lien release is unnecessary and inappropriate since the lien does not attach that specific property and/or the individual involved in the sale of the property. The department is not required to, and should not, issue a partial release when the lien in question does not attach the property. The requestor should be referred to Government Code Sections 7170-7174 and 7190-7191, which explains the state tax lien and attachment thereof.

Consideration will be given to a request for a partial release, after the taxpayer, entity, or requesting party submits the following information:

- A letter of explanation as to why they are requesting a partial release
- An estimated closing statement prepared by the escrow company or whoever is holding funds
- A current preliminary title report that includes the property description
- An appraisal or documentation that establishes the fair market value of the property
- Documentation to substantiate the payoff of lien holders

If the decision is made to issue a partial release, the taxpayer, entity, or requestor will be advised of the conditions under which the release may be recorded. If the partial release is issued subject to certain conditions such as payment of the amount of the taxpayer or entity's equity to the department, the partial release, with a letter of instructions ((****)), will be furnished only to an impartial agent, such as an escrow agent. The impartial agent will be responsible for recording the partial release with the appropriate county recorders.

Reference

Government Code Sections 7170-7174
Government Code Sections 7190-7191
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.1.5 Subordination Of Lien

Background

Through a subordination of lien, the Franchise Tax Board (FTB) permits another lien on a specific property to take priority over the FTB state tax lien even though the other lien may not otherwise have priority over the FTB state tax lien. A subordination of lien differs from a partial release of lien. A partial release of lien removes the FTB state tax lien from a specific property. A subordination of lien does not remove the FTB state tax lien, but simply lowers the priority of the FTB state tax lien in favor of some other lien against the property.

Government Code Section 7174 authorizes FTB to subordinate its state tax lien to another lien when it is determined that payment of the amount due is sufficiently secured by the state tax lien on other property or the subordination of lien will not jeopardize collection of the amount due. Subordination of lien is discretionary. It is not mandatory under any circumstances.

A subordination of lien may be advantageous when a taxpayer or entity is attempting to refinance all or part of real property. The refinancing may save the property from foreclosure. In this case FTB will be asked to subordinate our lien priority to the lender in order to make the loan. A lender would not likely lend money on property that is encumbered by a state tax lien, as the lien would be ahead of the lender in priority. The subordination would allow the lender to take priority over the state tax lien. Whether or not the subordination is to the department's advantage depends on the equity in the property.

While a lender who lends the initial amount used to purchase property always has the priority over all other liens (Civil Code Section 2898), a lender may insist that subordination be issued before a loan will be approved. FTB is not required to, and should not, issue subordination when the lien in question does not affect the lender. The lender should be referred to Government Code Sections 7170-7174, which explains the state tax lien and attachment thereof. The state tax lien will be subordinate to the mortgage lender, but the lien will encumber the equity the taxpayer gains in the property over subsequent years.

Purpose

The subordination of a lien permits a lien with less priority held on particular property to take precedence without fully releasing the state tax lien.

Responsibility

FTB staff are responsible to ensure all appropriate documents are received prior to the review of subordination of a state tax lien.

Action

Information similar to that required for a partial release of lien should be obtained and reviewed. In addition, the taxpayer will be required to furnish a copy of the New Deed of Trust that includes the following:

- Name and address of the trustee
- Name and address of the beneficiary on the deed of trust
- Amount of the loan secured by the deed of trust

If a state tax lien is being subordinated to a lien against specific personal property, the subordination must reference:

- The filing date and instrument number of the notice of state tax lien filed with the Secretary of State (SOS)
- Specify the party to which the state tax lien is being subordinated

If the decision is made to issue a subordination of lien, the taxpayer, entity, or requestor will be advised of the conditions under which the subordination may be recorded. If the subordination of lien is issued subject to certain conditions such as payment of the amount of the taxpayer or entity's equity to the department, the subordination of lien, with a letter of instructions ((****)), will be furnished only to an impartial agent, such as an escrow agent. The impartial agent will be responsible for recording the subordination of lien with the appropriate county recorder.

NOTE: The determination to issue a subordination of lien must be approved by the collection supervisor or designee. The subordination of lien must bear the signature of the Collection Division Chief.

Reference

Government Code Sections 7170-7174
Civil Code Section 2898
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.1.6 Assignment Of Deed Of Trust And Promissory Notes

Background

If a taxpayer or entity is unable to pay their outstanding liability voluntarily due to financial hardship, the Franchise Tax Board (FTB) should consider issuing a partial release of lien if the taxpayer/seller of real property will agree to assign a Deed of Trust and Promissory Note securing the deed to FTB. The assignment of a Deed of Trust is the document that, when properly executed, grants FTB control of the deed and note.

NOTE: Questions regarding Deed of Trust and Promissory Notes should be referred to the Collection Advisory Team (CAT).

There are two types of transactions involving the financing of property that the department would have an interest in, with respect to Assignment of Deed of Trust and Promissory Notes:

- The developer or lender (also the taxpayer or entity) financing a sale of property issues a First Deed of Trust secured with a Promissory Note.
- An owner of property that already has a First Deed of Trust elects to sell and "take back a second" from the buyer. The term, taking back a second, refers to the financing by the seller of his equity interest in real property. The seller is sometimes compelled to lend the buyer part of the purchase price in order to affect the sale.

Purpose

The assignment of Deed of Trust and Promissory Notes allows taxpayers the ability to resolve outstanding tax liabilities by granting FTB control of their Deed of Trust and notes.

Responsibility

FTB staff should verify all collection efforts have been exhausted before granting the assignment of Deed of Trust and Promissory Notes.

Action

Before a decision is made to accept an assignment, all facts and other collection alternatives should be carefully explored. Circumstances warranting this action will require careful and complete substantiation before approval will be granted.

To check for assets, FTB staff should do the following:

- Obtain a financial statement from the taxpayer or entity as a requirement for consideration of the assignment.

- Evaluate the statement to see if there is a more efficient collection alternative.
- ((****))

Prior to initiating the assignment process, the taxpayer should be advised that the assignment will not be treated as a credit to the taxpayer's liability and unless otherwise agreed to, the department may:

- Continue involuntary collection action.
- Discount the promissory note.
- Collect from the taxpayer or entity if the trustor (buyer) defaults. It is essential that a provision for recourse be contained in the assignment agreement. ((****))

Once the taxpayer or entity has agreed to the conditions of the assignment, more information about the transaction must be gathered. In order to verify the commitment of the trustor/buyer of the taxpayer or entity's property and to determine if the trustor is financially able to make payments. FTB staff should obtain:

- The trustor's financial statement
- A detailed set of facts to verify that a fair price is being paid for the property and that the state's interest in the property is adequately secured (e.g., appraisal report, preliminary title report, etc).

In order to approve an Assignment of a Deed of Trust and Promissory Note, CAT must have the following documents:

- Financial statements, taxpayer's or entity's and trustor/payor of note
- Promissory Note
- Deed of Trust secured by a note
- Assignment of Deed of Trust
- Agreement between FTB and the taxpayer or entity
- Security Deposit - Voluntary, ((****))
- Special Instructions to the payor of the assigned note
- Copy of the escrow instructions
- Copy of the preliminary title report and property appraisal report
- Cover memo from the collection supervisor with a summary of collection actions

A financial statement should be submitted by the trustor/purchaser of the property to FTB staff so it can be analyzed to verify the trustor's ability to make payments. ((****)) ((****)) Accepting an assignment involving a trustor that cannot make payments will greatly increase administrative costs to the department, possibly making it not worthwhile.

It is important that the documents relating to the proposed purchase be examined carefully to insure that the state's interest in the property is secure. These documents, available from the title company handling escrow, should also be analyzed to insure the distribution of funds is done in accordance with the priority of the state tax lien.

The fair market value and sales price should be compared to determine whether or not the transaction is reasonable. The sales price should not be so low that the sale and acceptance of the assigned note would result in a balance due when the note is paid. It would be prudent to request a property appraisal so that this comparison can be made.

The down payment offered by the purchaser should be large enough to indicate that the purchaser has a commitment to the transaction and that the purchaser is backing that interest with intent to "keep the deal" by offering a reasonable down payment. This might prevent future default by a purchaser whose credit is over extended.

Once the taxpayer or entity has agreed to the conditions and it has been determined to be in FTB's interest to accept the assignment, these documents will have to be prepared:

- Assignment of Note secured by Deed of Trust by the title company
- Agreement between FTB and the taxpayer or entity outlining the terms of the assignment

The FTB representative assigned to the account will work with the preparer and oversee the preparation of the documents. The FTB representative should request assistance from CAT if needed. The assignment should have a provision that allows the assignor to request a copy of any Notice of Default or Notice of Sale Under Deed of Trust be sent to CAT. The department must be aware of any Notice of Default in order to protect the State's interest in the property.

The FTB representative will draft an agreement to accompany the assignment of deed and note. FTB staff should contact CAT for assistance in preparing the agreement. The purpose of the agreement is to formally outline the terms and conditions of the acceptance of the assignment. The agreement includes:

- Names of agreeing parties (FTB and taxpayer or entity)
- Legal description of property
- Name of buyer (trustor of note)
- Name, address, and telephone number of title company, and the escrow number
- A statement that the assignment of deed and note is not a credit. Only payments made pursuant to the note are to be credited to the taxpayer's or entity's case
- A statement that the taxpayer or entity will continue to be liable if the buyer/trustor of the note defaults.

The draft documents are sent to CAT along with all other related documents and information. A complete Assignment of Note and Deed of Trust (ANDT) package includes the following signed papers:

- Cover memo, with summary of collection action, signed by the collection supervisor
- Deed of trust (original)
- Promissory note (original)
- Assignment of deed of trust (original)
- Agreement (original, signed by taxpayer)
- Voluntary Security Agreement ((****))
- Escrow instructions (copy)
- Preliminary title report (copy) and appraisal report (copy)
- Financial statement of taxpayer
- Financial statement of buyer/trustor

Upon receipt of the request for assignment of deed of trust, the supervisor will assign the request to an advisor. The advisor will review the request and make a determination whether to approve or deny the request.

If the request is denied, the advisor will;

- Contact the FTB representative handling the case outlining the reasons for the denial
- The FTB representative will inform the taxpayer or entity of the denial

If approval is recommended, the advisor will;

- Send the request to FTB's Legal Section for review
- Upon FTB Legal Section's approval the manager of the Special Programs Bureau will sign the agreement
- Make photocopies of the documents for files and add a study code to the account
- Send the approved package to the title company
- The title company will record the note, deed, assignment and accompanying agreement and return the recorded originals to CAT
- CAT will examine and then file photocopies of the recorded documents
- Recorded documents along with the Security Deposit- Voluntary Form will be forwarded to Fiscal Accounting

Once the note has been paid, the manager of Special Procedures will recover title and inform the parties concerned that the encumbrance has been cleared. The reverse side of a typical deed of trust form has a statement and signature block to indicate that the note has been paid.

CAT will review the package, when approved, the FTB's Legal Section will be asked to review the case. The manager of Special Procedures will sign the agreement upon Legal's approval. CAT will make a photocopy of the documents for its files and add a study code series ((****)) to the Taxpayer Information (TI) System. CAT will retain the Security Deposit - Voluntary, ((****)). The approved package will then be sent directly to the title company or via the field office, with a letter of instructions to the title company. The title company will be directed to record the note, deed, and assignment with accompanying agreement and return the recorded originals to CAT. CAT will examine and file photocopies of the recorded documents and forward the originals (with the Security Deposit - Voluntary Form FTB 6358) to Fiscal Accounting for safekeeping. Once the note has been paid, the manager of Special Procedures will reconvey title and inform the parties concerned that the encumbrance has been cleared. The reverse side of a typical deed of trust form has a statement and signature block to indicate that the note has been paid.

Reference

((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2 Warrants

7.0.2.1 General Warrant Information

Background

Warrants are legal documents that empower law enforcement officers to perform certain actions in order to seize assets. Franchise Tax Board (FTB) issues warrants to law enforcement agencies for the collection of a taxpayer's past due tax liabilities. After the assets are seized, non-cash assets must be sold at public auction for liquidation. The proceeds of the sale are then applied to the taxpayer's outstanding tax liability.

Warrants may be used to seize tangible and intangible assets.

- Tangible assets: Motor vehicles, boats, planes, jewelry, cash in a taxpayer's cash register (Till-tap), an ongoing seizure of a taxpayer's cash proceeds for a specific day or days (Keeper), land or other property.
- Intangible assets: Stocks, bonds, and other securities; or a country club membership, etc.

Once an asset is seized, a taxpayer is entitled to an administrative hearing to examine the appropriateness of the seizure. In such cases, the asset will not be sold until the hearing has been held and the taxpayer has been notified of the results in writing.

Purpose

FTB issues a warrant to seize a taxpayer's property in order to reduce or satisfy the taxpayer's outstanding tax liabilities.

Responsibility

FTB staff must verify that a case merits a warrant. To merit a warrant, an account must exhibit the following:

- Past due tax liability
- Established Due Process
- Non-compliance
- Exhaustion of least intrusive actions
- Identifiable assets worth seizing

Action

When accounts are determined to qualify for an action involving a warrant, FTB staff will refer these accounts to their lead(s) for review. Lead(s) will refer appropriate cases to field

office managers for field action, and the field regional managers must approve the issuance of warrants.

NOTE: Warrants can be released to facilitate collection action, and when it is in the best interest of the taxpayer and the state. Some reasons for releasing a warrant are:

- Costs to liquidate an asset exceed the tax liability
- Proceeds from an asset will not substantially reduce a tax liability
- When the issuance of a warrant did not follow administrative procedures

Reference

Revenue and Taxation Code Sections 19231 - 19236
Revenue and Taxation Code Section 21016

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.2 Warrant Actions

Background

Franchise Tax Board (FTB) field office staff can issue different types of warrants to seize assets and, when seizing an asset other than cash, have the asset sold at public auction. Warrants may be used to seize the following types of assets:

- Till Tap or Keeper to seize cash
- Seizure of a motorcycle, car, vessel, or plane
- Seizure of jewelry, business inventory, or other items
- Seizure of real property
- Seizure of stocks/securities - The taxpayer should be sent a voluntary liquidation notice ((****)) to save the taxpayer the costs involved in a forced sale.
- Open a safe deposit and seize cash or other assets found. The taxpayer should be asked to voluntarily open the box in the presence of the levying officer to save the costs of forcibly opening it.

Purpose

FTB issues a warrant to seize a taxpayer's property in order to reduce or satisfy the tax liabilities. Field office staff issue warrants to seize property and when appropriate, have the property sold at auction when other collection actions are unsuccessful.

Responsibility

Field office staff must establish the merits of a warrant by documenting if any of the following exist:

- Due process has been served
- Least intrusive actions have been taken
- Identifiable assets are worth seizing
- Meets minimum balance requirements
- Last asset of taxpayer
- Seizure will result in a significant reduction of the liability

Action

Field office staff must identify the proper type of warrant to pursue, based on the facts and circumstances of each account.

NOTE: When completing a seizure of stocks/securities, field staff should send the taxpayer a voluntary liquidation notice, form FTB 9886 or form FTB 9887, to save the taxpayer the costs of having the stock/securities sold at auction.

NOTE: When using a warrant to open a safe deposit box, the taxpayer should be asked to voluntarily open the box in the presence of the levying officer to save the taxpayer the costs of forcibly opening it.

NOTE: To seize the cash register funds belonging to the taxpayer, the field office staff should use a till tap or acquire a Keeper.

Reference

California Code of Civil Procedure Sections 700.010 – 700.200 and 701.520
Revenue and Taxation Code Sections 19231 - 19236
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.3 Identifying Property Ownership

Background

Prior to issuing a warrant for collections, Franchise Tax Board (FTB) staff must verify a taxpayer's ownership of property that may be subject to a warrant. A taxpayer usually holds real property ownership in one of the following ways:

- Sole ownership: The taxpayer is the only owner of the property.
- Tenancy in common: A form of co-ownership where more than one individual under distinct titles holds property. There must be a unity of possession, and owners must have a right to occupy the whole property in common with their co-tenants.
- Joint Tenancy: A form of co-ownership that gives each tenant equal interest and equal rights in the property.

A corporation may not hold title as joint tenancy. Joint tenancy has a right of survivorship and is incompatible with title being held by a business entity, such as a corporation, which has a perpetual existence unless dissolved.

Since a business entity is not a natural person, the issue of community property does not arise.

Additionally, there may be liens or third party claims of interest in property, which may affect title.

Purpose

FTB staff verifies ownership of property to determine whether warrant action can be taken against it. This process protects the interest of third parties, lien holders and co-owners, and ensures the appropriateness of FTB's warrant action.

Responsibility

FTB staff must verify the following:

- Title of a property
- Determine a taxpayer's ownership interest in the property
- Investigate any liens or other claims of interest on the property

Only a taxpayer's ownership interest in property is subject to sale.

Action

Field office staff does verification of the title to real property by searching the records of the county recorder. With the exception of leased property, personal property in the possession of a taxpayer is generally assumed to belong to that taxpayer. Appropriate recorded or filed documents must be checked to confirm ownership. For example, the ownership record for a motor vehicle is filed with the Department of Motor Vehicles (DMV). In the case of an operating business, a record of ownership may be found with the city business license department, with the Board of Equalization (BOE), Alcohol Beverage Control (ABC), or other sources.

While verifying the ownership and title of property, the field staff must also take note of the ownership interest of lien holders and other third parties. Claims against property may have to be satisfied before it can be sold, or they may preclude the sale of the property entirely.

Claims may affect the value and marketability of property. Also, the field staff must be aware that in unusual circumstances there may be a title change or transfer, which may not be recorded. See unit procedures for details.

Reference

Revenue and Taxation Code Sections 19231 – 19236
California Code Of Civil Procedure
Warrant Training for Collections (available only at field offices)
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.4 Evaluating Property

Background

Before requesting a warrant to seize an asset, the Franchise Tax Board (FTB) staff determines the anticipated proceeds from liquidating an asset. To determine the expected net proceeds, value and cost schedules are created. To do this, FTB field staff reviews authoritative published references, such as Kelley Blue Book. If no authoritative published reference exists, FTB field office staff can check other information sources, such as dealers, trade groups, clubs, etc. Then adjustments are often made to the wholesale value of an asset. In the case of vehicle assets, adjustments are made for a vehicle's mileage and equipment options when establishing its potential value. Vehicle values are often discounted by one third of its adjusted wholesale value. The resulting figure is the estimated forced sale value.

There are also schedules for encumbrances and other costs. These include the amount secured by third party claims and liens, as well as fees for the levying officer, for towing, and for storage. Although some items in the schedule must be documented, others may be estimated based on prior experience.

Purpose

FTB field staff evaluates assets to help determine whether it is cost effective to issue warrants to seize said assets.

Responsibility

FTB field office staff must gather all pertinent information to create value and cost schedules. They must then evaluate this information to see if it is cost effective to issue a warrant for an asset.

Action

FTB staff must:

- Research and analyze the value of an asset
- Document the estimated value basis
- Determine if there is a potential for an exemption under the Code of Civil Procedures. ((****))
- Determine if it is cost effective to issue a warrant for the asset

Warrants should not be issued if the proceeds from the sale will not result in a reasonable reduction of the tax liability. Warrants may not be used as a means of harassment.

Reference

Kelley Blue Book
Warrant Training for Collections (available only at field offices)
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.5 Completing Warrant Request And Instructions

Background

All requests for warrant action must be in writing and submitted to the Regional Manager for final approval. Typically, Request for Warrant Action (form FTB 4942) is used and each unit may implement its own format. The following topics are generally addressed:

- Identity of taxpayer (name, address and account number)
- Basis of liability
- Liens
- Balance due
- Action requested and an evaluation of the expected warrant proceeds (attach schedules and documentation)
- Levying officer selected to execute the warrant
- Affirmation that due process was given to the taxpayer
- Summary of actions taken, including an affirmation that all less intrusive actions was taken

Once the warrant request is approved, the Warrant for Collection (form FTB 2940) and Instructions for Levy (form FTB 2942) must be completed.

Purpose

The Request for Warrant Action (or its substitute) ensures that the request for warrant has been reviewed and approved at the appropriate level. The Warrant for Collection, and the Instructions for Levy of Warrant, enables the levying officer to properly execute the warrant as requested by field office staff.

Responsibility

Prior to submitting Request for Warrant Action, field office staff must ensure that all other collection actions have been pursued, due process has been served, and that the warrant action will reasonably reduce the liability.

Once the warrant is issued to the levying officer, field office staff must follow through with all aspects subsequently relating to the warrant process.

Action

Field staff complete the Request for Warrant Action. Upon approval, Field staff completes the Warrant for Collection and the Instructions for Levy, and then submit completed forms to the levying officer.

Stocks/securities constitute tangible personal property and must be sold at public auction by the levying officer. In no case is it permissible for warrant instructions to direct the levying officer to demand a brokerage firm liquidate stocks/securities held in a taxpayer's name.

Reference

Revenue and Taxation Code Sections 19231 - 19236
((****))
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.6 Directing Warrants To CHP Vs. Sheriff

Background

When the decision is made to issue a warrant, the field office staff has the option of directing the warrant to the California Highway Patrol (CHP) or to the County Sheriff located in the county where the warrant will be executed. The following should be taken into consideration when determining which agency to use:

- **Cost of warrant:** CHP costs cannot be charged to the taxpayer's balance; however, Sheriff costs are charged to the balance.
- **Location of warrant:** The County Sheriff serves warrants only in the county where they have jurisdiction. For example, if you are attempting to seize a vehicle, and there are business locations in multiple counties, it may be best to use the CHP.
- **Ability and/or willingness to execute warrant:** Various situations may arise where the levying agency may not have the ability or the willingness to execute a warrant. For example, the CHP will not execute a keeper.

Purpose

Evaluating which agency's services to use is in the best interest of the state. It ensures that overall efficiency (cost and time) is considered.

Responsibility

The field staff establishes whether it is in the State's best interest to employ the services of the CHP or the services of the County Sheriff to execute warrants.

Action

Field staff will determine whether to use the CHP or the County Sheriff to execute warrants.

Reference

Revenue and Taxation Code Section 19231-19236

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.7 Order For Levying Officer To Enter Private Property/Turnover Order (Commonly referred to as Ex Parte Orders)

Background

The situation may arise where the asset that field staff is attempting to seize is located behind locked doors, gates or on private property. When this occurs, the levying officer is required to have in his/her possession either a court order authorizing the levying officer to enter private property to execute the warrant or a court order requiring the taxpayer to turn the asset over to the levying officer. Collection staff commonly refers to these orders as "ex-parte orders". "Ex-parte" is the method used to obtain these types of court orders. The term "ex-parte" means "one party", which refers to only one party having to appear before the court to obtain the order. The taxpayer is not notified that an order has been granted until the levying officer serves it. This prevents the taxpayer from disposing of or hiding the asset prior to service of the warrant.

NOTE: To determine whether or not an Order to Enter Private Property or a Turnover Order is necessary, the execution of the warrant may be made either prior to obtaining the warrant or after the levying officer has attempted to seize the asset.

Purpose

The Order to Enter Private Property/Turnover Order is a collection process that enables the levying officer to seize an asset that would otherwise be impossible to take, due to its location.

Responsibility

Prior to requesting an Order to Enter Private Property/Turnover Order, collection staff must have personally observed or have reliable knowledge (e.g., interview with neighbor or information provided by the levying officer) that the asset is located in a private place. FTB's Legal Section requires that Order to Enter Private Property/Turnover Order requests must be submitted to the Collection Advisory Team (CAT) within 90 days of observation of asset.

Action

If field staff determines an Order to Enter Private Property/Turnover Order will be necessary to seize an asset, they must obtain supervisory approval to proceed. The following are the steps involved with the Ex-Parte Order process:

- Prepare Declaration – The Declaration should include a synopsis of the account and how the information regarding the location of the asset was obtained.
- Prepare a Certificate of Tax Due (Form FTB 2966).

- Request pertinent documentation (e.g., certified copy of DMV registration and history).
- Copy of warrant, if applicable (Form FTB 2940 and 2942).
- Submit above information (step 1-4) to supervisor for approval, and forward the information to CAT.
- CAT will arrange for the Attorney General's Office to appear on behalf of FTB to obtain the court order. Once obtained, the Order to Enter Private Property/Turnover Order will be forwarded to the requesting field office by either the Attorney General's office or CAT.
- The Order to Enter Private Property/Turnover Order is then delivered to the levying officer by field staff.

Reference

California Code Of Civil Procedure 699.030(a) and (b)
((****))
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.8 Notice Of Seizure And Intent To Sell

Background

Prior to selling an asset, it is the responsibility of Franchise Tax Board (FTB) staff to ensure that the debtor has been afforded all administrative rights. The Notice of Intent to Sell Personal Property (form FTB 4969) and the Notice of Intent to Sell Real Property (form FTB 4967) fulfill this responsibility.

NOTE: A protest of a Jeopardy Assessment (J/A) does NOT stay collection action.

Purpose

Form FTB 4969 or form FTB 4967 is served to inform the debtor that the debtor's asset has been seized and of FTB's intent to sell the asset. It also gives the debtor the opportunity to have a hearing to show why the asset in question should not be sold.

Responsibility

Once field staff is notified of an asset seizure, they will immediately serve form FTB 4969 or form FTB 4967 to the debtor by first class mail, address service requested. This will list in detail the asset subject to sale in accordance with FTB policy and will allow debtor up to 20 days to request a hearing. Field staff must wait until a hearing is conducted and a decision to proceed with the sale is made by the hearing officer, or the period for requesting a hearing has expired before going forward with the sale.

Action

When field office staff is notified that a debtor's asset has been seized, field office staff must do the following:

- Prepare form FTB 4969 or form FTB 4967.
- Serve debtor in person or first class mail, address service requested.
- Document service in the Accounts Receivable Collection System (ARCS), noting time and date of service, method of service and name of person who performed the service.
- Attach copy of the notice and addressed envelope to case file.
- If the notices are returned as undeliverable, skip trace for a better address. If after a reasonable effort is made to locate a good address is negative, document attempt, and proceed with the sale.

The sale should be canceled and rescheduled if there is insufficient time for the debtor to respond.

NOTE: If a J/A has been issued, and the protest period has not expired, it may be appropriate to serve a Notice of Seizure of Personal Property (form FTB 4929) prior to serving form FTB 4967 or form FTB 4969 when postponement of the sale (e.g., the appeal process) will not impair the interest of FTB. The interest of FTB will not be impaired when the annual storage cost is less than 5% of the appraised value of the property, and the property will not depreciate or deteriorate (for example: jewelry and heirlooms; antiques and works of art; stamp and coin collections, or land). Vehicles do not meet the above conditions.

If form FTB 4939 is served, form FTB 4967 or form FTB 4969 must follow once debtor's administrative appeal rights have expired, or a determination has been made regarding an appeal filed by debtor.

Reference

Revenue and Taxation Code Sections 19231-19236
California Taxpayers' Bill of Rights
((****))
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.9 Reserve Price

Background

Once an asset has been seized and appraised a reserve price must be set. The reserve price is a re-computation of an asset's forced sale value (a.k.a. an asset's original appraisal). The term reserve price specifies the minimum amount that the Franchise Tax Board (FTB) will accept as a bid at auction for the property being sold. The reserve price is set in the Amended Warrant Instructions. If an amount equal to or greater than the reserve price is not bid at auction, or there is no bid, the levying officer may be instructed by field office staff to release the property, or cancel the sale and reschedule a new sale at a future date.

NOTE: Do not mistake the term minimum bid with the term reserve price. FTB has no authority to set the minimum bid per Code of Civil Procedure Section 701.620.

Purpose

The reserve price is set to assure that the sale of property at auction will reasonably reduce or satisfy the taxpayer's liability.

Responsibility

FTB field office staff must ensure that a set reserve price is in the best interest of the state, and that it also cannot be construed as harassment. To accomplish this, the reserve price must pay off the liability in full or reasonably reduce it.

Action

To set a reserve price for auction, the original appraisal amount (i.e., the forced sale value) must be revaluated. Assets are re-evaluated because facts can arise that were unknown prior to seizure. These facts may significantly increase or decrease the forced sale value of an asset. Depending on the type of asset seized, the re-evaluation process may vary. After the asset is revaluated, the reserve price will be set.

Reference

Code of Civil Procedure Section 701.620
Warrant Training for Collections (available only at field offices)

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.10 Third Party Claim – Investigating The Claim

Background

A Third Party Claim is made by a party other than the taxpayer who alleges to have an interest in an asset that has been seized as a result of a warrant. The Third Party Claim can be made informally through the field staff or formally through the levying officer. There are two types of claims:

- Claim of ownership (Code of Civil Procedure Section 720.110).
- Claim of security interest and lien (Code of Civil Procedure Section 720.210)

Purpose

A Third Party Claim provides a third party with the opportunity to assert ownership or to demonstrate they have a security interest and/or lien in an asset. The claim may be filed with the levying officer at any time before the levying officer (1) sells the property, (2) delivers possession of the property to the creditor, or (3) pays proceeds of collection to the creditor. Once a Third Party Claim has been served upon the levying officer, the levying officer may not sell the property, deliver possession of the property to the creditor or pay proceeds of the collection to the creditor.

Responsibility

Whether a Third Party Claim is made informally through the field staff or formally through the levying officer, it is the job of the field staff to investigate the validity of the claim. Due to strict time frames involved with this process, the field staff should contact a Collection Advisory Team (CAT) advisor immediately upon receipt of the Third Party Claim. The CAT advisor will assist field staff in determining the validity of the claim and/or whether to file an objection to the Third Party Claim with the levying officer.

Action

When a formal or informal claim is received, the field staff should contact a CAT advisor immediately. FTB must file an objection to the claim within 15 days from service of the claim or the levying officer will either allow the claim or release the property.

The CAT advisor will prepare an objection to the claim and forward it to the field office staff for filing with the levying officer. The advisor will also coordinate with FTB legal branch and field office staff in regards to any required court appearances.

Reference

((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.11 Undertaking Filed By Third Party

Background

An undertaking is a remedy that a third-party claimant may use in order to have an asset released from levy. An undertaking is similar to a bond, in that it guarantees the value of an asset held under levy. An undertaking may be filed in conjunction with a third party claim, or at any time prior to the sale of an asset. Once an undertaking is filed, the levying officer will serve the field office (personally or by mail) with a notice and a copy of the undertaking. The levying officer will release the asset once the time allowed for objecting to the undertaking has expired, unless Franchise Tax Board (FTB) files an objection. The Collection Advisory Team (CAT) advisor assigned to the third party claim must be contacted immediately to determine if the undertaking adequately protects the asset. If it is appropriate to object to the undertaking, FTB must file a petition and motion with the court and levying officer within 10 days from the date the field office is served the copy of the Notice of Undertaking.

Purpose

((****))

Responsibility

Field office staff must react timely to the filing of an undertaking. Not reacting timely may jeopardize FTB's ability to oppose the undertaking.

Action

Field office staff will take the following steps when an undertaking is received.

- Contact the levying officer to confirm when the "Notice of Objection" must be received to prevent release of the property.
- Place a call to the CAT advisor handling third party claims to discuss surety and sufficiency requirements.
- Mail/fax a copy of the notice and undertaking to the CAT advisor.

Reference

Code of Civil Procedure Sections 720.610 – 720.640, 995.010-995.190, 995.210-995.260, 995.310-995.380, 995.410-995.440, 995.510-995.520, 995.610-995.675, 995.710-995.770, 995.810-995.850, 995.910-995.960, 996.010-996.030, 996.110-996.150, 996.210-996.250, 996.310-996.360, 996.410-996.495, and 996.510-996.560
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.12 Appraisal

Background

It is uncommon for Franchise Tax Board (FTB) staff to have the opportunity to thoroughly inspect an asset prior to seizure. As a result, when an asset is seized, the field office staff must go on location and conduct a physical inspection and appraisal of the asset. This inspection will give the FTB field staff a clear picture in terms of the true condition and value of the asset.

Purpose

By appraising the asset following its seizure, FTB field staff will obtain a more accurate indication of the true forced sale value of the asset. A more precise evaluation is in the best interest of the debtor and the state.

Responsibility

Based on the appraisal, field office staff must ensure that going to sale is a sensible action to pursue. In other words, will the adjusted forced sale value (reserve price) reasonably reduce the liability?

Action

When appraising an asset, the FTB field staff will do the following:

- Inspect the asset
- Re-compute forced sale value based on inspection
- Based on re-computed forced sale value, make a decision whether or not to proceed with the sale

NOTE: Automobiles are the most commonly seized assets. When appraising an automobile, use Motor Vehicle Evaluation (form FTB 6645), or Request for Warrant Action (form FTB 4942). Consideration should be given to the following:

- Kelley Blue Book values with special attention given to the mileage and optional equipment schedules
- Mileage
- Body and/or glass damage
- Paint condition
- Cleanliness and condition of upholstery; general condition of interior
- Make and condition of tires
- General engine appearance

- Condition and appearance of radiator and battery
- Any optional equipment

It is desirable to obtain three appraisals on personal property such as artwork, jewelry, or exotic cars to arrive at a forced sale value. In the event the property has a fixed market value, (e.g., gold and silver ingots) it is not necessary to obtain three estimates or to give a full one-third discount to arrive at a reserve price. A reasonable discount should be set based on the type of property, demand and location of the sale.

Reference

Revenue and Taxation Code Section 19231-19236
Kelley Blue Book
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.13 Dupuy Hearing

Background

A Dupuy Hearing is an administrative hearing that gives the debtor the opportunity to present evidence or arguments showing why an asset (real property or personal property) seized pursuant to a Franchise Tax Board (FTB) issued warrant should not be sold to satisfy an unpaid debt. The topics that may be discussed during the Dupuy Hearing include, but are not limited to, legal ownership of asset.

The debtor may also obtain a release of the asset by doing one of the following:

- Paying the amount due
- Posting a bond or other security which is satisfactory to the FTB
- Demonstrating that collection is not in jeopardy, when seizure results from jeopardy assessment

Purpose

The Dupuy Hearing insures that if a debtor's asset is seized, the debtor has the opportunity to request an administrative hearing to present evidence or arguments regarding why FTB should not sell the asset. The Dupuy Hearing allows the debtor to exercise this right.

Responsibility

Field manager or designee will conduct Dupuy Hearings.

Action

Hearing Guidelines:

- Two FTB employees must attend the hearing. One employee will be designated as the hearing officer and the other will serve as a witness. In no case may an employee directly responsible for the collection of the case serve as the designated hearing officer.

- All other persons attending the hearing, whether they actively participate or not, must identify themselves to the satisfaction of the hearing officer. Individuals in attendance who are not normally entitled to confidential information pertaining to the debtor must sign a statement authorizing FTB to disclose confidential information in the debtor's presence during the hearing.

- A debtor may be allowed to record the hearing but only in the instance where FTB also records the hearing. In the event that FTB is unable to record the hearing, recording

will not be allowed at that time. The hearing may be rescheduled to allow time for FTB to obtain the necessary audio equipment.

Under no circumstances is videotaping of a hearing allowed.

- After the hearing, the hearing officer's decision will be communicated to the debtor in a written report, including a list of the names of all persons in attendance, the report will be mailed to debtor within 15 days of the hearing date. The decision is considered final; and the debtor has no further appeal rights.

Reference

Revenue and Taxation Code Sections 19231-19236
California Taxpayers' Bill of Rights
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.14 Modifying Warrants (Cancel/Release Or Amend)

Background

Once a warrant is issued, various circumstances may arise that will require modification of the warrant. The following are some examples of when to modify a warrant:

Warrant Cancellation/Release:

- Payment-in-full, either monetarily and/or by the filing of tax returns
- Filing of a bankruptcy: Depending on the property seized and its value, the Franchise Tax Board (FTB) may release the property to the bankruptcy trustee or hold the property until the bankruptcy is concluded, if it is cost effective to do so
- Change in ownership of property prior to seizure
- Destruction of property prior to seizure
- The property was seized in error
- Any other circumstances deemed appropriate by FTB per Revenue and Taxation Code Section 21016

Warrant Amendment:

- Scheduling the sale date of the asset, and if necessary, rescheduling the sale date
- Modifying reserve price
- Modifying levy amount of original warrant
- Any situation that results in a need to change the warrant instructions

Purpose

During the warrant process, circumstances may develop that will require warrant modification.

Responsibility

FTB field office staff must modify warrants when appropriate.

Action

Cancellation/Release: When it is determined that a warrant should be canceled/released, field office staff must immediately call the levying officer, and provide notification of intent to cancel/release the warrant. Field office staff will follow-up by mailing the levying officer a Request for Warrant Return (form FTB 2945).

Amendment: When it is determined that a warrant should be amended, the field office staff must immediately call the levying officer indicating the intent to amend the warrant. Subsequently, field office staff will mail levying office the amended warrant.

Reference

Refer to Field Unit Procedures
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.15 Advertising

Background

If it is determined that the levying officer's statutory posting of the sale may not result in attracting the maximum amount of prospective bidders, the field staff will also advertise the sale. Franchise Tax Board (FTB) staff will determine the segment of the public that may be interested in the asset, and then advertise accordingly. The intent is to improve the probability of a successful sale.

Purpose

Advertising an asset will help to maximize public participation of a sale. As a result, a growth in public participation will increase the competitiveness of the sale. Generally, the more competitive a sale is, the higher the purchasing bid will be. This serves best interest of the debtor and the state.

Responsibility

Field office staff must insure that the sale is adequately advertised.

Action

Based on the asset and other possible factors, the FTB field staff may advertise in daily newspapers, special interest publications, etc.

Reference

Revenue and Taxation Code Sections 19231-19236

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.16 The Sale

Background

On the date of sale, the levying officer will conduct all aspects of the sale and collect all fees from the buyer. If the reserve price is not received (e.g., bid does not equal or exceed reserve price, or Third Party Claim is filed) the levying officer, as previously instructed, will cancel the sale and await further instructions unless release of the asset is required by law.

NOTE: The California Highway Patrol will not conduct the actual auctioneering segment of the sale. In this situation, an impartial third party, or a Franchise Tax Board (FTB) field staff member who otherwise was not involved in the warrant process, must conduct the auctioneering portion of the sale.

Purpose

The sale is conducted to pay-in-full or reasonably reduce the tax liability of the taxpayer.

Responsibility

At minimum, one member from the field office staff should attend the sale (preferably the individual who initiated the warrant) to answer questions from prospective buyers and to stay informed as events unfold.

Action

A field office staff member should arrive at the sale location at least one hour prior to sale and will adhere to field collection unit procedures.

Reference

Code of Civil Procedure Section 701.620

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.17 Payment Of Costs Associated With A Warrant

Background

The debtor is responsible for the charges associated with servicing the warrant, and for any additional costs associated with the sale of property. These costs include, but are not limited to appraiser, auctioneer and advertising fees.

Purpose

Additional costs, such as advertising fees, must be paid in order for the sale to be successful.

Responsibility

Franchise Tax Board (FTB) field staff will request funding for fees as needed to pay vendors, and assess the fees to the taxpayer's account per unit procedures.

Action

Once the cost of the fees is determined, arrangements must be made to pay the vendor for services.

Below are the steps for handling payment of fees:

- ((****))
- ((****))
  - ((****))
  - ((****))
  - ((****))

NOTE: Time constraints, unit procedures, vendor policy, etc. will dictate which payment method to request.

Once services have been rendered and the bill is received, the bill must be stamped "Services Received By," signed and dated by the FTB field office Supervisor, including the name of the field office. Forward the original bill to fiscal accounting, regardless of the payment method used.

Reference

Revenue and Taxation Code Section 19235
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.0.2.18 Payment And Reconciliation of Sheriff Charges

Background

To service a warrant, the Sheriff requires a revolving fund advance. Sheriff costs associated with this service may include execution of the warrant, storage, towing, etc. Upon completion of the warrant, the Sheriff charges must be reconciled for accuracy.

Purpose

This system of advance payment to the Sheriff allows for prompt payment to, and service from the Sheriff for a reliable method to reconcile Sheriff charges.

Responsibility

The responsible Franchise Tax Board (FTB) staff must send the correct amount of money to the Sheriff, so the Sheriff will perform the warrant service that is requested. The Sheriff may request additional funds when necessary upon completion of warrant.

Action

Payment of Sheriff charges - The following steps must be followed in regards to paying Sheriff charges:

- ((****))
- ((****))

NOTE: During the warrant process the Sheriff may require additional funds to service the warrant.

Reconciliation of charges (full return of advance) – There may be times when a warrant is cancelled, and the Sheriff has not accrued any charges. In this case, the Sheriff will return the full advance. When this occurs, the responsible field office staff will submit the following to fiscal accounting:

- Payments of Levying Officer's Fees and Collection Fees (form FTB 7301)
- Warrant for Collection of Amount Due (form FTB 2940)

((****))

Reconciliation of charges (partial or no return of advance): The Sheriff will submit a Writ of Execution, Return of Service (breakdown of charges) with partial or no return of advance. When this happens, the responsible field office staff must review the breakdown of charges for accuracy and submit the following to fiscal accounting:

- **((****))**
- **((****))**
- **((****))**
- **((****))**
- **((****))**
    - ((****))
    - ((****))
    - ((****))

Reference

Revenue and Taxation Code Section 19231 – 19236
((****))
((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1 BUSINESS ENTITIES

7.1.1 Order To Withhold (OTW) And Continuous Order To Withhold (COTW)

7.1.1.1 Order To Withhold Information (OTW)

Background

An Order To Withhold (OTW) is a one time legal order seizing 100% of the available funds from a financial institution or escrow company. Potential payors for an OTW include, California banks or escrow companies holding funds (e.g., checking or savings account, or proceeds from a sale of property or another asset) of a business entity. ((****)) ((****))

NOTE: Some financial institutions have centralized legal processing branches located out of state. An OTW should be issued as long as the financial institution has branches in California. An OTW must **not** be issued to a financial institution where no branches are located within California.

NOTE: Prior to remitting funds to FTB, banks are required to hold funds for 10 days from the date the OTW was received.

Purpose

An OTW is a one-time legal order sent to a financial institution or miscellaneous payor to seize 100% of the available funds of a non-compliant entity.

Miscellaneous payor sources may be, but are not limited to the following:

- Rental income
- Escrow companies
- Oil and gas rights
- Use of patents
- Movie and television rights
- Copyrights/literary works
- Stock

Responsibility

Franchise Tax Board (FTB) staff must ensure a business entity receives due process before issuing an OTW. To ensure that the entity is properly identified, FTB staff should include the following on an OTW:

- Entity name
- Doing Business As (DBA) name

- Entity number
- Federal Employer Identification Number (FEIN)
- Total amount due - Includes total tax, penalties, fees and interest to the date of the OTW
- Applicable tax years – all tax year liabilities that are receiving due process and are due and payable

Action

((****)) FTB staff should skip trace to identify possible new payors not currently listed on the account. ((****)) ((****))

NOTE: Enforcement of an OTW that attaches to non-cash assets, (stocks, securities, safe deposit boxes, etc.) must be seized and sold at public auction per our warrant procedures. See Section 7.0.2.1 Warrants for further information.

Reference

((****))
Revenue and Taxation Code Sections 18670 and 18674
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.1.2 Failure To Honor Levy

Background

Any recipient of a levy failing to withhold and send to Franchise Tax Board (FTB) the amount due may be liable for the amount due. It is not necessary to issue an assessment against the payor, which failed to honor the levy before taking an involuntary action. The liability must be established and the non-complying party must be given notice and an opportunity for a hearing.

NOTE: In the case of a financial institution, if an OTW is mailed to the branch where the account is located or principal banking office, the financial institution shall be liable for a failure to withhold only to the extent that the accounts can be identified by information maintained at that location.

Purpose

The purpose of a levy to a non-complying recipient is to protect California's interest in unpaid liabilities.

Responsibility

It is the responsibility of FTB staff to recognize situations where the payor is not complying with the levy.

Action

FTB staff must establish the payor had funds belonging to the entity at the time the levy was received.

FTB staff must follow unit procedures to refer the matter to the Collection Advisory Team (CAT). It may involve issuing a demand for information, or a Subpoena Duces Tecum may be issued to the parties involved. Examples of the type of documents that may need to be examined are:

- Accounts payable records
- Cancelled checks
- Checking or savings account statements
- Deposit slips
- Escrow closing statements
- Promissory notes
- Rental, installment, or lease agreements

Once FTB staff verifies payments were not sent to FTB, a letter to the non-complying party must be sent. The 'Response to Order to Withhold Tax', form FTB 4931, advises the non-complying party it is liable for the amount of the levy. The letter must be personally served or mailed via certified mail, return receipt requested.

The non-complying party may request a hearing within 15 days of the date form FTB 4931 was issued. If there is no payment received, and there is no hearing requested within 15 days, or if at a hearing the non-complying party cannot substantiate a valid reason for failing to honor the levy, a request should be sent immediately to CAT for issuance of an OTW against the non-complying party.

Collection actions against the non-complying party's assets should be taken as if the actions were being taken against the original debtor.

Reference

Revenue and Taxation Code Sections 18670 – 18672
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.1.3 Continuous Order To Withhold Tax (COTW) Information

Background

A Continuous Order To Withhold (COTW) is a legal order seizing funds from a miscellaneous payor and remains in effect for up to a year from the date the COTW was issued. A COTW attaches rents, commissions or scheduled payments from a sale of property or any other type of asset where continuous payments are made.

NOTE: COTW payors do not include funds held by a bank or escrow company. Bank and escrow funds require an Order to Withhold (OTW).

Purpose

A COTW seizes funds to satisfy the outstanding liabilities of a non-compliant entity. A COTW attaches 100% of the available funds at the time they are received, but does not exceed the amount due on the order. A COTW continues to attach 100% of the available funds for a maximum of twelve months from the received date of the COTW until the amount on the order is withheld in full or the twelve months has expired.

Responsibility

Franchise Tax Board (FTB) staff must ensure a business entity receives due process before issuing a COTW. To ensure that the entity is properly identified, FTB staff should include the following on a COTW:

- Entity name
- Doing Business As (DBA) name
- Entity number
- Federal Employee Identification Number (FEIN)

NOTE: The total amount due should include the total tax, penalties, fees and interest to the date of the COTW. Applicable tax years are all tax years with liabilities receiving due process that are due and payable.

Action

After exhausting voluntary collection actions, FTB staff should issue a COTW ((****)) on non-compliant entities. Multiple COTW's can be issued at one time providing proper documentation is provided on the Accounts Receivable Collection System (ARCS) notes and FTB staff has received supervisor and lead approval.

Reference

Revenue and Taxation Code Section 18671
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.1.4 Modification Or Withdrawal Of An OTW/COTW

Background

Franchise Tax Board (FTB) staff may modify or withdraw an OTW/COTW for the following reasons:

- Account balance indicates liability is lower than amount on the order
- Delinquent/amended returns have been processed and decreased original balance due
- Adjustments/corrections/errors reduce liability
- Received certified funds
- Verifiable funds allocated for payroll
- Lack of due process
- Liability is paid in full
- Financial hardship
- Agreement is made with the debtor allowing additional time for payment

Purpose

FTB staff may modify or withdraw an OTW/COTW to ensure the fair and reasonable collection of tax revenue and to assure funds are not over collected.

Responsibility

FTB staff must thoroughly review and verify all supplied documentation prior to modifying the order. When the decision is made to modify or withdraw an OTW/COTW, timely action should be taken through Business Entities Accounts Receivable Collection Systems (BE ARCS) to document and address the modification as soon as possible.

Action

When modifying or withdrawing an OTW/COTW, FTB staff must document the basis of the action, and cite all supporting documentation. FTB staff must follow their unit procedures for performing this action, such as obtaining a financial statement (if applicable). FTB staff should fax a copy to the bank and follow up by sending the hard copy via first class mail.

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Reference

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NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.2 Interagency Intercept

7.1.2.1 General Intercept Information

Background

Interagency Intercepts allow a business entity's credit balance with one government agency to be transferred to pay or reduce the business entity's balance due with a different government agency. Intercepts from the Employment Development Department (EDD), and the Board of Equalization (BOE) are an automatic process performed electronically based on a list from these agencies of corporations with available funds.

FTB can intercept funds from companies like the California Department of Health Services (CDHS), but the intercept must by done manually by sending form FTB 2970.

The process of intercepting funds for other state agencies is the same when they locate excess funds within the Franchise Tax Board (FTB).

Purpose

Interagency Intercepts intercept a business entity's monetary credits to satisfy or diminish an outstanding liability.

Responsibility

FTB staff must deduct offset amounts if an intercept credit has not posted to the account when giving account balances. This will lessen the possibility of over-collecting.

Action

When FTB staff determines that a business entity has funds held by CDHS, FTB staff can issue an Interagency Offset Notice; form FTB 2970, to intercept the funds to satisfy the liability held by FTB.

All intercepts from EDD and BOE will be done by an automated process and overseen by the Business Entities Collection Support Unit. ((****))

NOTE: FTB staff must follow their unit procedures for initiating an Interagency Intercept.

Security Deposit Intercepts:

- Intercepts can be requested against cash and time certificate deposits held by state agencies to secure payment of taxes by sending form FTB 2970. Authorized by Government Code Section 12419.5.

- BOE security deposits are controlled and administered by the local office. If it is determined that funds are available, a form FTB 2904 notice should be sent to intercept these funds.

Medi-Cal Payment Intercept:

- A Medi-Cal Intercept can attach a health care provider's funds paid by CDHS. If it is determined that funds are available, a form FTB 2970 and the medical provider number from CDHS should be sent to intercept these funds.

NOTE: Any monies sent by the EDD or BOE based on an interagency intercept cannot be released if the liability was previously satisfied. The intercept payment will be appropriated to other income years with liabilities or refunded to the business entity.

Reference

California Department of Health Services
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NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.3 Assessments

7.1.3.1 Missing Year Assessments

Background

Missing year assessments are defined by which type of entity they are.

- Non-qualified corporation – Missing years are created when a business entity does business or derives income during a tax year but doesn't file a tax return.
- Qualified corporations – Missing years are created any time a qualified franchise tax filer doesn't file a return. Business activity and income do not determine the filing requirement for a corporation who has qualified through the California Secretary of State.

Missing year assessments are set up by Franchise Tax Board's (FTB) automated collection system Integrated Non-Filing Compliance (INC), and manually by authorized FTB staff.

Purpose

Missing year assessments enable FTB to assess taxes due in the absence of a tax return and provides a tool to encourage businesses to file tax returns.

Responsibility

FTB staff must evaluate the cost effectiveness of setting up a missing year assessment if there is no indication of business activity, income generation, or transferee assessments. During the initial contact, FTB staff must ask the business entity representative the following questions:

- Is the business entity actively doing business (in or out of California)?
- What kind of business does the entity conduct?
- What were the entity's gross receipts for the year of _____?
- Does the entity have any other locations?
- Verify all active addresses.
- Gather asset info (bank, accounts receivable, property, etc.).
- Does the entity use a Doing-Business-As (DBA) name? This information is vital if a lien or levy is required.

Action

If a missing year assessment is justified, FTB staff must notify the business entity by mailing form FTB 4960 Notice to File Tax Returns.

The missing year assessment form FTB 6923A must be completed to determine the income basis of the assessment. The following income sources are listed in priority order:

- Taxpayer information
- Board of Equalization (BOE)
- Prior year return
- Industry income average
- FTB determination

FTB Staff should follow unit procedures to complete missing year assessments.

Reference

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U.S. Department of Labor – Bureau of Labor Statistics

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.3.2 Jeopardy Assessment (J/A) Information

Background

Jeopardy Assessments (J/A) are issued when it is determined collection of a tax or deficiency for any year, current or past will be jeopardized. J/As may be issued to a business entity, transferee, or assumer. A J/A is due and payable at the time assessed and collection action may commence at once.

The collection of tax might be in jeopardy if one or more of the following is established:

- Entity received income from illegal sources and has assets that are in immediate danger of attachment or assignment.
- There is evidence that the entity is assigning and/or placing assets in the name of a third party for the purpose of concealment.
- Entity is selling business and has not filed tax returns.
- Entity has a previous history of collection difficulty or is a non-filer; and the entity has access to a large amount of cash or escrow funds and it is the last verifiable asset of the entity.
- Entity has unpaid liability from tax return(s) filed.

Due process is served once the Business Transfers Desk (BTD) mails the J/A Notice (the Notice of Proposed Assessment (NPA)). Unlike a regular NPA, the taxpayer has:

- 30 days to protest that collections was not in jeopardy
- 60 days to protest on the grounds that the assessment was incorrect

A J/A is sent in conjunction with a demand to file and pay for all liened years and an Order to Withhold (OTW) for all un-liened years.

To stay collections actions the entity must post a bond for 125% of the J/A , or show substantial evidence that the funds are not in jeopardy.

Purpose

J/As provide for a prompt assessment, expedited due process, and accelerated collection actions when an asset (generally the last asset) is subject to liquidation and FTB establishes criteria of Revenue and Taxation Code Sections 19081 and 19082 and the Internal Revenue Service (IRS) Regulations 1.6851.1 is met.

Responsibility

FTB staff must determine the income basis of the assessment. The following income sources are listed in priority order:

- Taxpayer information
- Board Of Equalization (BOE)
- Prior year return
- Industry income average
- Collection Filing Enforcement (CFE) basis

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Action

Complete the assessment worksheet, form FTB 6923, and prepare the basis letter containing two statements explaining the following:

- **Assessment:** What information FTB relied upon in issuing the assessment, detailing the method of computation.
- **Jeopardy:** Reason the FTB determined that the collection of tax assessed would be jeopardized by delay.

The worksheet and supporting narrative is reviewed by the section or district manager, or designee for compliance with Revenue and Taxation Code Section 19081 and 19082 and Internal Revenue Service (IRS) Regulations 1.6851.1.

Effective October 10, 1999, Senate Bill 94 requires written approval by the Chief Counsel of the FTB, or the counsel's designee, prior to issuing a J/A per Revenue and Taxation Code Section 19084.

Prior to submitting the J/A, FTB staff must do the following:

- Verify and document that a case meets J/A criteria.
- Prepare the J/A request, including a narrative specifying the reason for the J/A.
- Obtain Supervisor approval.
- E-mail the J/A request to the Business Transfer Desk (BTD). The BTD will obtain Legal approval.
- Pursue involuntary collection actions after the BTD notifies the FTB staff that the J/A was mailed.

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Reference

Section 4.1.1.10 Protest Rights
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Revenue and Taxation Code Sections 19081, 19082, and 19084
U.S. Department of Labor – Bureau of Labor Statistics

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.3.3 Assumer

Background

An assumer is an individual or business entity that accepts legal responsibility for another business entity when requesting a tax clearance. Franchise Tax Board (FTB) form FTB 3555 Request for Tax Clearance initiates this process. Once this form is accepted and the entity has completed the dissolution, surrender, cancellation, or merger process, the assumer becomes responsible for the entity's taxes and/or unfiled tax returns. All returns remain subject to audit until expiration of the normal statute of limitations. (See section 4.1.1.8 Statute of Limitations)

An assumer differs from a transferee because an assumer voluntarily assumes any subsequent liabilities or responsibilities for a business entity, where a transferee has the liabilities transferred to them without their consent.

NOTE:

- An assumer cannot be a general or limited partnership.
- The surviving entity of a conversion assumes the converted entities liability without a tax clearance unless they are a domestic or qualified corporations that are converting to another type of entity.

Purpose

The assumer process ensures the accountability of a business entity's tax liabilities. The assumption is unconditional and makes the assumer liable for an entity's tax obligations.

Responsibility

FTB staff should:

- Identify the assumer in Business Entities Tax System (BETS) ((****)).
- Ensure that the entity is dissolved, cancelled, surrendered, or merged with the Secretary of State.
- Request folder in order to review form FTB 3555 for contact and asset information of the business entity, and the assumer.

NOTE: The statute of limitation for assumer assessments is one year beyond the statute for assessment of the original liability regardless of any extension.

Action

After verifying the assumer is responsible, initiate the assumer process.

Assumer Process:

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  ((****))
- ((****))
- ((****))
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The statue of limitations for an assumer is one year past the normal statue.

Reference

Revenue and Taxation Code Sections 19071 and 19072
Revenue and Taxation Code Sections 19049 and 23334
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NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.3.4 Transferee Assessments

Background

Transferee assessments are issued when assets are inappropriately taken from a business entity, leaving the business insolvent and unable to meet its tax obligations. This process makes the transferee responsible for the amount taken or the tax liability due (whichever is less).

A transferee can be any of the following:

- A company officer
- Stockholder
- A business entity

Purpose

A transferee assessment enables Franchise Tax Board (FTB) to pursue collections against individuals and/or business entities when assets and/or property is transferred without giving full, fair, and adequate consideration to the prejudice of the rights of creditors.

Examples:

- Corporate officers who receive improper compensation, such as excessively high salaries or expenses
- Stockholders who borrow from the corporation without repaying the loans
- Other corporations, partnerships or sole proprietorships that receive assets from the corporation without adequate compensation

Responsibility

FTB staff must identify accounts that potentially qualify for transferee assessments. Cases include transferee assessments based upon **law**, or based upon **equity**.

For transferee assessments based upon "**law**," a contract must exist in which the transferee agrees to pay the transferor's tax.

For transferee assessments based upon "**equity,**" all of the following requirements must be met:

- Transfer of assets
- Tax liability accrued before or in the taxable year the transfer was made
- Transfer made without full and adequate compensation

- Transferor left without assets sufficient to pay tax liability due to the transfer
- Transfer must have been to actual beneficial owners
- Creditor may be held as transferee only to the extent of the overpayment

NOTE: FTB staff must have exhausted all means available to collect from the business entity before proceeding with a transferee assessment.

Action

FTB staff will issue transferee assessments after establishing that a transferee situation is warranted.

Proof of transferee is determined by the following:

- Identification of the asset transferred
- Evidence that the transfer left the transferor insolvent or defrauded creditors
- The value of the asset transferred
- Asset transferred after tax accrued or during tax year in which liability arose

Transferee Process:

- Send form FTB 5900 – wait 45 days for due process
- Complete the transferee lien on ARCS – wait 45 days for due process
- Take appropriate collections action, e.g. order to withhold

NOTE: The statute of limitations for setting up a transferee assessment is five years past the original due date of the tax return. For subsequent transferees, the statute of limitations is within one year of the expiration of the previous transferee assessments' statute of limitations (up to a maximum of three years).

Reference

Revenue and Taxation Code Section 19071-19074
Civil Code Section 3439 – 3439.12, 3440 – 3440.9, and 3445-3449
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.1.4 Suspension and Forfeiture

7.1.4.1 Suspension and Forfeiture General Information

Background

Under certain circumstances, a domestic business entity may have all its rights and privileges suspended. Similarly, a foreign business entity may have its rights and privileges forfeited. A foreign business is any business that does not have California as their state of incorporation.

The reasons for Franchise Tax Board (FTB) suspension or forfeiture are:

- Failure to file a return(s)
- Nonpayment of taxes, penalties and interest

Legal requirements for suspension or forfeiture are:

- Failure to File - 12 months from the end of the accounting period
- Failure to Pay - 11 months from the date of the first billing
- Failure to File an annual Statement of Information with the Secretary of State

When a business entity's rights and privileges have been suspended or forfeited, the business can still amend its Articles of Incorporation to change the entity's name and/or apply for "exempt" status.

The Secretary of State (SOS) may also suspend/forfeit a business entity if the business fails to file a Statement of Information.

Non-qualified/Non registered entities, also known as unincorporated entities, cannot be suspended/forfeited.

Unincorporated entities acting and filing as a corporation are subject to contract voidability. The reasons for contract voidability are the same as for suspension and forfeiture.

Purpose

FTB is able to suspend the rights, powers, and privileges of an entity which has failed to pay the amounts due and/or file the required tax return(s). This action helps FTB bring business entities into legal compliance. Under suspension or forfeiture, an entity:

- Loses the right to conduct any business activity
- Loses the right to enforce contracts
- Loses the right to initiate or defend a lawsuit
- Loses exclusive rights to the entity name

- May be subject to a $2,000.00 penalty while operating under suspension/forfeiture
- Loses the right to make a claim for refund or amend a return
- Loses the right to protest an assessment
- Loses the rights to sell, transfer, or exchange real property
- Loses the privilege for an extension to file tax returns

Responsibility

To ensure due process, a final notice before suspension/forfeiture, form FTB 4974, must be mailed to the entity at least 60 days before the date of suspension/forfeiture, form FTB 2520. If the suspension notice does not go out in 90 days from the Final Notice Before Suspension, the suspension process must start over.

These notices are generated from Business Entities Accounts Receivable Collection System (BE ARCS), and inform the entity of the:

- Proposed date of the action (see note below)
- The income period that subjects the entity to the action
- The balance/returns due for each period that subjects the entity to the action
- The applicable Revenue and Taxation Codes

NOTE: Non-qualified/Non-registered entities receive a date of contract void. Entities registered through the SOS receive a date of suspension.

Action

FTB staff may defer suspension or forfeiture in BE ARCS for a period up to 90 days while negotiating compliance.

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Reference

Revenue and Taxation Code Section 23301-23305e, 23775, 21020, and 19135
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NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2 PERSONAL INCOME TAX

7.2.1 Earnings Withholding Order For Taxes

7.2.1.1 Earnings Withholding Order For Taxes

Background

An Earnings Withholding Order for Taxes (EWOT) is a continuing wage garnishment on earnings due to a taxpayer from an employer and is subject to the provisions of the Code of Civil Procedure Section 706.050. Court action is not required, except when Franchise Tax Board (FTB) desires to reach more than the established 25% of disposable income (Code of Civil Procedure Section 706.076) or to levy on the earnings of a non-liable spouse.

NOTE: EWOTs can be served through first class mail or by personal service.

An EWOT creates a levy upon the earnings of the taxpayer in the amount of the taxpayer's outstanding Personal Income Tax (PIT) liabilities. The term "earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether designated as wages, salary, commission, bonus or otherwise. It does not include periodic payments pursuant to a pension, retirement plan, or residuals.

The employer shall not withhold from any pay period that ends prior to the 10th day after receipt of the EWOT. Thus, if a pay period ends on the 10th or subsequent day after receipt, the earnings of the period prior to receipt of the order is attachable. The employer shall continue to withhold until the amount specified in the order is paid or the order is withdrawn by FTB. The EWOT is a continuing levy on the taxpayer's earnings until the amount on the order is satisfied or terminated by FTB.

Purpose

An EWOT secures payment from the taxpayer's employer to be paid towards an outstanding PIT tax liability.

Responsibility

It is the responsibility of FTB staff to issue EWOTs when appropriate without violating the rights of the taxpayer. (See section 3.2.3.3 Taxpayer Bill of Rights)

Action

The EWOT is a valuable collection tool and must not be used indiscriminately. FTB staff must determine that the taxpayer has received adequate notice of the amount of tax, penalty and interest due, and has failed to comply before the EWOT is issued. The EWOT may be issued against a taxpayer in the following situations:

- When the taxpayer has not responded to a demand for payment.
- When the taxpayer has previously promised to pay and fails to do so.
- When the taxpayer has a history of delinquency.
- When the taxpayer does not make a full disclosure of their financial condition when required to do so.
- When the taxpayer defaults on an Installment Agreement (I/A). ((****))

An EWOT should not be levied against any of the following:

- The wages of a Merchant Seaman earned for services aboard seagoing vessels. The wages may be reached by an assignment order. Contact the Collection Advisory Team (CAT) for further information. (See Section 5.2.2.1 Airline employees, Merchant Seaman, Railroad Employees, and Truck Driver)
- Nonresident employees of interstate carriers regulated by the Interstate Commerce Commission or Federal Aviation Agency (FAA).
- An employer without a California branch or office.

Liens should not be issued simultaneously with an EWOT. Generally, a lien may be issued ((****)) after the EWOT is issued, if full payment is not anticipated in approximately ((****)) months.

Priority of EWOTs

The relative priorities of various orders used to levy wages are:

First: A court ordered wage assignment for support.
Second: A Withholding Order for Child or Spousal Support.
Third: An EWOT for taxes. The Code of Civil Procedure Section 706.023 states that only one EWOT for state taxes can be deducted at one time (regardless if the amount of the first levy for taxes is less than 25%).
Fourth: Other earnings withholding order for other non-tax debt and civil judgments.

The effect of an EWOT in circumstances involving other orders varies. If an employer receives an EWOT and there is a prior court ordered wage assignment for support or a Withholding Order for Child Support or Spousal Support enforced, the EWOT is effective. The employer should notify the department that a higher priority order is in effect and comply with the higher priority order before withholding any amounts pursuant to the EWOT.

If the amount withheld for the higher priority order equals or exceeds 25% of disposable income no additional amount should be withheld pursuant to the EWOT, however, the EWOT remains in effect. Once the higher priority order is satisfied the employer should commence withholding pursuant to the EWOT.

If the amount withheld for the higher priority order is less than 25% of disposable income, and is not for state taxes, the employer should withhold an additional amount pursuant to the EWOT. The additional amount should not exceed 25% percent of disposable income less the amount withheld for the higher priority order.

If an EWOT is in effect and the employer receives a court ordered wage assignment for support or a Withholding Order for Child Support or Spousal Support, the EWOT will still remain in effect, but will now change priority. The employer should notify FTB that a higher priority order has been received and comply with the higher priority order before withholding any amounts pursuant to the EWOT.

If an employer receives an additional EWOT from FTB and there is already a prior FTB EWOT in effect, the subsequent EWOT is not effective and the employer should return the subsequent order.

If an employer receives two EWOTs for the same employee on the same day, the employer should honor the EWOT for the tax liability secured by the statutory lien that first came into existence. The employer will have to contact the taxing agencies that issued the EWOTs to determine the dates the statutory liens arose. If the statutory liens came into existence on the same date, the employer should select which EWOT to honor, and the other EWOT will not be effective.

If an employer receives an FTB EWOT and there is a prior earnings-withholding order (fourth priority) in effect, the FTB EWOT is effective. The employer should notify the levying officer who served the prior earnings-withholding order that a supervening EWOT has been received and commence honoring the supervening FTB EWOT. The prior earnings withholding order should remain in effect. If the FTB EWOT is satisfied before the prior earnings withholding order expires (100 days after the date the order was received), the employer should resume withholding pursuant to the earnings withholding order.

The Wage Garnishment Law does not establish the priority between EWOTs and levies on wages by the Internal Revenue Service (IRS). Government Code Section 7170.5 provides that between a state tax lien and a federal tax lien, the lien that first comes into existence has priority. In September 1986 the IRS, FTB, and Employment Development Department (EDD) agreed to comply with this code in determining lien priority.

If an employer receives an IRS levy and there is a prior EWOT in effect, or vice versa, both the IRS levy and the EWOT may be effective. If the IRS levy has priority, but less than 25% of the disposable income is being withheld, an additional amount should be withheld pursuant to the EWOT. The additional amount should not exceed 25% of the disposable income less the amount withheld for the IRS levy.

When information is obtained from the employer that a prior IRS levy is in effect, FTB staff should first exhaust all other collection avenues before pursuing the lien priority issue. If all

other collection actions are unsuccessful or inappropriate and no other reachable assets can be located, the user should contact CAT.

CAT will contact the revenue officer and/or the IRS Special Procedures Unit to compare the state and federal statutory lien dates and the amounts involved and determine the actual priority. CAT will then contact the user and provide them with the statutory lien priority information. It is FTB staff's responsibility to then notify the employer of the priority of the levies received.

NOTE: This action should only be pursued after all other collection remedies have been exhausted. Whenever a statutory lien date comparison is completed FTB staff only provide FTB's statutory lien date information to the taxpayer or their authorized representative. Due to disclosure issues, FTB is only allowed to indicate which agency has priority and the balance owed for that priority amount when comparing dates with multi-state agencies EDD, Board Of Equalization (BOE), and the IRS.

EWOTs may be converted to an Electronic Funds Transfer (EFT) I/A (See section 6.2.3.1 Installment Agreements) when:

- The continuation of the EWOT may be harmful or cause the loss of the taxpayer's employment.
- The taxpayer requests an I/A and does not have a pattern of non-compliance.

An EWOT should be released when the following occur:

- The taxpayer has not received due process (See section 3.2.3.1 Due Process)
- The case is paid in full
- The liability is erroneous
- The EWOT will create a hardship
- The Social Security Number (SSN) is erroneous
- Other situations that may be deemed appropriate by the supervisor or lead

The Department of Defense charges an administrative fee of $75.00 per EWOT for federal employees. The authority to charge the fee is in accordance with Section 643 of Public Law 104-106. The first payment will be 25% of the taxpayer's paycheck minus the fee. ((****))

Jeopardy Withholding Order For Taxes (JWOT)

A Jeopardy Withholding Order for Taxes (JWOT) may be issued only when it has been determined that the collection of the liability will be jeopardized by delay. The amount to withhold is the same as the amount required on the EWOT; however, it attaches earnings due to the employee at the time of service. Cases where the taxpayer changes jobs frequently, making it difficult to effectively use the EWOT, may warrant issuance of a JWOT. Lead or supervisor approval is required.

If the order is served via FAX, include:

- A copy of the front and back of PART 1 of the completed JWOT and a copy of PART 2, 3 and 4.
- A FAX Cover Sheet ((****)) must be used and should include such information as:
  - To whom the JWOT is addressed,
  - The date, time of day, and the fax number dialed.

  NOTE: The cover sheet should also have a statement that identifies a contact person at FTB in case there is a question regarding the JWOT.

- The copies used in the transmission and the "Confirmation of Transmittal" slip should be retained as proof of service.

NOTE: Service by FAX should be followed up with the mailing of the original JWOT.

Court Issued Earnings Withholding Order For Taxes

Code of Civil Procedure Section 706.076 states FTB can apply to a court in the county where the taxpayer resides for a court issued EWOT that would require the employer to withhold funds in excess of the standard 25% of the taxpayer's disposable earnings.

Application for a court issued EWOT should be considered when an existing EWOT will not close the case within ((****)) months and it appears that a portion of the taxpayer's disposable income normally exempt from levy is not necessary for self or family support. In determining the disposable income necessary for support, income of a liable or non-liable spouse may be considered.

In order to obtain a court issued EWOT, the requesting office will route a summary of the case to CAT. The summary must include the following information:

- A clearly stated reason as to why the request is being made.
- The taxpayer's full name, case number and address.
- The name and address of the employer.
- The amount of the liability.
- The name and telephone number of the person who is responsible for the case.
- State if this is a jeopardy situation that would require the issuance of a Temporary Earnings Holding Order (TEHO). TEHO would freeze the taxpayer's wages in cases where collection would be in jeopardy until the court hearing.

CAT will prepare the case for transmittal to the Attorney General who will file the application for a court issued EWOT. The court will serve the taxpayer with a copy of the application, and if it is a jeopardy situation, the Attorney General will issue a TEHO to the employer. The court will notify the parties of the hearing date. The requesting office will be

notified by CAT and a representative from that office must appear with the Attorney General at the hearing.

After the hearing, the court will issue an EWOT, which will require the taxpayer's employer to withhold and pay over all earnings of the taxpayer other than that amount necessary for support. In no event will the amount withheld be less than 25% of disposable earnings.

Earnings of Non-Liable Spouse

Code of Civil Procedure Section 706.109 states that "an EWOT may not be issued against the earnings of the spouse of the judgment taxpayer except by a court order upon noticed motion." FTB is required to obtain a court order to collect a post marital debt from the earnings of a non-liable spouse even when it is determined that such earnings are community property. ((****))

Failure to Honor an EWOT

Code of Civil Procedure Section 706.154 states that, "If an employer fails to withhold or to pay over the amount the employer is required to withhold and pay over, the judgment creditor may bring a civil action against the employer to recover such amount".

The civil actions available to remedy a failure to comply with an EWOT, is the filing of a suit by the Attorney General, or the filing of a Small Claims Court action by CAT. CAT should be contacted for information regarding actions relating to EWOT non-compliance cases.

If an employer withholds funds from a taxpayer's earnings pursuant to an EWOT and fails to remit said amounts to FTB, the remedy to recover these funds differs from the above procedure. Revenue and Taxation Code Section 18673 provides that if a taxpayer can substantiate that funds were withheld by the employer but not remitted to the FTB, the taxpayer's case should be credited for the amount withheld and the employer be assessed a like amount. This action requires the department to issue a Notice of Proposed Assessment (NPA) against the employer for the un-remitted funds. CAT is responsible for this workload and should be contacted immediately if a taxpayer claims monies were withheld by his employer and not remitted to the FTB.

Wages Paid In Advance

The employer should be advised that any advance payments to the taxpayer after the receipt of the EWOT is subject to withholding. Any advance payments to the taxpayer, which covers a pay period ending prior to the 10th day after receipt of our order, are not attachable. If the employer will not cooperate or FTB staff feels the employer is intentionally hindering the collection, FTB staff should take action to enforce compliance. Information concerning the pay advance arrangement should be obtained.

Out-of-State Employers

An EWOT may be served on the out-of-state employer of a resident and nonresident taxpayer when:

- The resident taxpayer is employed by a sole proprietorship or partnership and the payroll department is located outside of California, the EWOT may be addressed to and served on a branch office located in California.
- A non-resident taxpayer is employed by a California company; the EWOT may be addressed to and served on a branch office located in California.
- A foreign corporation qualified to do business in California employs the taxpayer and the payroll department is located outside of California, the EWOT should be served on the corporation at the address given on the payor file.

Corporation Code Sections 1502, 1505 and 2105 requires that every corporation qualified to do business in California file a statement with the Secretary of State (SOS) designating an agent for the purpose of service of process.

The process agent may be an individual or a corporation. This information is available from the SOS as follows:

- If the process agent is an individual residing in this state, the complete business or residence address of the individual is available.
- If the process agent is a corporation, the complete address of its office or offices in California where it may be served with process, and the name of each person employed who is authorized to accept service of process.

For purposes of properly identifying the taxpayer, an EWOT sent to the branch office or the process agent of an out-of-state employer should include the following additional information:

- Name and address of the company employing the taxpayer
- Name of the person authorized to receive the EWOT

Preparation and Control of EWOT

((****)). The address and telephone number of the FTB staff issuing the EWOT are entered in the upper left area adjacent to the State seal. The date and initials of the FTB staff that requested the EWOT and the unit code are entered to the right of the addressee. The name and address of the employer to whom the order is served are entered to fit a window envelope. Taxpayer's social security number or Taxpayer Identification Number (TPID) must not be visible on any outgoing mail on the envelope or through the window, return mail envelopes provided, or registered/certified mail receipts. Senate Bill 458 (CH 97-685) prohibits state agencies from displaying personal information including, but not limited to social security number, telephone number, and driver's license number. Federal employees require special handling by proof of certified mail. Certified mail items are inserted by the mailroom.

A stamped, self-addressed return envelope will be enclosed with each order for return of Part 2, Employer's Acknowledgment. A 9-digit user code number is stamped on the return envelope to facilitate delivery. Since Senate Bill 458 (CH 97-685) prohibits displaying personal information, ((****)) Envelopes are not provided for payments since numerous payments will probably occur from each EWOT. ((****)).

If the order is served via FAX, include the following:

- A copy of the front and back of PART 1 of the completed EWOT and a copy of PART 3 (Taxpayer Information).
- A FTB FAX Cover Sheet ((****)) must be used and should include such information as: to whom the EWOT's addressed, the date, time of day, and the FAX number dialed. The cover sheet should also have a statement that identifies a contact person at FTB in case there is a question regarding the EWOT.
- The copies used in the transmission and the "Confirmation of Transmittal" slip should be retained as proof of service.
- Service by FAX should be followed up with the mailing of the original EWOT.

The EWOT consists of four parts:

Part 1 – "Employer's copy" which explains why the EWOT was issued and gives instructions for the employer to follow. The employer retains this part for their records.
Part 2 – "Employer's acknowledgment" asks for specific information about the taxpayer and any higher priority orders. This part is to be completed by the employer and returned within 15 days of the date of receipt of the order.
Part 3 – "Notice of taxpayer's rights"
Part 4 – "Taxpayer's copy" informs the taxpayer of the effect of the order, their rights, and opportunity for an EWOT hearing. The employer forwards this part to the taxpayer within 10 days from receipt of the order.

FTB staff need to update the Accounts Receivable Collection System (ARCS) payor file to reflect the taxpayer's employment status and ((****))

Termination of the EWOT

FTB is required by Code of Civil Procedure Section 706.078(c) to issue a "Termination of Order to Withhold Tax" to withdraw an EWOT only when the amount shown on the EWOT is paid in full before the employer has withheld the full amount specified in the order. This notice should be sent to the employer when the order is satisfied regardless of the source of credits. This procedure will prevent over collecting and erroneous refunds to the taxpayer.

A Termination of Order to Withhold Tax, ((****)), is automated and sent to employers when an automated issued EWOT is satisfied. The notice will withdraw the EWOT. The taxpayer's copy is sent with the employer's copy to be forwarded to the taxpayer. A copy of the Termination of the EWOT can be viewed on the Notice File.

Modification of Order To Withhold Tax

A Modification of Order to Withhold Tax, ((****)), is used to terminate or modify an EWOT that was automated or manually issued.

A manual modification must be issued when the payor information on the Accounts Receivable Collection System (ARCS) does not have a result of action, the EWOT was issued in error or when the EWOT is being modified. ((****)) (See Section 4.2.2.2 ARCS Case Documentation)

The taxpayer's copy is sent with the employer's copy to be forwarded to the taxpayer. Service will be by first class mail or by personal service. It is FTB staff's responsibility to ensure that these notices are sent on those cases under their control.

Administrative Hearing

An EWOT generally attaches 25% of the taxpayer's disposable earnings on a continuous basis; the taxpayer has a right under Code of Civil Procedure Section 706.075(c) to a formal administrative hearing to reconsider or modify the EWOT. FTB is required by law to grant the hearing and make a decision regarding whether to modify the EWOT within 15 days of the taxpayer's request. The request should be in writing to preclude any disagreement as to the date of receipt. A Notice of Hearing and a Financial Statement ((****)) should be mailed to the taxpayer immediately upon receipt of a request for a hearing.

For central office Personal Income Tax (PIT) collections, cases with an outstanding EWOT should first be handled within the account's associated unit through negotiation with the taxpayer.

If an agreement cannot be reached with the taxpayer and a formal hearing is requested, the case should be referred to the Revenue Recovery Services Bureau hearing officer.

((****))

- ((****))
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- ((****))
- ((****))

The hearing is an informal conference where the parties discuss the information shown on the taxpayer's Financial Statement and any other information provided by the taxpayer regarding their financial condition. The purpose of the hearing is to determine whether any of the taxpayer's earnings reached by the EWOT are necessary for the support of the taxpayer and/or the taxpayer's family. After the hearing, a written report of the hearing will be prepared and a notice of the hearing officer's decision will be mailed to the taxpayer.

If the hearing officer is unable to resolve the issue with the taxpayer and a formal hearing is requested, the hearing officer will refer the case to a field office to schedule a formal hearing with the taxpayer.

The following hearing guidelines will be followed:

- Two FTB employees must attend the hearing. One employee will be designated as the hearing officer and the other employee as a witness. The FTB employee directly responsible for the collection of the account usually will not be the designated hearing officer. Generally, the collection supervisor or branch manager in the field offices will be designated as the primary hearing officer with one or more employees designated as alternates.

All other persons attending the hearing, whether they actively participate or not, must identify themselves to the satisfaction of the hearing officer. In addition, if a person(s) not normally entitled to confidential information pertaining to the taxpayer is in attendance, the taxpayer or authorized representative, are required to sign a statement authorizing FTB to disclose confidential information.

After the hearing, a written report of the hearing and the hearing officer's decision must be prepared. A statement and a list of the names of all persons in attendance at the hearing will be a part of the hearing officer's report. The written decision must be mailed to the taxpayer within the 15-day time limit.

NOTE: A taxpayer may be allowed to record the hearing but only in the instance where FTB also records the hearing. In the event FTB is not able to record the hearing then the hearing should:

- Not be recorded by either party, or
- Be rescheduled to allow staff time to obtain the necessary equipment

The above note applies to audio taping only; under no circumstances is video taping of the hearing allowed.

An administrative hearing can be requested at any time by the taxpayer after the EWOT is issued. Additional hearings can be requested if a change in the taxpayer's financial circumstances warrants it. The FTB's decision at the hearing is subject to judicial review if the taxpayer files a petition for writ of mandate pursuant to Code of Civil Procedure Section 1094.5 within 90 days from the date the hearing report was delivered or mailed to the taxpayer. A copy of the hearing report and any other records related to the hearing and decision must be retained during the 90-day period.

Reference

((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.2 Order To Withhold Personal Income Tax

7.2.2.1 Order To Withhold Personal Income Tax

Background

Revenue and Taxation Code Section 18670 gives Franchise Tax Board (FTB) the authority to issue an Order to Withhold (OTW) Personal Income Tax to satisfy outstanding tax liabilities. An OTW is a demand to a third person in possession of funds or properties belonging to the taxpayer to pay over such funds to FTB. The term “person” includes banks or others indebted to the taxpayer.

An OTW is an administrative collection remedy to collect unpaid taxes. The OTW can be served personally, by first class mail or via FAX service. It is recommended, that service by FAX be confined to "rush cases" only and followed up with the mailing of the original OTW. FTB staff should consult their supervisor when determining whether an account meets the "RUSH" criteria.

An OTW attaches to funds or properties due the taxpayer at the time the order is received and does not have a continuing effect. If the "person" is required to make periodic payments to the taxpayer (e.g., rents, royalties), a timely OTW may be issued as the payments become due. For the order to have a continuous effect, a Continuous Order to Withhold (COTW) must be issued.

Upon receipt of the OTW, the person notified is required to remit to FTB, after the appropriate holding period, all funds due or belonging to the taxpayer at the time the OTW was received. When an OTW has attached personal property other than cash or its equivalent, (e.g., a safe deposit box or stocks/securities), these assets must be seized and sold via the warrant process.

Purpose

An OTW secures payment from a third party in possession of funds or property belonging to the taxpayer in order to satisfy an outstanding tax liability.

Responsibility

FTB staff are responsible for issuing OTWs on accounts where the taxpayer has received due process, has failed to comply, and attachable assets have been identified.

Action

An OTW is a valuable collection tool and must not be used indiscriminately. FTB staff must determine that the taxpayer has received due process of the amount of tax, penalty, and interest due, and has failed to comply before the OTW is issued. (See section 3.2.3.1 Due Process) OTWs may be issued against a taxpayer in the following situations:

- When the taxpayer has not responded to a demand for payment
- When the taxpayer has previously promised to pay and fails to do so
- When the taxpayer has a history of delinquency
- When the taxpayer does not make a full financial disclosure
- When the taxpayer defaults on an installment agreement ((****))

OTWs should not be levied against the following:

- Earnings of an employee held by an employer. An Earnings Withholding Order For Taxes (EWOT) must be used for this purpose.
- As of January 1, 2006 NO OTW's are to be issued to any Brokerage Firms until further notice from the AB 1767 Implementation Team. AB 1767 changes the way brokerage firms process OTW issued against stocks and securities. Instead of issuing warrants to sell stocks and securities after they have been frozen by an OTW, RT&C section 18670 has been revised to require the brokerage firms to liquidate the stocks or securities within 90 days of the receipt of the OTW and remit the proceeds to FTB.
- Veteran's benefits paid or payable are not subject to levy (38 USC 3101).
- Social Security benefits paid or payable are not subject to levy (42 USC 407).
- A Trustee in Bankruptcy or any assets of the bankrupt while under the jurisdiction of the court.
- Partnership assets - To reach partnership assets, a charging order must be obtained. An OTW can be levied upon a partnership to require payment of amounts currently due a taxpayer/partner from the partnership, (e.g., a distribution of a share of the profits). To be effective, the OTW must be levied after the distribution becomes due and before it is paid. In most instances, this timing will be difficult unless the taxpayer/partner receives guaranteed payments pursuant to the partnership agreement.
- Payroll funds (monies deposited by an employer to pay employee salaries).
- Accounts of prison inmates.
- Retirement benefits should not be levied upon if a hardship exists.
- Residual payments in the possession of the Screen Actors Guild or the Directors Guild of America. To reach these residual payments, a Demand for Information, ((****)) should be sent to these organizations to determine the name and address of the payers of the residuals due the taxpayer. COTW should then be sent to those payers identified in the response to the Demand for Information.
- Worker's compensation claims. (Labor Code Section 4901)
- "Pre-Need" burial fund accounts.

The exemptions from enforcement of a money judgment described in the Code of Civil Procedure are not available to a taxpayer when property is levied upon by OTW. The exemptions are available to a taxpayer when property is levied upon by warrant.

Preparation and Control –

((****)). A stamped, self-addressed return envelope will be enclosed with each order and a 9+digit user code stamped on it to facilitate delivery. Since Senate Bill 458 (CH 97-685) prohibits displaying personal information, ((****)) Return receipt requests are not used unless proof of receipt is required.

If the order is served via FAX, include the following:

- A copy of the front and back of PART 1 of the completed OTW and a copy of PART 3 (Taxpayer Information).
- FTB Facsimile Transmittal cover sheet ((****)) must be used and should include information to who or whom the OTW is addressed, the date, time of day, and the FAX number dialed. The cover sheet should also have a statement that identifies a contact person at FTB in case there is a question regarding the OTW.
- The copies used in the transmission and the "Confirmation of Transmittal" slip should be retained as proof of service.
- Service by FAX should be followed up with the mailing of the original OTW.

To provide complete information for identifying the taxpayer and/or the monies held, the following information must be shown on the OTW:

- Full name of taxpayer- Show the taxpayer's full name, if known, instead of initials.
- Joint Assessment - If it is a joint assessment, include both names and use "and/or" for maximum effectiveness; e.g., John and/or Mary Smith.
- AKA's - Place cross-reference names and "also known as" (AKA) names in parenthesis directly behind the taxpayer's names. When assets are located that are being held in a name other than the taxpayer's, and it is known that the taxpayer uses this name, it is possible to attach these funds by use of the "AKA" indicator. There must be evidence that the taxpayer is the person known by the other name. Department of Motor Vehicle records, a marriage license, or court documents are examples of the types of evidence that could be used. The OTW will be effective unless other identifying indicator, such as SSN does not match.
- Doing Business As (DBA) - In the event that the taxpayer is operating a business as a sole proprietorship, it is possible to OTW funds held in the fictitious business name, by use of a “DBA” indicator. The existence of the sole proprietorship must be verified before using a “DBA” indicator. This precaution is necessary in order to confirm that the business is a sole proprietorship and not a corporation or partnership. Obtaining a copy of, or confirming the existence of a fictitious business name statement (or verifying the taxpayer's ownership of the business through other sources, tax returns, Board of Equalization (BOE) Employment Development Department (EDD) is essential. (John Doe, “DBA” J. D. Trucking, is an example of the use of the “DBA” indicator.)

- Case Number - This is the primary identifying number under the Taxpayer Information (TI) System. If the liability is joint, the primary taxpayer's SSN is listed.
- Account Number - The account number is the Taxpayer Identification (TPID) number. If the liability is joint, include the spouse's TPID number.
- Total Due - Total tax, penalties, interest, and fees due on all years on the date sent. **Exception:** When an escrow demand is prepared, project interest ((****)) from the date the demand is processed.
- Years - Include all open and discharged years ((****)).
- Joint Assessment - In a joint assessment include both the taxpayer (primary number) and spouse (secondary number).
- Alternate SSN - If FTB staff determines that the taxpayer is using a second SSN, it should be listed as an "alternate SSN" in an area of the OTW that is **NOT** exposed by the window of the envelope.

NOTE: Address any questions regarding the validity of the OTW to the Collection Advisory Team (CAT).

Special OTW Paragraphs

Unique collection situations arise that require the use of wording not found on preprinted forms.

- When certain types of funds or property are to be held, they should be specifically stated on the order. The appropriate paragraph must be typed on the OTW.

- If a citation of law is needed relating to the authority for issuance of the order, current laws or other codes should be referenced. If unable to locate the appropriate section of the law, consult your supervisor first, then the CAT if further assistance is needed.

Nominee OTW

When it is discovered that personal property is held in the name of an entity or person other than the taxpayer, you may have a nominee situation.

Liens should not be issued simultaneously with an OTW. Generally, a lien may be issued 30 days afterwards.

Erroneous Levy - Bank Charge Reimbursement

Revenue and Taxation Code Section 21018 provides that a taxpayer who feels an OTW was issued in error, and is requesting reimbursement for the bank charge must submit a letter (claim) within 90 days of the levy explaining the error and provide proof of the following:

- The erroneous levy was caused by an error made by FTB.

- The bank charges were solely the result of FTB's levy.
- The bank did not waive the bank charges.
- Prior to levy, the taxpayer responded to all contacts by the department and provided all requested information.

Upon receipt of a claim, the FTB representative must evaluate the information and either deny the claim or submit it for approval to a collection supervisor.

If the claim is denied, ((****)) to the taxpayer indicating the reason(s) for the denial. This must be done within 30 days after receipt of the claim.

If the claim is approved:

- ((****)) notify the taxpayer of the approval.
- ((****))

((****)) ((****))

Vacation Trust Funds ((****))

Many trade unions have contracts that require employers to contribute to employee vacation trust funds (VTF) as part of the benefit package. The employees receive these accumulated funds at a designated time from the trustee. ((****)).

((****)) The Vacation Trust Fund Guide contains listings that include the date the OTW must be sent, the address of the fund, and the date payment should be received.

((****)) ((****))

The department was involved in lengthy litigation to enforce its authority to levy upon vacation trust funds. Several vacation trust fund administrators contended that federal law (the Employees Retirement Income Security Act of 1974 commonly referred to as ERISA) prohibited them from honoring the OTW. In both cases filed, the courts ruled that FTB's levies (OTWs) are not preempted by ERISA and that the vacation trust funds were required to honor the OTWs.

Any unusual or contrary responses to VTF OTWs should be forwarded to CAT.

Financial Institutions

OTWs are used to issue a levy against a financial institution. The OTW reaches funds in checking and savings accounts, certificates of deposit, funds in escrow, Individual Retirement Accounts (IRA), Keogh plans (also called H.R. 10 plans), credit union share accounts, safe deposit boxes, or any other credits or personal property belonging to the depositor. A warrant must be issued to gain entry to the safe deposit box. If a warrant is not going to be issued, an OTW attaching a safe deposit box must be released.

((****))

Most financial institutions have a central mailing address for receipt of levies. (See Section 5.2.1.10 Financial Institution Centralized Information)

Revenue and Taxation Code Section 18670 requires financial institutions to hold funds for 10 business days from the date of receipt of an OTW before transmitting the funds to the department.

NOTE: Business days may include any Saturday that mail is delivered.

An OTW attaches joint bank accounts regardless of the signature requirement on the account. It does not matter whether one or both signatures are required to access the account. The financial institution must honor the OTW to the extent of either the balance due or the balance in the account, unless the balance is insufficient to satisfy the liability. In the event that a financial institution refuses to honor the OTW on a joint account, advise the operations officer that the two party signature requirement is only a service option by them and not a claim of ownership to the account (Financial Code Section 852). The other party on the account may file a third party claim within the 10-day holding period.

Individual Retirement Account (IRA) or Simplified Employee Pensions (SEP)

An OTW may be sent to a financial institution to attach funds in IRA's or Simplified Employee Pensions (SEP).

IRAs - These retirement accounts are self-funded, tax sheltered retirement plans created by employees or self-employed persons. They may be used as primary retirement plans or they may be supplemental to employer retirement plans.

SEPs - These pension plans were created to help employers provide retirement benefits under an arrangement less complex than those required by ERISA. Although employers primarily fund them, individuals may make additional contributions to their SEP.

Funds held in either an IRA or SEP account are reachable at any time by the beneficiary, subject to penalty for early withdrawal and additional income tax for the current year.

((****)) ((****)) In addition, the holding period for this OTW is 30 calendar days. This is to allow the taxpayer adequate time to resolve the account before the IRA or SEP funds are disbursed.

Hardship should be considered when the taxpayer is currently drawing on the account as income or when the withdrawal penalties would be excessive compared to the debt amount.

Refer questions regarding FTB's authority to levy IRA or SEP accounts to CAT.

Accounts Receivable

Commercial Code Section 9106 defines an account receivable as any right to payment for either goods sold or leased, or services rendered, which is not evident by an instrument or chattel paper.

If the account receivable levied upon has been assigned, the assignor and the assignee must have filed a National Financing Statement with the Secretary of State (SOS) to perfect the security interest.

If after the levy, the department is informed of an assignment of the accounts receivable to a third party, a request for a copy of the National Financing Statement must be sent to the SOS's office.

If the SOS indicates a National Financing Statement was not filed, the person served will be informed the assignment is not valid; that the OTW takes priority and must be paid. The OTW will be released only if the information indicates the assignee perfected their security interest prior to the issuance of the OTW.

Dividends ((****))

An OTW-Dividend (OTW-DIV) can be issued to levy against stock dividends to satisfy an outstanding tax liability. (If the corporation is not based in California, the order must be sent to the instate branch of the corporation or the instate process agent for the corporation.)

A Stock and Bond Inquiry Letter, ((****)), may be sent to the corporation requesting information concerning the taxpayer's interest, date of declaration, payment of dividend, and the name and address of the process agent prior to an OTW-Div being issued.

The OTW must be issued after a dividend is declared and before it is paid.

The OTW will also attach stocks/securities. ((****)) A Demand to Furnish Information, ((****)), should be sent to the brokerage firm to determine the dollar value once the OTW has been returned confirming the taxpayer has an account which includes stocks /securities.

The following questions should be asked on the Demand:

- Name of asset
- Number of shares of each stock/security held by the taxpayer
- Certificate numbers or other identifying data
- TIC/call letters (this is the abbreviation of the stock and will help identify which exchange that particular stock is listed)
- Approximate value

Once it has been confirmed that the taxpayer has stocks/securities with a particular broker and the dollar value will significantly reduce the liability send the Voluntary Liquidation Letter, ((****)) and Attached Securities Authorization ((****)) to the taxpayer requesting that they voluntarily liquidate their stock. If the taxpayer agrees to liquidate their stock it will eliminate the warrant process and a Field Office referral.

((****)) ((****)) ((****))

Funds In Escrow

Funds held in escrow resulting from the sale of real or personal property should be collected issuing a Demand to Pay a State Tax Lien ((****)) to the escrow holder. A Notice of State Tax Lien must be filed in the county where the property is located in order to issue a demand notice. If no lien has been filed, consider issuing a lien and requesting the field office hand-carry the lien to the county recorder's office for recording to expedite the process.

When there are unliened tax liabilities and it has been determined that a lien will not be hand-carried to the county recorder's office for recording, an OTW may be issued. Issuing an OTW can seize excess proceeds from funds held in escrow.

If the escrow officer responds that there is nothing due the taxpayer until the close of escrow, the closure date should be ascertained. A new OTW should be issued on the expected closing date, and a follow-up telephone call made to the escrow company to ensure that funds will be forthcoming.

Medi-Care and Medi-Cal Payments

Medi-Care payments (Department of Health, Education and Welfare, Title XVIII) are not subject to levy. Medi-Cal payments (State of California, Department of Health) can be levied upon. See Section 7.2.5.1 Interagency Intercept.

Medical Plans

There are many organizations that receive premiums from employers to prepay expenses for their employees. In the plans below, claims are paid directly to doctors. ((****))

- ((****))
- ((****))

Dental Plans

There are some organizations that receive premiums from employers to prepay dental expenses for their employees. In the case of ((****)), claims are paid directly to the dentist. An OTW will attach these funds.

Insurance Claim Proceeds

The proceeds of fire insurance policies are subject to levy by an OTW. The insured, or the creditor, to receive payment of claim, must submit a proper proof of loss.

Prior to issuing a levy on an insurance company the following information is required:

- Name of insurance company
- Policy number
- Name of beneficiary
- Name of insured

An OTW issued to an insurance company, which has an out-of-state address, should be sent to the California process agent.

An OTW will also attach to proceeds from casualty and life insurance policies.

Spendthrift Trust

A spendthrift trust is one in which the beneficiary is unable to transfer their right to future payments of income or capital and creditors are unable to subject the beneficiary's interest to payment of their claims.

Certain valid claims against a spendthrift trust can be legally satisfied. The liability for state income tax is a valid claim and the trust can be levied upon by using an OTW.

Levy By OTW Upon Retirement Benefits

Retirement benefits payable by a pension plan may be levied upon by an OTW if a hardship does not exist. The OTW does not have a continuing effect. Whether or not the benefits payable by a pension plan are subject to levy by an OTW depends upon the nature of the plan and applicable state and federal laws.

Private Pension Plans

- Federal law, the Employee Retirement Income Security Act (ERISA), regulates most private pension plans. The provisions of the act are codified in the Labor Code (29 USC 100 et seq.) and the Internal Revenue Code (26 USC 401 et seq.). These provisions distinguish two types of private pension plans.

Qualified Private Pension Plans

- Most private pension plans are "qualified" plans under Section 401 of the Internal Revenue Code. This means the plan has met certain requirements relating to organization and operation to qualify for particular treatment under federal tax laws. At present, federal law protects benefits payable by such plans. Consequently, OTW's should not be sent to qualified private pension plans.

Non-qualified Private Pension Plans

- With some exceptions, the protection from a levy afforded by federal law does not extend to benefits payable by private pension plans that are not qualified under Internal Revenue Code Section 401. The exemption from levy provided in Code of Civil Procedure Section 704.115 does not apply when a levy is made by an OTW. Consequently, OTWs may be sent to non-qualified private pension plans. If the plan asserts the benefits are protected from a levy by federal law, refer the matter to CAT. A determination of the extent of protection afforded by federal law will be made on a case-by-case basis.

Church Pension Plans

- A pension plan established by a church may elect under Internal Revenue Code Section 410(d) to be treated in the same manner as other private pension plans for federal tax purposes. If a church pension plan has made such an election and it is a qualified pension plan, federal law protects the benefits from a levy. Federal law does not protect benefits from a levy if the church pension plan does not make such an election or is not a qualified pension plan. The exemption from a levy provided in the Code of Civil Procedure Section 704.115 does not apply when a levy is made by an OTW. Consequently, OTW's may be issued to church pension plans that have not made an election under Internal Revenue Code Section 410(d) or have made such an election, but are not a qualified pension plan. If the plan asserts the benefits are protected from levy by federal law, refer the matter to CAT. A determination of the extent of protection afforded by federal law will be made on a case-by-case basis.

Public Pension Plans

- The protection from levy afforded by federal law set forth in ERISA does not extend to benefits payable by governmental pension plans. The exemption from a levy provided by Code of Civil Procedure Section 704.110 does not apply when a levy is made by an

OTW. There are other federal and state laws that protect many public retirement benefits.

- Benefits payable by the following public retirement systems are not subject to execution or any other process whatsoever. "Any other process whatsoever" would appear to include OTW's. Consequently, OTW's should not be sent to the following retirement systems:

  - U. S. Government (5 USC 8346)
  - Public Employees' Retirement System (Government Code Section 21255)
  - State Teachers Retirement System (Education Code Section 22005)
  - Legislators' Retirement Fund (Government Code Section 9359.3)
  - Municipal Utility District Retirement Systems
  - Transit District Retirement Systems - Some districts do not have their own retirement system, but participate in the County Employees' Retirement System.

Benefits payable by the following public retirement systems are not subject to execution or any other process of court. "Any other process of court" would not appear to include the OTW. Consequently, OTWs may be issued to the following public retirement systems:

- County Employees' Retirement System (Government Code Section 31452)
- County Fire Service Retirement System (Government Code Section 32210)
- County Peace Officers Retirement System (Government Code Section 31913)

Some public retirement systems are established under city charters, local administrative codes, etc. ((****)) Other than Code of Civil Procedure Section 704.110, there are no state laws that would prohibit levies upon benefits payable by such systems. Since Code of Civil Procedure Section 704.110 does not apply when a levy is made by an OTW, OTWs may be issued to these public retirement systems.

Existing state and federal laws relating to retirement systems and benefits are subject to frequent modification or clarification by the courts. Should questions arise concerning the department's authority to levy upon benefits payable by a particular retirement system, contact CAT.

Third-Party Claims

A third party may claim ownership of or an interest in property levied upon by an OTW. Claims may be presented to FTB and/or the State Board of Control. Generally, the third party is to present the claim to FTB first to obtain a speedy determination. If FTB's conclusions are unsatisfactory, a claim may still be filed with the State Board of Control.

To present a claim to FTB, the third party should contact the office responsible for the taxpayer's case. There is no particular form required for the claim. The supervisor should review the basis and merits of the claim and make a determination denying, allowing, or

partially allowing the claim. CAT may be contacted for assistance in making a determination.

Claims may be filed with the State Board of Control pursuant to provisions in the Government Code Section 900. Third party claim procedures set forth in the Code of Civil Procedure are not applicable when property is levied upon by OTW.

Reference

((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.2.2 Failure To Honor An Order To Withhold Personal Income Tax

Background

Revenue and Taxation Code Section 18672 states that any person failing to honor an Order to Withhold (OTW) Personal Income Tax and transmit the amount due from any taxpayer is liable for such amount after service of a notice pursuant to Revenue and Taxation Code Section 18670.

Purpose

The purpose is to ensure Franchise Tax Board (FTB) has recourse available should the party to whom the OTW was sent fail to honor the order.

Responsibility

It is the responsibility of the Collection Advisory Team (CAT) and legal staff to initiate the legal process on the non-complying party failing to honor the OTW.

Action

It is not necessary to issue an assessment against the person who failed to honor the OTW before taking involuntary action. It must be established that the party to whom the OTW was issued was in possession of credits or payments belonging to the taxpayer at the time the OTW was received. This may require that a Demand to Furnish Information ((****)) or a Subpoena Duces Tecum be issued to the parties involved. CAT should be contacted once staff has gathered all the necessary information supporting non-compliance.

Prior to referral to CAT the user should:

- ((****))
- ((****))
- ((****)) The information to be requested may include the following: accounts payable records (ledgers or journals), bank statements, canceled checks, escrow closing statements, promissory notices, contracts, agreement, and/or rental or lease agreement.

If the payor fails to comply with the Demand to Furnish Information, request a Subpoena Duces Tecum from CAT.

NOTE: If the payor sends the information do not request a Subpoena Duces Tecum.

Once the records have been examined, determine the amount the payor should have sent to FTB.

Send a formal demand for payment. The demand should include language advising them that they are liable for the amount that was due to the taxpayer at the time the OTW was received and that they may request a hearing within 15 days of the date of the notice. The letter must be personally served or mailed via certified mail, return receipt requested. Do not include identifying taxpayer information on the return receipt.

If payment is not received nor a hearing requested within 15 days, or if at a hearing the non-complying party cannot substantiate a valid reason for failing to honor the OTW, a request should be sent immediately to CAT for issuance of an OTW against the non-complying party.

The following supporting documentation should be included with the request sent to CAT:

- Copy of the original OTW
- Copy of response to OTW
- Copy of Demand to Furnish Information sent to payor
- Copy of the Subpoena Duces Tecum
- Copies of the supporting information obtained from the payor by Subpoena Duces Tecum or Demand to Furnish Information
- Copy of the user's determination and computation figures
- Copy of the demand for payment letter

Upon receipt of the request for action on a failure to honor an OTW, the request will be assigned to a CAT advisor. The advisor will make sure that all the necessary documents have been included with the request. If the request is approved, the advisor will prepare an OTW against the non-complying party.

By policy, the liability must be established and the non-complying party must be given notice and an opportunity for an administrative hearing. The hearing is an informal conference at which the parties discuss the reasons for non-compliance. If the non-complying party disagrees with the determination, they may file a claim with the Board of Control.

Hearings can be held in person at any of FTB's field offices in California by any designated hearing officers or by telephone.

The following hearing guidelines will be followed:

Two FTB employees must attend the hearing. One employee will be designated as the hearing officer and the other employee as a witness. An employee directly responsible for the collection of the case cannot be the designated hearing officer. Generally, the collection supervisor or branch manager in the small field offices will be designated as the primary hearing officer with one or more employees designated as alternates.

All other persons attending the hearing, whether they actively participate or not, must identify themselves to the satisfaction of the hearing officer.

After the hearing, a written report of the hearing and the hearing officer's decision must be prepared. A statement and a list of the names of all persons in attendance at the hearing will be a part of the hearing officer's report. The written decision must be mailed to the taxpayer.

NOTE: The non-complying party may be allowed to record the hearing but only in the instance where the FTB also records the hearing. In the event that FTB is not able to record the hearing, then the hearing should not be recorded by either party, or rescheduled to allow staff time to obtain the necessary equipment. Under no circumstances is videotaping of the hearing allowed.

The non-complying party, prior to the payment being received by FTB, can request an administrative hearing at any time. FTB's decision at the hearing is not subject to judicial review. A copy of the hearing report and any other records related to the hearing and decision must be retained for one year.

Reference

((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.2.3 Release Of Order To Withhold Personal Income Tax

Background

An Order to Withhold (OTW) Personal Income Tax will be released if the taxpayer provides information to Franchise Tax Board (FTB) staff that substantiates a financial hardship or that the OTW was issued in error.

Examples an OTW was issued in error are:

- The taxpayer has not received due process
- The liability is erroneous
- The name or Social Security Number (SSN) is erroneous
- The levy was attached to a bona fide trust account or payroll funds
- The taxpayer is currently involved in a bankruptcy
- The levy attached funds that are not attachable by an OTW
- It is deemed appropriate by the user, supervisor or lead

A taxpayer may also claim a financial hardship, which are reviewed on a case-by-case basis. Financial information is used to determine whether a release or modification of the levy is appropriate. (See Section 4.2.1.18 Financial Statements)

Generally, an OTW will be released when the taxpayer pays the liability in full or files required returns and pays all tax due.

Purpose

The purpose of the release of the OTW is to ensure the order will not create an undue hardship to the taxpayer. Additionally, it also affords an opportunity for the taxpayer to make other arrangements to resolve their liability.

Responsibility

It is the responsibility of FTB staff to issue (mail, fax, etc.) the release of the OTW to the appropriate party.

Action

When the taxpayer presents evidence that enforcement of the order would cause undue hardship, the OTW may be released either partially or in full.

The order must be released when the taxpayer pays the liability in full or files required returns and pays all tax due. Payment should be by certified funds or cash.

When a taxpayer who has received an order goes into or contacts any FTB field office, the field office staff should attempt to resolve the account and notify the appropriate office of the action taken. On assigned cases, the responsible representative should be notified prior to an action being taken. ((****))

Reference

((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.3 Continuous Order To Withhold

7.2.3.1 Continuous Order To Withhold – General Information

Background

Revenue and Taxation Code section 18671 permits Franchise Tax Board (FTB) to levy upon payments due a taxpayer by issuing an Order to Withhold (OTW) that remains in effect for one year. This type of OTW is referred to as a Continuous Order To Withhold (COTW) Tax. These orders are generally issued for self-employed individuals who contract out their services. A COTW attaches 25% of any credit or payment that is due to the taxpayer for the duration of one year.

The COTW cannot be used to levy upon the earnings of an employee or funds in a deposit account. Earnings as defined in Code of Civil Procedure Section 706.011 should be garnished by issuing an Earnings Withholding Order for Taxes (EWOT) to the employer. Funds in a deposit account as defined in Commercial Code Section 9105 should be levied upon by issuing an OTW to the financial institution.

Purpose

A COTW is a demand to a third party in possession of funds or properties belonging to the taxpayer, to pay over such funds to FTB.

Responsibility

FTB staff are responsible for identifying when a COTW should be issued.

Action

The COTW can be used to levy upon many kinds of payments due taxpayers including but not limited to the following:

- Payments due for services rendered as an independent contractor
- Rent(s)
- Dividends, royalties and residuals
- Payments due as a result of written or oral contracts for services or sales
- Payments due periodically as a result of an enforceable obligation to the taxpayer
- Payments due for the lease of real or personal property

A stamped, self-addressed return envelope will be enclosed with each order with a 9+digit collector code stamped on it to facilitate delivery. Since Senate Bill 458 (CH 97-685) prohibits displaying personal information, ((****)). Return receipt requests are not used unless proof of receipt is required.

If the COTW is served in person, ask the person authorized to receive the order to acknowledge receipt by signing, dating and indicating the time received on the fourth copy. FTB staff will retain the fourth copy.

If the order is served via FAX, include the following:

- A copy of the front and back of PART 1 of the completed COTW and a copy of PART 3 (taxpayer information)
- A FTB Facsimile Transmittal Cover Sheet ((****)) must be used and should include such information as:
  - To whom the COTW is addressed, the date, time of day, and the FAX number dialed. The cover sheet should also have a statement that identifies a contact person at FTB in case there is a question regarding the COTW.
  - The copies used in the transmission and the "Confirmation of Transmittal" slip should be retained as proof of service.
  - Service by FAX should be followed up with the mailing of the original COTW.

The Accounts Receivable Collection System (ARCS) monitors and reconciles cases where levies have been issued. ((****))

- ((****))
- ((****))
- ((****))
- ((****))
- ((****))
- ((****)) ((****))

At times, the taxpayer may have other assets available and a field office transfer is necessary to gain compliance. FTB staff should confirm information concerning the outstanding COTW is available in history text before transferring the case to the field. ((****)) Do not use any other form to issue COTWs.

Period COTW Remains In Effect

The COTW remains in effect from the date it is received by the third party until one of the following occurs:

- The amount due on the COTW has been withheld.
- The department has withdrawn the COTW.
- The COTW has been in effect for one year from the date of receipt.

Thus, a COTW will remain in effect for one year at most. Subsequent COTWs may be issued at any time.

Amount To Be Withheld Per COTW

All payments due the taxpayer at the time the COTW is received by the third party and all payments becoming due the taxpayer during the period the COTW is in effect are subject to withholding. Under the statutes enacted, the amount to be withheld from each payment depends on whether the taxpayer is a natural person (individual) or is not a natural person (corporation). If the taxpayer is a natural person, the third party is required to withhold 25% of each payment. If the taxpayer is not a natural person, the third party is required to withhold 100% of each payment.

Modification of COTW

When warranted by financial hardship or other circumstances, COTWs may be modified to reduce the amount to be withheld from each payment to an amount or rate less than that required by law. ((****)) is used for this purpose.

Enforcement of COTW

COTWs are enforceable under Revenue and Taxation Code section 18671.

Under Revenue and Taxation Code section 18672 persons other than the taxpayer may become liable for payment of all or a portion of the tax liability (e.g., a person who failed to honor the COTW).

If it becomes necessary to issue a COTW to levy upon payments due a person other than the taxpayer, contact the Collection Advisory Team (CAT) for assistance.

Reference

((****))
((****))
((****))
((****))
Revenue and Taxation Code Section 18671

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.4 Assessments

7.2.4.1 Jeopardy Assessments

Background

Franchise Tax Board's (FTB) primary consideration for issuing a jeopardy assessment (J/A) is whether there is, or will be a risk of not collecting an outstanding amount due if immediate collection action is delayed. A J/A is immediately due and payable and collection action may be commenced at once. All warrant instructions issued to seize personal property must state, "SEIZE and HOLD". Personal property can be seized immediately, but must not be sold until the taxpayer has had an opportunity for an administrative hearing.

The collection of the whole or any amount of a J/A may be suspended at any time before the assessment becomes final by filing with the department:

- A bond in an amount equal to the amount of the assessment together with interest to the date to which the stay is desired. Normally, this amount is equal to ((****)) the total tax, penalty, and interest due on the date of issuance of the assessment.
- Other security in such amount as the department may deem necessary.
- Acceptable evidence showing that the collection of tax is not in jeopardy that (Revenue and Taxation Code Section 19083) provides for the taxpayer to file a petition for review to challenge whether the findings pursuant to the jeopardy statute are reasonable under the circumstances. They must specify the grounds upon which the petition is based.

NOTE: The filing of a petition for review and/or a protest of the assessment do not stay collection.

Purpose

J/A allows FTB to expedite tax assessments, circumventing normal procedures to seize and recover assets that are in jeopardy or otherwise would be lost.

Responsibility

FTB staff will educate the taxpayer on the basis of the J/A and recognize when a J/A needs to be initiated.

Some examples for issuing J/A are:

- Taxpayer received income from illegal sources and has assets that are in immediate danger of attachment or assignment.
- There is evidence that the taxpayer is assigning and/or placing assets in the name of a third party for the purpose of concealment.

- Taxpayer has a previous history of noncompliance, and has historically failed to file returns. This, by itself, is not sufficient ground to issue a J/A. A J/A may be appropriate when:
    - The taxpayer has access to a significant amount of cash, escrow funds, or personal property
    - The taxpayer is not employed or in business
    - The taxpayer does not own real property
    - ((****))

NOTE: Each situation must be measured on its own merits. The underlying concern must continue to be whether or not there is a substantial risk of lost revenue by California. Mere inconvenience in collecting an assessment is not a basis for issuing a J/A.

Action

FTB staff will determine when collection actions will be jeopardized by delay and recommend a J/A immediately. The request for approval must include specific information and supporting documentation.

Effective October 10, 1999, SB 94 requires all J/A to be approved in writing by Chief Counsel of FTB, or their designee, prior to being assessed. Approval requires compliance with Revenue and Taxation Code Sections 19081 and 19082. To support the validity of the jeopardy assessment the case must meet the rules as defined in IRS Regulations 1.6851-1.

((****))

- ((****))
- ((****))
- ((****))

Reference

((****))
((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.4.2 Missing Year Assessments

Background

A missing year (MY) is defined as an income year for which no tax return has been filed and the automated filing enforcement program will not identify the tax year. A MY tax return may be pursued anytime after the due date or extended due date.

Purpose

The purpose of a MY assessment is to secure compliance from taxpayers who derive taxable income in California but are not filing tax returns.

Responsibility

Franchise Tax Board (FTB) staff will ensure that MYs are accounted for by either securing returns, issuing assessments or by determining that there are no filing requirements.

Action

MYs are generally addressed by the Integrated Nonfiler Compliance (INC) system through Notice of Proposed Assessments (NPA). See Section 4.2.1.13 Proposed Assessments. There are instances where a MY will need to be assessed by FTB staff.

Determining Filing Requirements For Missing Years -

- If contact has been established with the taxpayer, determine their occupation and the amount of income for the MYs. This information can be used as the basis for an assessment.

- If the taxpayer indicates that the income or gross sales for the MY was insufficient to require filing a tax return and there is no information to indicate otherwise, disregard the MYs. ((****))

- If taxpayer contact cannot be established, then FTB staff should use their judgment to determine if a filing requirement exists.

    - The following situations may warrant further investigation:

        - ((****))
        - ((****))
        - ((****))
        - ((****))
        - ((****))

        - ((****))

    - If the taxpayer has been contacted and there is a filing requirement for MY(s), establish a deadline for filing the returns and proceed with issuing assessment procedures.

Basis for Assessments -

Guidelines for using income information to establish filing enforcement assessments are authorized by Revenue and Taxation Code Section 19087.

After computing an assessment, any credits and allowances for standard deductions (1983 and prior) should be applied. If the resulting tax for all years being assessed does not exceed ((****)), then generally the missing year(s) should not be pursued.

The following assessment bases apply to both central and field offices:

- Income Information Declared by Taxpayer
    - Income information provided by the taxpayer may be used as a basis for an assessment in the absence of any conflicting information.
    - Any discrepancies between the taxpayer's statements and other information must be explained.
- Income Information from Tax Returns
    - A return filed for a previous or subsequent year can be used as a source of income information for the MY. ((****)) There should also be continuity with respect to the business or trade of the taxpayer for the years on file and the MYs.
- Personal Income Tax (PIT) Return
    - If a prior PIT return is available, it may be possible to estimate the taxpayer's income based on that information. To estimate income from a PIT return:
        - ((****))
        - ((****))
            - ((****))
            - ((****))
            - ((****))
    - ((****))
    - ((****))

- Corporation Tax Return

  ((****))

  - Calendar year tax return:

    - ((****)) ((****))

  - Fiscal year tax return:

    - ((****))
    - ((****)) ((****))
    - ((****)) ((****))

  - Part year tax return:

    - ((****)) ((****))

  - Partnership/Fiduciary Tax Return:

    - ((****))
    - ((****))

  - Board of Equalization (BOE) Information

    - ((****))
    - ((****))
    - ((****))
    - ((****))
    - ((****)) ((****))
    - ((****)) ((****))

  - EDD Information

  ((****))

    - ((****))
    - ((****)) ((****))

  - Businesses or Professional Information

  To determine the amount of the assessment:

    - ((****))
    - ((****)) ((****)) ((****)) ((****))

        - ((****))

    - Industry Wide Average, Using SIC:

        - ((****))
        - ((****))
        - ((****))

    - Income Property

        - ((****)) ((****))
        - ((****))
        - ((****))

Issuing Assessments Procedures -

    - Manual filing enforcement assessments consider the following:

        - ((****)) ((****))
        - ((****))
        - ((****)) ((****))

    - Demanding a Delinquent Return

        - ((****))
        - ((****)) ((****))
        - ((****)) ((****))

Preparing the Assessment Worksheet -

    - ((****))
    - ((****)) ((****))
    - ((****)) ((****))

Reviewing Missing Year Assessments-

    - ((****))

        - ((****))
        - ((****))
        - ((****))
        - ((****))
        - ((****))
            - ((****)) ((****))

- Processing Approved Assessments
  - ((****))
    - ((****))
    - ((****)) ((****))
    - ((****)) ((****))
    - ((****)) ((****))
- Audit Liaison Processing Procedures
  - ((****))
  - ((****))
  - ((****))
  - ((****))
    - ((****))
    - ((****))
- Handling Protests
  - All protests must be submitted in writing.
  - ((****)) ((****))
  - ((****))
- Post-Assessment Activity

Collection action is continued on prior liabilities until the new PA is final.

- ((****))
- ((****))
- ((****))

Reference

((****))
((****))
((****))
((****))
((****))
((****))
((****))
((****))
California Department of Finance California Price (CPI & Deflators) Data
U.S. Department of Labor Bureau of Labor Statistics

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.5 Interagency Intercept

7.2.5.1 General Interagency Intercept Information

Background

Government Code Section 12419.5 authorizes the State Controller's office to collect money that is due to one state agency by an individual by deducting the amount of credits due to such individual by another state agency. This procedure is called an interagency intercept. An amount owed to an individual by the State may be for a refund of tax, license, or fee; payment of services received or materials purchased. Refunds of retirement contributions are not subject to intercept.

Franchise Tax Board (FTB) operates the Interagency Intercept Collection program on behalf of the State Controller's office. FTB's Interagency Intercept Collection program receives requests from participating agencies to intercept tax refunds or lottery winnings from individuals or business entities that owe delinquent amounts to state and local agencies.

Government Code Section 12419.4 authorizes the offset against security deposits held by various agencies in their treasury trust bank cases or in the form of bonds deposited with the State Treasurer, by the agencies holding the deposits, under specified conditions. Any monies due to the taxpayer will be paid to the department once the taxpayer's case with the agency is closed.

Government Code Section 926.8 provides that whenever a federal agency levies on a state agency against credits owing to a taxpayer, any amounts due the state are offset before payment is made to the federal government.

An interagency intercept may occur against a taxpayer when a participating makes an intercept request:

- State agency
- University
- City agency
- County agency
- The Internal Revenue Service (IRS) (as of March 2002)

An interagency intercept may occur against a business entity taxpayer when an intercept request is made by:

- Employment Development Department (EDD)
- Board of Equalization (BOE)
- The Attorney General's Office
- The Medical Board of California

- The Pharmacy Board
- State Controller's Office

A refund must be available for the taxpayer before an intercept can occur. A refund is available when payments and credits for a particular year exceed the tax liability for that year, creating an overpayment. Then:

- The overpayment is credited to the subsequent year's estimated tax, if the individual taxpayer has so elected, or if the business entity taxpayer has not made their minimum tax payment.
- Any remaining overpayment is credited to any final unpaid balance with FTB.
- Then any remaining overpayment is available to be intercepted or issued as a refund.

Purpose

Interagency intercepts an individual's monetary credits to satisfy or reduce an outstanding liability.

Responsibility

FTB staff should be aware of an account with an outstanding offset to another agency. ((****))

Action

In the case of a tax assessment, the offset procedure is not used unless the assessment has become final. When the tax liability has become final (e.g., the taxpayer has no further time to file a protest appeal) and positive identification of the taxpayer can be made (e.g., through social security number, employer number, or other case number as carried on the cases of the state agency filing the claim for offset), offset is normally made without prior notification to the taxpayer. The agency on which the offset is made is responsible for notifying the taxpayer after the offset.

Upon working the assigned cases, FTB staff should always be aware of the possibility of any excess credit being offset. At times the money should be refunded to the taxpayer. When this occurs a tax year "hold" needs to be put on the tax year to avoid the offset. If the money is offset then it needs to be retrieved from the offset agency.

((****))

- ((****))
- ((****))
- ((****))

If the amount has already been offset, contact the offset coordinator immediately to retrieve the money. In many cases retrieval of intercepted funds in not possible because the funds have already been disbursed or the requesting agency has closed its books.

Agency Intercept Information

The Agency Liability and Suspense Agency Liability files are purged and re-created annually. Interagency liability records are created for taxpayers on TI and suspense agency liability records are created for taxpayers that are not on TI. When a taxpayer does not have a TI account, but has an agency-offset request, then files a return, their suspense agency liability record is transferred to the Agency Liability File.

AGENCY OFFSET INFORMATION DISPLAY- lists agency-offset information for taxpayers whom are currently on TI.

SUSPENSE AGENCY OFFSET INFORMATION DISPLAY - lists agency-offset information for taxpayers who are not currently on TI.

If a return posts to TI with a credit balance of ((****)), and an agency-offset request exists, TI will offset the credit to the agency.

If there is more than one agency-offset request, the priority is:

1. Delinquent child or family support cases enforced by a district attorney.
2. Delinquent child or family support cases enforced by someone other than a district attorney
3. Delinquent spousal support cases enforced by a district attorney
4. Delinquent spousal support cases enforced by someone other than a district attorney
5. Unemployment benefits overpayment cases
6. All other state agencies
7. Cities and counties
8. Private and post secondary education
9. IRS

((****))

Medi-Cal Offset Procedure –
Issuing an interagency offset to attach Medi-Cal funds to satisfy a taxpayer's outstanding liability is issued doing the following:

- Medi-Cal payments (State of California, Department of Health Services) can be offset for payment of a tax liability. Medi-Cal funds are paid directly to physicians or other approved medical practitioners. An offset will attach funds payable to these providers. Offset letters ((****)) should be sent to Department of Health Services.

  Department of Health Services
  ((****))
  ((****))
  ((****))
  ((****))
  ((****))

- The State Controller who will issue warrants to pay approved processed claims. When an offset letter is received, the Department of Health Services will notify the State Controller to "flag" the provider's records. Any warrants issued will then be directed to the Department of Health Services for transmittal to the FTB.

- Offsets on Medi-Cal payments should include the taxpayer's address and any known Doing Business As (DBA) used by the provider to facilitate identification.

- An original and two copies should be sent to the Department of Health Services.

- At the time the FTB representative receives the response from Department of Health Services notifying that the individual is, a Medi-Cal provider, ((****)) ((****))

- When full payment has been received, either through the offset or other collection remedies, ((****)) must be sent to release the offset.

Request For Offset of A Security Deposit

Upon locating a security deposit held by a state agency, FTB staff should issue an interagency offset letter ((****)), to the agency holding the deposit. This is not a mandatory collection action, but should be considered whenever a security deposit is located. It is mandatory that an interagency offset letter be used rather than an Order to Withhold (OTW) Personal Income Tax because the offset is authorized under Government Code Section 12419.4.

The interagency offset letter has the effect of placing a lien on the security deposit. Any monies due the taxpayer will be paid to FTB once the taxpayer's case with the agency is closed out.

Security deposits held by state agencies are in the form of:

- Bank Time Certificates of Deposit
- Bank or Savings and Loan Association Savings Passbooks
- Cash deposits
- Surety Bonds

NOTE: Bank Time Certificates of Deposit, Bank or Savings and Loan Association Savings Passbooks, and cash deposits are held in physical possession by the taxpayer agency and will be returned to the taxpayer when no longer indebted to that agency.

If an interagency offset letter has been sent and the collection case is subsequently fully resolved by another collection action, FTB staff must advise the agency in writing as soon as possible.

Erroneous Intercepts

Within FTB there are two types of erroneous intercepts:

- Intercepting Agency Error - The taxpayer states that the agency requested the intercept in error. That is, the taxpayer believes they did not have a liability with the requesting agency for the intercept and/or the amount of the intercept.

NOTE: If the taxpayer claims the intercepting agency is in error, advise the taxpayer to contact the intercepting agency. Provide the taxpayer with the name and telephone number of the intercepting agency. FTB has no jurisdiction over the amounts submitted for intercept.

- FTB Error - Due to the timing of the intercept, funds that were actually not available were intercepted. For example, a:
    - Dishonored check debit and penalty post after the intercept.
    - Payment was misapplied and intercepted.
    - Penalty did not post until after the intercept.
    - User transaction error occurred creating an erroneous refund which was intercepted.
    - Taxpayer committed fraud creating an erroneous refund which was intercepted.
    - Taxpayer filed more than one tax year return at the same time. One or more of the returns had an overpayment that was to apply to one or more of the returns that had a balance due, and the overpayment return posted prior to the balance due return and the overpayment was intercepted rather than applied to the balance due year.
    - A credit has offset from an account that has not yet been coded in bankruptcy during the bankruptcy stay. When a petition for bankruptcy has been filed an automatic stay from all types of collection activity including the collection of

taxes is in effect until the conclusion of the bankruptcy through discharge or dismissal.

- Tax return posts to a wrong account that has an offset request and intercept occurs before the incorrectly posted return has been moved to correct account.

((****))

Reference

((****))
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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7.2.5.2 Franchise Tax Board (FTB) Offset Of Taxpayer Refunds

Background

Revenue and Taxation Code Section 19302 establishes the authority to apply any overpayment due to a taxpayer for any year within the statute of limitations (SOL) (See section 4.2.1.17 Statue of Limitations) to any unpaid amounts due the same or other years; any remaining balance is refundable to the taxpayer.

Purpose

Offsetting taxpayer refunds allows Franchise Tax (FTB) to satisfy additional outstanding liabilities accrued by the taxpayer.

Responsibility

FTB will apply any due refunds to the taxpayer against outstanding liabilities within the SOL.

Action

The Taxpayer Information System (TI) will automatically offset credit balances to other balance due tax years, taxpayer liabilities, and interagency offsets. ((****)).

Reference

Revenue and Taxation Code Section 19302
((****))

NOTE: ((****)) = Indicates confidential and/or proprietary information.

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