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**9.0 GENERAL (Tax Amnesty/Bulk And Business Transfers/Legal Services)**

**9.0.1 Tax Amnesty**

9.0.1.1 Tax Amnesty (References)

Franchise Tax Board (FTB) - [California Tax Amnesty](#)

[Who is eligible, how to apply, etc.](#)

[Tax Amnesty - Power Point](#) (tax professionals)

[Tax Gap Homepage](#)

[California Taxes Information Center](#)

**FTB staff resources**

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**FTB public relations**

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## 9.0.2 Bulk And Business Transfers

### 9.0.2.1 Alcoholic Beverage License

#### Background

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The State of California Department of Alcoholic Beverage Control (ABC) has the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the state. Under an interagency agreement, ABC notifies Franchise Tax Board (FTB) of the pending transfer of a liquor license by an entity.

#### Purpose

---

Learning of a potential liquor license sale allows FTB to review its records and take appropriate actions if a tax liability exists.

#### Responsibility

---

FTB staff should recognize the possibility that an entity may possess a liquor license and know the questions needed to expose any and all information regarding the liquor license.

#### Action

---

Below are appropriate questions regarding the ABC license:

- Address of business
- Liquor license information (e.g., number, type, status)
- Cross reference mailing address to business address

After making contact with the business representative, FTB staff will cross reference all information from the liquor license to the information listed on the Department of Alcohol Beverage Control's web site.

#### Reference

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[Business and Professions Code 24049](#)  
[Revenue and Taxation Code Section 19262](#)  
[Department of Alcohol Beverage Control](#)

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### 9.0.2.2 Alcohol Beverage Control (ABC) License Withholds and General Information

#### **Background**

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A liquor license hold can be a useful collection tool that works like a lien, in that it will need to be released once the liability is fully satisfied. A business can possess a liquor license that can be sold or transferred, regardless of business activity. A hold can be placed on the following liquor license types:

- #20 - Off-Sale Beer and Wine (only in certain cities)
- #21 - Off-Sale General
- #47 - On-Sale General for Bona Fide Public Eating Place
- #48 - On-Sale General for Public Premises
- #49 - On-Sale General for Seasonal Business
- #57 - Special On-Sale General

**NOTE:** A business can file for bankruptcy and hold an active liquor license simultaneously.

#### **Purpose**

---

A hold on a liquor license will prevent a business from selling/transferring the license.

#### **Responsibility**

---

Franchise Tax Board (FTB) staff should search the [Department of Alcohol Beverage Control's \(ABC\) web site](#) for the license. Once the license is located look for the following:

- Licensee Information: A HOLD can be placed if anyone listed as a licensee has a valid balance due.
- Business Name: "doing business as" and business address.
- Status: If status is surrendered, the license is no longer being used and has been returned to ABC, but the licensee still retains ownership. The business is probably defunct.
- Disciplinary History: This information can help determine history of entity.
- Hold Information: Can indicate if the entity has balances due with other state, county or city agencies.

#### **Action**

---

FTB staff should first use the liquor license as a tool to help the business gain compliance. If the business fails to comply in a timely manner, contact the Business Transfer Desk to proceed with placing a hold on the liquor license.

## Reference

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[Business and Professions Code 24049](#)

[Revenue and Taxation Code 19262](#)

[Department of Alcohol Beverage Control](#)

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9.0.2.3 Notice To Withhold Funds And Issuance Of Release On Liquor Licenses

**Background**

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Occasionally, businesses become unwilling to voluntarily comply with the requirements to satisfy unpaid liabilities with the Franchise Tax Board (FTB). FTB can withhold the funds of a pending escrow, by sending a Liquor License Transfer Notice to Withhold ((\*\*\*\*)) to the escrow company.

**Purpose**

---

Withholding funds from a pending escrow can give FTB the ability to satisfy a businesses unpaid liability that is unable to be collected through voluntary means.

**Responsibility**

---

FTB staff must make sure due process is served on all income years before sending the notice to withhold funds.

**Action**

---

FTB staff will send the notice to withhold funds to the escrow company holding the funds. Once the escrow company pays the unpaid liability, the requesting staff must request that the hold on the liquor license be released.

**Reference**

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[Business and Professions Code Section 24049](#)  
[Revenue and Taxation Code Section 19262](#)  
[Department of Alcohol Beverage Control](#)

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#### 9.0.2.4 Seizure, Notification, Sale And Conclusion Of Liquor License

##### **Background**

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Any on-sale or off-sale liquor license may be seized and sold by the Franchise Tax Board (FTB), but in practice, the Board of Equalization (BOE) is the only state agency that seizes and sells liquor licenses. If BOE seizes a liquor license and FTB has placed a timely hold upon the liquor license, FTB will receive either the full, or a prorated portion of the proceeds for the liquor license sale, pending other state agencies that may also have a hold on the license.

##### **Purpose**

---

Notification is sent to the licensee by the seizing agency, advising them the liquor license has been seized, and will be sold at public auction.

##### **Responsibility**

---

FTB staff should update all demographics at the time contact is made with the business representative. FTB staff should use the liquor license as a collection tool by advising the licensee that a hold may delay any pending sale.

##### **Action**

---

Advise the business representative of the requirements to gain compliance before the process of selling the liquor license is taken. If the representative is willing to comply, they will not have to contend with a liquor licensee hold, and possible jeopardy assessments.

If the license is sold by an agency, FTB staff must make sure that the hold has been released after payment to FTB has been received.

##### **Reference**

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[Business and Professions Code Sections 24049.0 and 24049.5](#)

[Revenue and Taxation Code Section 19262](#)

[Department of Alcohol Beverage Control](#)

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### 9.0.2.5 Alcoholic Beverage License In Bankruptcy

#### **Background**

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There are times when a business files for bankruptcy, and they have a liquor license as a major asset. The Department of Alcohol Beverage Control (ABC) may notify our Business Transfer coordinator if there is a pending transfer of a license, or Accounts Receivable Collection System (ARCS) will automatically route the account to the Bankruptcy state in which the Bankruptcy section would notify the Business Transfer coordinator if a hold is needed on the license. Even if a business files a petition for bankruptcy, the liquor license is not contained within the bankruptcy, and needs to be managed separately.

#### **Purpose**

---

Accounts that are flagged by bankruptcy need to be addressed by their unit before any actions are taken against the liquor license.

#### **Responsibility**

---

Franchise Tax Board (FTB) staff must make sure the Bankruptcy unit has documented the account before taking any collection actions.

#### **Action**

---

FTB staff should contact the bankruptcy unit before working the account. Look in the ARCS comments to see if the bankruptcy section has documented the account. See your lead for unit procedures.

#### **Reference**

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### 9.0.2.6 Bulk Sales General Information

#### **Background**

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Business transfers and sales information is received from:

- Bulk sale clearance request ([Revenue and Taxation Code Section 18669](#))
- Pacific Report
- Department of Alcohol Beverage Control (ABC) notices of transfers

#### **Purpose**

---

The purpose of having general information for Bulk Transfers and Sales is for Franchise Tax Board (FTB) staff to have an understanding of where business transfers and sales information is derived from and how it is used.

#### **Responsibility**

---

Business Transfers Group staff will know and apply the Business Transfers and Sales information appropriately.

#### **Action**

---

FTB staff will issue an Order To Withhold (OTW), a demand and release, and/or determine if a Jeopardy Assessment is appropriate and perform all follow-up activity.

Jeopardy Assessments are issued when the basis available produces a balance ((\*\*\*\*)). Interest is generally calculated six weeks in advance, unless the escrow closing date is sooner.

The Business Transfers Group procedures for processing the information are as follows:

- Check the Alpha Cross Reference file to find the seller's social security number, corporation number or partnership number. Once the number has been found, review the account to see if returns are current or if a balance is due.
- Print the accounts with missing year tax returns or balance due.
- Photocopy the source document for each account.
- Match the printout with the source document and give that information to the Business Transfer coordinator.
- Check and printout any records from the Employment Development Department (EDD), Board of Equalization (BOE), and/or ABC. Provide this information to the Business Transfer coordinator.

- If the account is assigned, inform the assigned FTB staff immediately to secure the escrow information.

## Reference

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[Department of Alcohol Beverage Control](#)

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### 9.0.2.7 Assessment Procedures

#### **Background**

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Several factors must be considered before deciding to issue an assessment:

- Is the business active or defunct?
- Numbers of income years without a tax return
- Are there any attachable assets? (e.g., liquor license, property)
- Is there an open escrow?
- Are there other agencies in line to collect funds?

**NOTE:** If the escrow is closed and distribution of funds has been made, jeopardy assessments (J/A) are not appropriate.

#### **Purpose**

---

Initiating assessments allows Franchise Tax Board (FTB) to collect at least the minimum tax, penalties, and interest for tax years that returns have not been filed, and may not be collectible any other way.

#### **Responsibility**

---

If the escrow closing date is unknown, telephone the escrow company to obtain the information.

FTB Staff must:

- Verify and document the account 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) and the BTD will obtain legal approval

#### **Action**

---

If the escrow closing date is unknown, telephone the escrow company to obtain the following information:

- Escrow number
- Amount of escrow and proceeds available for attachment
- Address of business
- Names of the parties involved

When the decision is made by the Business Transfers Group to issue jeopardy assessments, the Business Transfers Coordinator will follow the procedures described under Jeopardy Assessments.

## Reference

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[Business and Professions Code Section 24049.0 and 24049.5](#)

[Revenue and Taxation Code Section 19262](#)

[Department of Alcohol Beverage Control](#)

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### 9.0.2.8 Bulk Sales Order To Withhold (OTW)

#### **Background**

---

Bulk Sales Order To Withhold (OTW) seizes the funds of non-compliant entities with assets such as a liquor license. This OTW is a one-time order sent to an escrow company, and attaches 100% of the available funds at the time it is received, but does not exceed the amount due on the order.

#### **Purpose**

---

A Bulk Sales OTW is a legal order seizing funds from an escrow company.

#### **Responsibility**

---

Franchise Tax Board (FTB) staff must ensure a business entity receives due process before issuing an OTW.

#### **Action**

---

((\*\*\*) These forms will change according to the collection circumstances. Refer to the unit procedures for the specific form. If there is insufficient time for mail to reach the escrow company before the escrow closing date, the OTW may be faxed or field office assistance may be requested to hand deliver the OTW.

If the OTW is being issued to a bank, include in care of the "Escrow Department" in the address field. This additional clarification will help prevent the OTW from being misdirected, and possibly checked against demand deposits, safe deposit records, or employee records.

The OTW should contain all available information to identify the escrow being attached. Use the escrow number, if available, the business name, and the business address for identification.

If the OTW needs to be released, the Business Transfer coordinator will complete it.

#### **Reference**

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[Revenue and Taxation Code Section 19262](#)

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### **9.0.3 Legal Services**

#### **9.0.3.1 Collection Advisory Team (CAT)**

##### **Background**

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The Collection Advisory Team (CAT) is designed specifically as a specialized support team to the ARM Division. CAT advisors work closely with Franchise Tax Board's (FTB) Legal Department, and the office of the Attorney General on litigation matters in lawsuits filed against FTB where the departments' collection techniques or tools are challenged in State Superior Courts. CAT advisors frequently work with the Special Procedures staff of the Internal Revenue Service (IRS), Board of Equalization (BOE), and Employment Development Department (EDD) to resolve issues of mutual concern, specifically in the area of statutory lien dates and seizure and sale of assets. CAT advisors represent FTB in lawsuits filed against the department in California Small Claims Court.

##### **Purpose**

---

CAT provides technical and legal research and guidance on not only general collection tools and methods, but also complex legal proceedings.

##### **Responsibility**

---

CAT advisors are responsible for ensuring FTB staff are aware of the types of actions that require their assistance.

##### **Action**

---

Actions that require the assistance of the CAT advisors are:

- Notice of State Tax Lien on Cause of Action
- Interpleader
- Subpoena and Subpoena Duces Tecum
- Order to Show Cause
- Assignment Order
- Nominee Actions
- Employer Non-Compliance Earnings Withholding Order for Taxes (EWOT)
- Employer Non-Compliance: Failure to Remit Funds (EWOT)
- Order to Enter Private Property/Order for Transfer of Property (AKA Ex Parte Order)
- Summons and Complaint
- Statutory Lien Date Comparisons

## Reference

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

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### 9.0.3.2 Notice Of State Tax Lien (NSTL) On Cause Of Action

#### **Background**

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A Notice of State Tax Lien (NSTL) on a Cause of Action is a lien filed in a court action when the taxpayer is a party (generally the plaintiff) to a lawsuit in which the taxpayer may become entitled to property or a money judgment. ((\*\*\*\*)).

[Government Code Section 7173](#) provides that “If the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a state tax lien extends to the taxpayer's cause of action and any judgment in favor of the taxpayer”. A NSTL can be filed from the time the action is filed with the court to the time the judgment is rendered.

The lien has priority from the filing of the notice in the action and no compromise, dismissal, settlement or satisfaction can be made thereafter without FTB consent.

NSTL's cannot be utilized in federal court proceedings and Worker's Compensation accounts.

#### **Purpose**

---

A NSTL on a Cause of Action allows FTB to enter a lawsuit and notice the parties of FTB's encumbrance and priority on any property awarded to the taxpayer.

#### **Responsibility**

---

FTB staff develops and obtains information relating to the taxpayer's involvement and potential to receive property or funds as a result of the action.

Collection Advisory Team (CAT) advisors will review all NSTL requests for completeness of account information. After CAT approval, the request will be referred to Legal Counsel for pleading preparation and court filing.

#### **Action**

---

An NSTL worksheet is completed and forwarded to CAT. ((\*\*\*\*)). If circumstances warrant a rush filing of the NSTL, the information can be telephoned to a CAT advisor, who will complete the worksheet.

The NSTL worksheet must include the following documents:

- The title page of the complaint (e.g., State of California vs. John Doe), which names all the plaintiffs and defendants in the action(s).
- The service list that provides the names and addresses of the attorneys representing all parties named in the action(s).
- A copy of the summons and complaint may be obtained from either the plaintiff or defendant's attorney. The attorneys are not required to provide a copy. A copy can also be obtained from the account file at the courthouse.

The following information must be provided on the worksheet in order for the CAT advisors to process the request:

- The type of tax indebtedness by checking the appropriate tax:
  - Personal Income Tax,
  - Corporation, or
  - Other
- The exact name of the taxpayer. Check all parties for tax obligations, as there may be more than one taxpayer that may receive an award in a particular action. If this is the case, complete a separate worksheet for each taxpayer.
- The exact name of the action, including all plaintiffs and defendants. If the action includes a cross-complaint that may result in the taxpayer's award, the name of the cross-complaint should be provided; e.g., John Doe, Plaintiff vs. Sally Smith, Joe Jones, Defendants; Joe Jones, Cross-complainant vs. John Doe, Cross-defendant. The NSTL must be served on all parties.
- The account number, which usually includes alpha as well as numerical characters (e.g., BC 12345).
- The name of the court hearing the action including the county, and the address and/or branch.
- The total balance due, the date to which the interest is computed, and the applicable tax years.

- The name, address, and telephone number of the attorney for each party.
- The amount of the award that is at issue and the basis for the complaint if known (e.g., \$40,000, Breach of Contract).
- Status of account (e.g., settlement pending or hearing scheduled).

The completed worksheet and attachments may be sent to the CAT supervisor by fax or inter-office mail.

The NSTL on a Cause of Action is a passive action and may take years to resolve. FTB staff should continue collection activity consistent with the department's collection policy.

FTB staff should notify the CAT advisors immediately if the account is resolved through other means or an additional assessment becomes final.

## Reference

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

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### 9.0.3.3 Interpleader

#### **Background**

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An Interpleader is a civil action used by a third party to have the court determine how property or funds should be distributed. Generally, FTB is named in an Interpleader action when a foreclosure trustee is distributing excess proceeds from a foreclosure sale and cannot determine the priority of liens and judgment creditors.

#### **Purpose**

---

The Interpleader action allows the courts to settle disputes of claims to property and provides for lien holders and judgment creditors to assert their claim or encumbrance on the property.

#### **Responsibility**

---

Collection Advisory Team (CAT) advisors process the Interpleader (both informal and formal) and decide on FTB's course of action. Formal Interpleader actions (Summons and Complaint) are referred to the Attorney General's Office. Informal Interpleaders do not require referral to the Attorney General's Office but are handled by CAT advisors.

#### **Action**

---

Normally, a Summons and Complaint is served to our legal counsel and then referred to CAT for review. CAT advisors must be notified immediately in those accounts where the process of service is not followed and an Interpleader is received by FTB collection staff.

FTB staff will be notified if collection actions are affected by an Interpleader action.

#### **Reference**

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### 9.0.3.4 Subpoena Duces Tecum (SDT) And Subpoena

#### **Background**

---

A Subpoena Duces Tecum (SDT) is a document or writ issued under the authority of [Revenue and Taxation Code Section 19504\(c\)](#). The SDT requires a party to produce specified documents, records or papers for inspection and/or photocopying. A court appearance is not required. This module deals specifically with the SDT.

A Subpoena is a document or writ issued under the authority of [Revenue and Taxation Code Section 19504\(c\)](#) and requires the served party to appear in person. A Subpoena is rarely requested by Franchise Tax Board (FTB). Questions regarding a Subpoena and a personal appearance should be directed to the Collection Advisory Team (CAT) advisors.

#### **Purpose**

---

The Subpoena Duces Tecum provides FTB with a legal instrument to obtain documents when voluntary compliance is not productive.

#### **Responsibility**

---

CAT advisors prepare the SDT, obtain authorized signatures, and provide instructions for service.

FTB collection staff performs all research and documentation to support issuing an SDT.

Generally, field staff serves the SDT.

The California Right to Financial Privacy Act limits our authority to demand information from financial institutions. [Government Code Section 7491](#) does not allow any other laws to supersede the Right to Financial Privacy Act. Therefore, a Demand for Information may not be sent to a financial institution.

#### **Action**

---

Requests for SDT's are submitted to CAT on the fillable worksheet ((\*\*\*)).

- A Subpoena Duces Tecum should be requested only when all other means of collection have been exhausted or:
- The taxpayer refused to sign a Voluntary Authorization to Release Financial Information to FTB ((\*\*\*)), and the financial institution requires a SDT before releasing information; or

- An entity (business or individual) refuses to honor the Demand for Information, ((\*\*\*\*)); or
- Based on circumstances of the account, staff believes a Demand for Information will not be honored.

Contact CAT for questions concerning process of service, third party billings (fees to copy documents), and non-compliance to the SDT service.

The worksheet is self-explanatory and all requested information must be provided. Two items of the worksheet are clarified below:

- Item 4 - Name of the individual to receive service. When the subpoenaed party is other than an individual, it is desirable to ascertain who is designated to receive service, e.g., custodian of records. As a guideline for determining who can be served, refer to [Code of Civil Procedure Section 416.10](#), ET seq. If in doubt as to whom to serve, a CAT advisor may be contacted for assistance.
- Item 8 - Summary of account facts and reasons the SDT is needed. The summary should include dates and methods of delivery of any Withholding Orders and follow up requests for information. Be brief, but do not omit facts that substantiate the need.

A SDT must be served within a reasonable time after it is issued, and never more than six (6) months the after date of issuance unless service is impossible due to avoidance.

Personal service is the preferred method of service:

- **General Service** - General service of the SDT (such as to an employer or landlord) does not require that the taxpayer be provided with a copy.
- **Financial Institutions** - Service of a SDT on a financial institution differs from general service. [Government Code Section 7460](#), et seq., known as the California Right to Financial Privacy Act, governs the department's requests for information from financial institutions. It mandates that we serve the taxpayer with a copy of the SDT prior to serving the financial institution. Service is accomplished pursuant to [Code of Civil Procedure Section 415.10](#).

- **Service By Mail** - Service by mail is typically used when records are located out-of-state, but may also be used in state.
  - In-State Service - If it appears service by mail must be accomplished in state, contact CAT so that proper service can be ensured. In the event in-state service by mail is needed, [Code of Civil Procedure Section 415.30](#) requires the use of an acknowledgment form. Personal service must be used if neither the executed acknowledgment of Receipt nor the subpoenaed information is returned by the subpoenaed party.
  - Out-of-State Service -
    - [Code of Civil Procedure Section 415.40](#) governs out-of-state service. It provides that service may be accomplished by first class mail, postage prepaid, return receipt requested. Service is deemed completed on the 10th day after mailing. The return receipt is proof of service.
    - The SDT should not be directed out-of-state unless served on a designated process agent, or the California entity requests that we serve their custodian of records located out-of-state.
- **Service By Publication** - Service by publication is used as a last resort and only when personal service or service by mail cannot be accomplished. [Civil Code of Procedure Section 415.50](#) governs service by publication. Since the publication method involves a judicial proceeding, the Attorney General's Office is contacted to represent the department. At a hearing arranged by the court, the deputy attorney general presents an affidavit prepared and signed by the person who requested the subpoena, setting forth all attempts to locate the party being served. The court has the authority to permit or deny service by publication.

After inspecting the SDT and instructions, the requesting staff must:

- Establish an appointment date and time, and enter it on the face of the SDT. At least 11 days must be allowed from the date of service to allow for potential motions to quash the subpoena. The time usually allowed to collect the requested information is 15 days.
- Serve the SDT as instructed:
  - Serve a copied set of the documents. Do not serve the original.
  - On a financial institution, a copied set is served, but the original set must be shown (not served) in order to complete the Financial Certificate of Service.

- After completing service and signing (executing) the Certificate of Service on the original and the field office file copy, the original set is returned to CAT, Mail Stop F-240.

## Reference

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[Revenue and Taxation Code Section 19504\(a\)\(c\)](#)

[Government Code Sections 7460 and 7491](#)

[Code of Civil Procedure Sections 415.10, 415.30, 415.40, and 415.50](#)

[Code of Civil Procedure Section 416.10](#)

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### 9.0.3.5 Order To Show Cause

#### **Background**

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An Order to Show Cause is a court order directing a person to appear and present to the court reasons why a previous legal request was not honored or should not be honored. The department uses the Order to Show Cause primarily to enforce a Subpoena Duces Tecum (SDT). For clarity, this module refers to non-compliance of a SDT.

#### **Purpose**

---

An Order To Show Cause is used to enforce a SDT and other legal orders by requiring the served party to appear in court.

#### **Responsibility**

---

The assigned Franchise Tax Board (FTB) staff requests an Order To Show Cause when the person named on the SDT does not provide the documents by the date indicated on the Subpoena. FTB staff are responsible for documenting all contacts relating to the non-compliance and determining reasonable cause for non-compliance. An Order to Show Cause will not be issued where the person was unable to respond due to circumstances beyond their control.

Collection Advisory Team (CAT) advisors are responsible for preparing and issuing the order and assisting the Attorney General until the account is resolved.

#### **Action**

---

An Order to Show Cause is generally requested when FTB staff does not receive the information requested in the SDT.

FTB staff prepares the following:

- A Declaration. Contact a CAT advisor for format and instructions.
- A memorandum addressed to the CAT supervisor with the subject:  
*Request for an Order To Show Cause.*

The memorandum should include:

- The reason why the SDT was requested and who it was served upon.

- A brief chronology of all attempts to obtain the information and the results. This should include all attempts made prior to the service of the SDT.
- The contacts or attempts made, by date, to determine the reason for noncompliance.

## Reference

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((\*\*\*)

[Government Code Section 11188](#)

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

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### 9.0.3.6 Nominee Actions

#### Background

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A nominee situation arises when property is titled in the name of an entity or person, other than the taxpayer, for the purpose of hiding assets to avoid creditors.

Generally, a nominee action involves a lien or Order to Withhold (OTW). In some situations, both a lien and an OTW may be issued.

No statutory authority for nominee action exists, and authority is based on federal case law, however, we are protected under the California Uniform Fraudulent Transfer Act or Statute of Frauds, which states that it is illegal for an individual to hide assets from creditors. [California Civil Code Section 3439 – 3439.12](#) cites the Fraudulent Transfer Act.

Fraudulent Conveyance is when property is transferred without adequate compensation and can be an indicator that the taxpayer is attempting to hide his assets. [California Civil Code Section 1227](#) cites the Fraudulent Conveyance statute on transfer of real property.

#### Purpose

---

A Nominee Action provides the Franchise Tax Board (FTB) the ability to protect its interest in property owned by a taxpayer that is titled in the name of a third party. The taking of a nominee action alleges that the titled owner of the property is a “*nominee*” of the taxpayer and that the property actually belongs to the taxpayer.

- The nominee lien identifies specific property subject to our lien. The purpose is to provide public notice of our lien priority and to prevent additional transfers of the property that could cause the state to lose its lien priority as stated in [Government Code Section 7170\(b\)](#).
- Nominee actions may be in the form of a *nominee lien* filed against real property, in the name of a third party, or a *nominee Order to Withhold* to levy personal property held in the name of a third party.

#### Responsibility

---

FTB staff obtains the facts and documents to establish prima facie evidence that the taxpayer is attempting to hide assets to avoid creditors.

Approval or denial of a nominee request is based on information submitted by FTB staff.

## Action

---

Requests for nominee actions are submitted in narrative form with attached exhibits. Exhibits documenting the action may include title transfer records, utility records of service, utility statements, tax returns showing mortgage interest deductions, Credit Bureau Reports (CBR), loan documents, escrow documents and copies of cancelled checks.

Once approved, the requesting FTB staff issues the lien or OTW. The lien or OTW will be issued in the name of the nominee as nominee of the taxpayer. In the case of a person-to-person transfer, a lien must be issued as property specific. A nominee lien naming a taxpayer's trust or other entity does not need to be property specific.

Other collections may continue during this process.

**NOTE:** Approval of a nominee action does not constitute approval for any action other than what is specifically approved by FTB General Counsel. For example, approval to issue a nominee lien does not automatically include a nominee OTW.

## Reference

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((\*\*\*)

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

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### 9.0.3.7 Voluntary Authorization To Release Financial Records

#### **Background**

---

The California Right to Financial Privacy Act ([Government Code Section 7460](#)) was enacted "to clarify and protect the confidential relationship between financial institutions and their customers and to balance a citizen's right of privacy with the governmental interest in obtaining information for specific purposes and by specified procedures." The use of the Subpoena Duces Tecum is one of the procedures. The act also provides that the customer may authorize the disclosure of records to governmental agencies.

#### **Purpose**

---

The Voluntary Authorization To Release Financial Records ((\*\*\*\*)) allows Franchise Tax Board (FTB) to receive financial information from a taxpayer's financial institution. Without a signed form FTB 2590, the records can only be obtained with a Subpoena Duces Tecum.

#### **Responsibility**

---

FTB staff attempting to obtain financial information is responsible for obtaining a signed authorization or documenting why one was not obtained.

#### **Action**

---

When practical, the taxpayer should be asked to sign the authorization before a Subpoena Duces Tecum is requested.

The authorization statement must contain the following:

- The time period under which disclosure is authorized.
- The name of the agency or department designated to receive the records.
- The statutory purpose for obtaining the records.
- Identification of the records that are to be disclosed.
- Notification on the statement that the taxpayer has the right to revoke the authorization at any time.

Within 30 days of receipt of the records, staff must notify the taxpayer in writing of the examination and that upon written request, the reason for the examination will be furnished.

The original signed authorization ((\*\*\*\*)) and a copy of the notice sent to the taxpayer after receipt of the records, are sent to CAT for retention.

## Reference

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[Government Code Sections 7460](#) and [7473](#).

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

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### 9.0.3.8 Order To Enter Private Property/Order For Transfer Of Property (AKA Ex Parte Order)

#### **Background**

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An Order to Enter Private Property/Order for Transfer of Property is performed by the department "ex parte" to prevent a taxpayer from disposing of or hiding of an asset prior to service of a warrant. The taxpayer is not notified that an order is granted until served by the levying officer.

The term "ex parte" refers to only one party having to appear before the court to obtain an order.

The [Code of Civil Procedure Section 699.030\(a\)](#) provides for a creditor Franchise Tax Board (FTB) to apply to the court "ex parte" for an order directing the taxpayer to turn over the property sought by the warrant to the levying officer. The order requires the taxpayer to turn over the asset and/or documentary evidence of title to the levying officer and advises the taxpayer that failure to comply with the order may subject them to arrest and punishment for contempt of court.

The [Code of Civil Procedure Section 699.030\(b\)](#) provides for a creditor (FTB) to apply to the court "ex parte" for an order permitting a levying officer to seize property located in a private place (e.g., an enclosed garage, behind a locked gate, etc.). This order, in combination with a warrant issued by the FTB, authorizes the levying officer to enter a locked building or enclosed place in order to seize the taxpayer's asset. This is called an Order to Enter Private Property (aka: Ex Parte Order) when a vehicle subject to warrant execution is stored in a garage or behind a locked gate.

#### **Purpose**

---

An Order to Enter Private Property/Order for Transfer of Property provides the levying officer with legal authorization to enter private property to seize a taxpayer's asset.

#### **Responsibility**

---

FTB staff must observe and document the location of the asset prior to requesting an Order to Enter Private Property/Order for Transfer of Property. The asset must be observed at the location indicated on the warrant (if a private place or property) within 90 days of requesting the Order. Either the field office staff or levying officer may observe and attest to the location of the asset.

It is the responsibility of the collection supervisor to approve the request for an Order before referring it to the Collection Advisory Team (CAT).

CAT advisors review the request to ensure the action is supported by the facts and documentation.

A Deputy Attorney General appears in court for FTB. The staff does not appear in court unless requested by the Deputy Attorney General.

### Action

---

A request for an order is made on the fillable form ((\*\*\*\*)). The documentation may be faxed or mailed to CAT.

- A copy of the certified vehicle registration from Department of Motor Vehicles (when seizing vehicles, watercraft, vessels, motor homes, etc.).
- A copy of the warrant, if applicable form FTB 2840 and 2842.
- A declaration by the staff that consists of a synopsis of the account and how the information regarding the asset was obtained or the efforts made to locate the asset. CAT will prepare the declaration on legal paper and return it to the collector for signature.
- A Certificate of Tax Due and Delinquency which must include the taxpayer's name and current address, a breakdown and itemized listing of each of the open tax years and all existing recorded tax liens. CAT will prepare the certificate on legal paper, affix the department seal and return it to the assigned FTB staff for signature along with the declaration and court documents.

### Reference

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[Code of Civil Procedure Section 699.030\(a\)\(b\)](#)

((\*\*\*\*))

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

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### 9.0.3.9 Employer Non-Compliance

#### **Background**

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Earnings Withholding Order for Taxes (EWOT) are issued pursuant to the authority provided by [Code of Civil Procedure Section 706.074](#). To enforce involuntary compliance of an EWOT by an employer, [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 pursuant to this chapter, 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 are the filing of a suit by the Attorney General or the filing of a Small Claims Court action by the Collection Advisory Team (CAT). Small Claims Court actions will be used only when the amount that should have been withheld is less than \$10,000.00. ((\*\*\*)

**NOTE:** Small Claims actions are limited to amounts not to exceed \$5,000.00, however the Franchise Tax Board (FTB) may file two Small Claims actions against the same non-compliant employer during a calendar year. It is therefore, possible to file two actions in Small Claims Court to recover \$10,000.00 from a non-compliant employer during the course of a calendar year.

((\*\*\*)

#### **Purpose**

---

It is the purpose of Employer Non-Compliance to ensure that civil actions are available to remedy any involuntary compliance with an EWOT by an employer by referring the case to the Attorney General's Office or filing a Small Claims Court action.

#### **Responsibility**

---

It is the responsibility of CAT to refer the case to the Attorney General's Office or file suit in Small Claims Court.

#### **Action**

---

All requests for action on EWOT non-compliance cases will be referred to CAT for processing.

Prior to referral to CAT, FTB staff should complete the following steps:

- A. After allowing for mailing time of the EWOT, call the employer and verify that the EWOT was received and the taxpayer is still employed. The employer should be asked the reason for failure to respond or honor the EWOT. If there is no valid legal reason for the failure (e.g., previously served IRS levy, another state agency EWOT or a court ordered child or spousal support order), the employer should be instructed to comply immediately with the EWOT.
- B. If the employer claims the EWOT was not received, send another EWOT. This order should be mailed Certified Mail, return receipt requested.
- C. If the employer does not comply within 30 days from the date of the contact in (a) above or does not respond to the second EWOT, send ((\*\*\*\*)), Request For Earnings Withholding Order Payment Information. The form should either be sent Certified Mail, return receipt requested or personally delivered by field staff.
- D. If the employer still does not comply, issue a Demand to Furnish Information, ((\*\*\*\*)). The demand should request payroll information such as copies of payroll check register, canceled payroll checks, etc. The time period for which FTB staff requests information should begin on the date the initial EWOT was sent out. The form should be either sent Certified Mail, return receipt requested or personally delivered by field staff.

**NOTE:** If the employer sends the information skip (E) and (F) below.

- E. If the employer fails to comply with the form FTB 4973, request a Subpoena Duces Tecum from CAT.

**NOTE:** If the employer honors the Subpoena Duces Tecum skip (F) below.

- F. Request the assistance of CAT in obtaining an Order to Show Cause if the employer fails to produce the documents requested in the Subpoena Duces Tecum.
- G. Once payroll records have been examined, determine the amount the employer should have sent FTB.
- H. The demand should include language as to what FTB's next action could be if the employer continues with noncompliance (i.e., reference to possible referral to the Attorney General's Office for legal action). The employer should be given 10 days to remit payment.

- I. After review by a supervisor, submit the request for civil action against the employer to CAT along with a detailed summary of the EWOT non-compliance actions taken and supporting documentation. FTB staff should retain the account unless otherwise advised by CAT.

The supporting documentation should include the following:

- Copy of the original EWOT
- Copy of the second EWOT, if any, and the signed return receipt card
- Copy ((\*\*\*\*)) sent to the employer and the signed return receipt card
- Copies of responses returned by the employer, if any
- Copy ((\*\*\*\*)) sent to the employer, and the signed return receipt card
- Copy of the Subpoena Duces Tecum
- Copies of the supporting payroll information obtained from the employer by Subpoena Duces Tecum or Demand to Furnish Information
- Copy of the collector's determination and computation figures
- Copy of the demand for payment letter
- Detailed summary of the account, including a chronological list of actions taken since the initial EWOT was issued
- Declaration statement from FTB staff
- Supervisor's approval on the request for assistance

Upon receipt of the request for action on an EWOT non-compliance case, the request will be assigned to a CAT advisor. The advisor will determine whether the case should be referred to the Attorney General or whether a Small Claims Court action should be filed. The advisor will also make sure that all the necessary supporting documents have been included with the request prior to taking action on the case.

If the request for action is denied, the advisor will contact the collector and explain the reason(s) for the denial. A written memorandum will also be sent to the collector detailing the reason(s) for denial.

If the request is approved, the advisor will either prepare a referral to the Attorney General or prepare the documents required to file a Small Claims Court action and notify the collector of the action taken.

## Reference

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((\*\*\*\*))

((\*\*\*\*))

[Code of Civil Procedure Section 706.074](#)

[Code of Civil Procedure Section 706.154](#)

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

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### 9.0.3.10 Employer Non-Compliance – Failure To Remit Funds

#### **Background**

---

In October 1999, Senate Bill 94 (also known as the Taxpayer's Bill of Rights Act of 1999) was enacted and added to the [Revenue and Taxation Code Section 18673](#). This section provides that if a taxpayer can substantiate that funds were withheld by the employer but not remitted to the Franchise Tax Board (FTB), the taxpayer's case should be credited for the amount withheld and that the employer be assessed a like amount. The amount may be assessed at any time prior to seven years from the first date that the funds were withheld. Interest shall accrue on the aggregate amount from the first withholding date of the funds not remitted.

#### **Purpose**

---

The purpose of having Employer Non-Compliance – Failure To Remit Funds process is to ensure crediting a taxpayer's account for funds withheld by an employer pursuant to an Earnings Withholding Order for Taxes (EWOT).

#### **Responsibility**

---

It is the responsibility of FTB staff to:

- Contact the employer to request EWOT funds be remitted to FTB.
- If the employer does not respond or fails to comply with the request to remit funds, issue ((\*\*\*\*)), Request for Earnings Withholding Order Payment Information.
- If the employer still does not comply, issue a Demand to Furnish Information, ((\*\*\*\*)). The demand should request payroll information such as copies of payroll check register(s), canceled payroll check(s), etc. to verify funds were withheld.
- Relay this information to the Collection Advisory Team (CAT) supervisor for further action. ((\*\*\*\*))

It is the responsibility of the taxpayer to provide the department with the documentation needed to verify that the funds withheld pursuant to an EWOT were not remitted to the FTB. If the taxpayer is unable to provide proof to support this position, the request will be denied.

It is the responsibility of the CAT supervisor to assign the case to an advisor.

#### **Action**

---

If FTB staff are contacted by telephone regarding this issue, they should:

- Obtain the taxpayer's daytime telephone number

- Inform the taxpayer that a CAT advisor will contact them within 48 hours
- Relay this information to the CAT supervisor
- Immediately forward all written inquiries regarding failure to remit funds pursuant to an EWOT to CAT for a response.

Upon receipt, the case will be assigned to a CAT advisor. The advisor will contact the taxpayer to determine whether the situation falls under [Revenue and Taxation Code Section 18673](#). If not, the taxpayer will be referred to the appropriate collection unit for resolution of any outstanding liability.

Once CAT has reviewed the case and determined the aggregate amount of funds due the department, as a result of the employer's non-compliance, a letter will be sent to the employer demanding the withheld funds be remitted to the department within 15 days. The letter shall inform the employer that failure to comply will result in the employer being liable for the amount withheld and any applicable interest.

In some circumstances the employer may have remitted the funds however the funds may have been improperly applied to a different account number or sent to a different agency (e.g., Internal Revenue Service). This process will assist in clarifying any misappropriation of funds. It will also allow the employer to dispute the taxpayer's claim or explain the reason why the funds were not remitted. Financial hardship or lack of funds claimed by the employer would not constitute reasonable cause and the employer would remain liable for the funds not remitted.

If an acceptable response is not received and the funds are not remitted, CAT will:

- Issue a Notice of Proposed Assessment (NPA) against the employer
- If the NPA is protested, CAT will either affirm the assessment or withdraw the NPA, depending on the circumstances,
- If the assessment is withdrawn, CAT will notify the taxpayer of the denial
- Provide the taxpayer with the reason(s) for the denial.

After the NPA is final and due and payable, the CAT advisor will prepare a memo to Fiscal Accounting informing them of the amount and date of the credit to be applied to the taxpayer's account. Once the employer's assessment is final and the taxpayer's account has been credited for the non-remitted funds, CAT will refer the employer's account to the appropriate collection unit for resolution.

## Reference

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[Revenue and Taxation Code Section 18673](#)

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

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## 9.1 BUSINESS ENTITIES

### 9.1.1 Bankruptcy

#### 9.1.1.1 General Bankruptcy Information for Business Entities

#### Background

---

Normal collection procedures must stop when an entity files for bankruptcy, and all levies immediately released. Exception: *Levies against bank accounts are released unless generated prior to the bankruptcy petition date.* The filing of the bankruptcy petition triggers an automatic stay enjoining any collection action against the entity. The stay remains in effect until the bankruptcy account is **Dismissed** or **Closed**.

- Dismissed – The court case was not finalized, and there are no automatic stays. Once the case is dismissed, there is no protection under bankruptcy, and all collection should continue.
- Closed – The court case was closed. If the bankruptcy case was a chapter 7 the balances due are never forgiven and all years are collectable if the entity continues to do business. If the bankruptcy case was a chapter 11, all account periods ending before the plan confirmation date are protected under the bankruptcy. All years after the plan confirmation date can be collected with no protections.

The taxpayer may need to do the following to get their order released, but we must first verify that the employee/depositor/debtor has in fact filed for bankruptcy and if the taxpayer has had any other pending bankruptcies within the last 365 days, since the length of the automatic stay may be reduce or even eliminated. The employee/depositor/debtor may need to provide a copy of their bankruptcy petition and/or proof that they are allowed an automatic stay.

If the debtor is allowed an automatic stay then:

Outstanding OTW:

- If the bank received the OTW **before** the petition date, the OTW is valid and FTB is entitled to the funds.
- If the bank received the OTW **after** the petition date, the OTW will be released and the bank must remove the hold on funds.

The bankruptcy chapter affects the extent of payment of the liability through Franchise Tax Board claims, the value and kind of assets involved, the type of tax liability, and whether the claim is secured by a valid lien.

Although the [Bankruptcy Code \(11 U.S.C.\)](#) has several chapters under which petitions are filed, practically all the accounts involving the department fall into two general classes:

- Liquidation, Chapter 7 - nonexempt assets are turned over to a trustee who converts them into cash and pays the creditors according to priority.
- Reorganization, Chapter 11 - an entity in-possession or trustee continues to operate the debtor's business and pays the creditors according to a repayment plan.

**Purpose**

---

Bankruptcy stops all involuntary collection actions that may violate the bankruptcy stay and provides the opportunity to file a claim for any unpaid taxes.

**Responsibility**

---

The Business Entity Bankruptcy Unit (BE Bankruptcy) is responsible for coding the accounts with bankruptcy codes, filing all formal claims and following up for payment from the bankruptcy proceedings of delinquent taxpayers.

## Action

---

The following information should be obtained and the Accounts Receivable Collection System (ARCS) Bankruptcy Summary Screen completed before referring the account to a supervisor to review for transferring to bankruptcy.

If a paper file is available, send it to the Bankruptcy Unit with the following information:

- Copy of the petition
- Bankruptcy case number
- Federal Employer Tax Identification Number (FEIN) on petition
- Date of petition
- Chapter number of the petition

All business entity petitions are forwarded directly to the BE Bankruptcy Unit for manual processing. The account information is entered onto the Enterprise Wide Bankruptcy System (EWBS) by the BE Bankruptcy Unit. This information is matched daily to Business Entities Transaction System (BETS) and ARCS. After December 2004 all petitions from California courts will be sent to Franchise Tax Board electronically and posted automatically to EWBS.

Matching BETS and ARCS accounts are coded BANKRUPT, and the bankruptcy petition date is used to prevent offsetting credits, suspensions, refunds, etc., as these actions would violate the stay as would any involuntary collection action such as issuing liens and Orders to Withhold (OTW) from ARCS.

((\*\*\*)  
((\*\*\*)

If there is no match with the collection file, the bankruptcy information remains active on EWBS and BETS until the account is closed and the information is deleted from the file. If a subsequent liability arises while the record is active on EWBS, the above routing changes will occur to the new collection account.

## Reference

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((\*\*\*)

Refer to BE Bankruptcy Unit Procedures for specific details on claims, litigation and account processing.

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

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### 9.1.1.2 Bankruptcy Terminology

#### **Background**

---

Bankruptcies have terminology and phrases for common and unique circumstances.

#### **Purpose**

---

Bankruptcy terminology assists Franchise Tax Board (FTB) staff with bankruptcy workloads and proceedings.

#### **Responsibility**

---

It is the responsibility of FTB staff and/or bankruptcy specialist to be aware and understand the terminology used in bankruptcy proceedings.

#### **Action**

---

FTB staff and/or bankruptcy specialist should familiarize themselves with these terms when processing bankruptcy claims.

#### **Reference**

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((\*\*\*\*))

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

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9.1.1.3 Taxes Discharged In Bankruptcy

**Background**

---

Business Entity (BE) taxes are not discharged in a bankruptcy proceeding. If a creditor, including Franchise Tax Board (FTB), does not file a timely claim in a Chapter 11 bankruptcy on a pre-petition debt with the bankruptcy courts on a specific case, then the creditor will be forever stopped from collecting on that debt. Chapter 7 debts are never discharged, they are always deemed collectable.

**Purpose**

---

The discharge process is completed after a bankruptcy case has closed and collection actions are not to be taken on certain protected years, or a discharge is completed to close an account that has ceased to do business.

**Responsibility**

---

Bankruptcy specialists must be familiar with the guidelines and policies in which liabilities may be discharged under law.

**Action**

---

((\*\*\*)  
 (\*\*\*)

A lien that was filed and recorded prior to the bankruptcy petition date remains in effect after the bankruptcy, but only to the extent it attaches to any pre-bankruptcy property that was not liquidated in the bankruptcy.

**Reference**

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

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## 9.1.2 Contract Collections

### 9.1.2.1 Out Of State Collection Account Referral (OSCAR)

#### Background

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[Revenue and Taxation Code Sections - 19376 and 19377](#) authorize the Franchise Tax Board (FTB) to contract with private collection agencies for in state (ISCAR) and out of state (OSCAR) debt collection. Accounts referred under OSCAR are typically out of state Business Entity (BE) delinquent accounts with no attachable California assets.

**NOTE:** Private collection agency referrals are limited to out of state BE accounts only.

#### Purpose

---

The OSCAR program provides an out of state presence on accounts that are generally uncollectable due to FTB's limited statutory authority outside of California.

#### Responsibility

---

All manual referrals to OSCAR are subject to lead review.

In addition:

- There must be a reasonable expectation that a private collection agency will be able to collect on the account.

OSCAR referrals must also meet the following criteria:

- Out of state address
- Business entity must be active
- No known assets in California
- ((\*\*\*\*))
- Liens filed ((\*\*\*\*))
- Prior protested liabilities have been addressed
- Not currently in bankruptcy
- No prior assignment to OSCAR

#### Action

---

After verifying 30 days have passed since any legal actions have been taken (e.g., lien, Order to Withhold (OTW), suspension), or a request for contact has been mailed, the account is ready for referral to OSCAR. ((\*\*\*\*))

- OSCAR fees are added to the business entity's tax liability and are dependent on the contract between FTB and the private collection agency.

**NOTE:** The OSCAR program does not include Partnerships or Limited Liability Companies.

## Reference

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

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### 9.1.3 Offer In Compromise (OIC)

#### 9.1.3.1 Offer In Compromise Program For Business Entities

##### Background

---

The Offer in Compromise (OIC) Program is for taxpayers Business Entities, e.g., corporations, partnerships, Limited Liability Corporations (LLC), Limited Liability Partnerships (LLP) who do not have, and will not have in the foreseeable future, the money, assets or means to pay their tax liability.

Consideration for a compromise is conditioned upon the taxpayer establishing the following:

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

California [Revenue and Taxation Code Section 19443](#) allows the Executive Officer and Chief Counsel, jointly, or their delegates, to compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7500) or less. Recommendations made jointly by the Executive Officer and Chief Counsel for compromises that exceed seven thousand five hundred dollars (\$7500) must be reviewed and approved by the Franchise Tax Board (FTB).

##### Purpose

---

The purpose of the OIC program is to allow business entities to offer a lesser amount for payment of a *non-disputed* final tax liability.

##### Responsibility

---

It is the responsibility of FTB staff to be aware of the OIC program and where to direct taxpayer's for information on the program.

##### Action

---

Taxpayers or representatives who express interest in submitting an OIC may obtain an OIC package. [Form FTB 4905BE](#) can be sent directly from the department, or downloaded from the FTB website. Questions from taxpayers and representatives regarding the OIC program may be referred to the OIC Public Assistance line at 1-800-338-0505.

To apply for an OIC, the taxpayer must sign and submit the [form FTB 4905BE](#). Before an OIC can be accepted for further processing, the following items are considered:

- All tax returns must have been filed. If the taxpayer has no filing requirement, this should be noted in the application.
- The tax liability is *final and non-disputed*.
- The taxpayer must submit all the supporting documentation required with the Statement of Financial Condition. If a specific item does not apply, then they must indicate N/A.

The OIC specialist will evaluate all submitted information and may request additional information. Generally, these factors are considered in the evaluation:

- The taxpayer's ability to pay
- The amount of equity in the taxpayer's assets
- The taxpayer's present and future income
- The taxpayer's present and future expenses
- The potential for changed circumstances

## Reference

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[Revenue and Taxation Code Section 19443](#)

[Offer In Compromise web page](#)

[Form FTB 4905BE](#)

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

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## 9.2 PERSONAL INCOME TAX

### 9.2.1 Bankruptcy

#### 9.2.1.1 General Bankruptcy Information for Individuals

#### Background

---

Bankruptcy is a legal process found under Title 11 of the United States Code (U.S.C.) that allows relief from certain obligations in exchange for turning over assets or income. Normal collection procedures must stop when a taxpayer files bankruptcy, and all levies immediately released. Exception: *Levies against bank accounts are released unless generated prior to the bankruptcy petition date.* The filing of the bankruptcy petition triggers an automatic stay enjoining any collection action against the delinquent taxpayer. The stay remains in effect until the debtor is granted an order of discharge or the bankruptcy is dismissed or closed.

- Dismissed – The court case was not finalized, and there are no automatic stays. Once the case is dismissed, there is no protection under bankruptcy, and all collection should continue.
- Closed – The court case was closed. If the bankruptcy case was a chapter 7 the balances due are never forgiven and all years are collectable if the entity continues to do business. If the bankruptcy case was a chapter 11, all account periods ending before the plan confirmation date are protected under the bankruptcy. All years after the plan confirmation date can be collected with no protections.

The taxpayer may need to do the following to get their order released, but we must first verify that the employee/depositor/debtor has in fact filed for bankruptcy and if the taxpayer has had any other pending bankruptcies within the last 365 days, since the length of the automatic stay may be reduce or even eliminated. The employee/depositor/debtor may need to provide a copy of their bankruptcy petition and/or proof that they are allowed an automatic stay.

If the debtor is allowed an automatic stay then:

Outstanding EWOT:

- If the pay period ended **before** the petition date, FTB is entitled to any funds withheld.
- If the pay period ended **after** the petition date, any funds withheld must be returned to the employee by the employer if they have not already sent them to FTB or by FTB if the employer has already sent the funds to FTB.
- In either case , the EWOT must be released.

Although the [Bankruptcy Code \(11 U.S.C.\)](#) has several chapters under which petitions are filed, practically all accounts involving the department fall into three general classes:

- Liquidation, Chapter 7 - In a Chapter 7 case, nonexempt assets are turned over to a trustee who converts them into cash and pays the creditors according to priority.
- Reorganization, Chapter 11 - Under Chapter 11, a debtor in-possession or trustee continues to operate the debtor's business and pays the creditors according to a repayment plan.
- Adjustment of Debts of an Individual with Regular Income, Chapter 13 - Chapter 13 is similar to Chapter 11, in that the debtor makes payments to a trustee who distributes the funds to creditors according to a plan. This chapter is restricted to wage/salary earners and self-employed individuals who operate small businesses and fall within the debt limits.

### **Purpose**

---

The Bankruptcy Unit, in the Special Procedures Section, handles all account actions while a debtor is involved in an active bankruptcy. All involuntary collection actions that may violate the bankruptcy automatic stay are discontinued while the Bankruptcy Unit makes efforts to collect unpaid taxes through the bankruptcy court.

### **Responsibility**

---

The Bankruptcy Unit is responsible for any action taken on the account of a bankrupt taxpayer. Furthermore, the Bankruptcy Unit will code taxpayer accounts that have filed for debt relief through a bankruptcy court, file all formal claims, and follow up for payment from the bankruptcy proceedings of delinquent taxpayers.

## Action

---

In most instances, the Bankruptcy Unit will automatically be notified of the bankruptcy petition filing by the bankruptcy courts. Petition notices are received both electronically and via paper. The electronic petitions are updated automatically into the Enterprise Wide Bankruptcy System (EWBS). The paper petitions received should be forwarded directly to the Bankruptcy Unit for manual processing.

New EWBS information is interfaced daily with the Taxpayer Information System (TI) and Accounts Receivable Collection System (ARCS). Once corresponding accounts are located, TI and ARCS will be coded BANKRUPT. The bankruptcy petition date is used to prevent any involuntary actions such as liens and Orders to Withhold Personal Income Tax (OTW) from ARCS or credit offsets in TI. ARCS accounts coded BANKRUPT will be located in function states BA (Chapter 7), BB (Chapter 11) or BC (Chapter 13). Recall dates are removed, and any system-recognized OTWs or liens that violate the stay are automatically released.

Franchise Tax Board (FTB) staff that locates an account with an active bankruptcy or a past bankruptcy that was not reviewed by the Bankruptcy Unit should refer the account to the Bankruptcy Unit. FTB staff should obtain a copy of the petition or discharge notice from the debtor or representative and FAX it to the Bankruptcy Unit. *Do Not Forward The Paper File, Place A Hold Or Reassign The ARCS Account To The Bankruptcy Unit.* The Bankruptcy Unit will enter the information into EWBS, and the account will automatically reassign or updated.

## Reference

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Refer to Bankruptcy Unit Procedures for specific details on claims, litigation and account processing.

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

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### 9.2.1.2 Taxes Discharged In Bankruptcy

#### **Background**

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A bankruptcy discharge is granted to a debtor by the bankruptcy court when the bankruptcy plan is completed. A discharge order permanently prohibits the state, or any other entity, from taking any action to enforce collection of debts relieved under the bankruptcy code.

A discharge in Chapter 7 or 11 bankruptcies will not release a debtor if: (the following are guidelines and staff should refer to Title 11 U.S.C. Section 523 for Chapter 7 or 11 discharge law.)

- Taxes became legally due and owing within three years preceding bankruptcy.
- The debtor failed to file a return required by law.
- Taxes were assessed within 240 days, plus 30 days beyond the time a settlement offer was pending, preceding the date of the filing of the petition.
- Taxes were not assessed prior to bankruptcy by reason of a prohibition on assessment pending the exhaustion of administrative or judicial remedies available to the debtor.
- Taxes were based on a late filed return that was filed within two years before the petition filing date.
- The debtor made a false or fraudulent return, or willfully attempted in any manner to evade or defeat the tax.

A discharge in a Chapter 13 bankruptcy is dependent on a filed and approved plan. Staff should refer to Title 11 U.S.C. Section 1328 for Chapter 13 discharge law.

#### **Purpose**

---

Bankruptcy specialists must be familiar with the guidelines and policies in which liabilities may be discharged under law and prevent the violation of the discharge injunction.

#### **Responsibility**

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Bankruptcy staff will analyze and take action on an account abiding by Title 11 U.S.C.

**Action**

---

Franchise Tax Board (FTB) staff that locates an account that must be reviewed for a possible discharge will forward all pertinent information to the Bankruptcy Unit. FTB staff should obtain a copy of the petition or discharge notice from the debtor or representative and FAX it to the Bankruptcy Unit. *Do not forward the paper file, place a hold or reassign the ARCS account to the bankruptcy section.* Bankruptcy Unit will enter the information into EWBS and the account will automatically reassign or update.

**Reference**

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

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## **9.2.2 Estates And Probate**

### **9.2.2.1 Decedent Estate Proceedings**

#### **Background**

---

A decedent estate is a taxable entity separate from the decedent and comes into being upon the death of the individual. The assets of the deceased taxpayer revert to an estate that will be administered on behalf of the decedent through:

- A court process known as probate, or
- A trust that was established prior to the death, or
- In some instances, the distribution of assets directly to beneficiaries of the estate.

#### **Purpose**

---

Probate is a process by which legal title to a decedents property is transferred from an estate to its beneficiaries. It is designed to ensure fair distribution of a deceased persons assets and settlement of outstanding creditor debts. There are two types of probate estates:

- Testate Estate - Is established by the will of the decedent. An executor is named in the will as the individual selected by the decedent to fulfill the instructions set forth in the will.
- Intestate Estate - Is established when no will of the decedent is found. An administrator is appointed by the court to handle the affairs of the decedent and to distribute the assets of the decedent according to a succession established by statute.

#### **Responsibility**

---

When a probate is opened, a petition is presented to the Probate Court in the county where the taxpayer died, to appoint the executor or administrator. The petitioner is granted Letters of Testamentary or Letters of Administration, which empower the petitioner to act on behalf of the decedent. These letters establish the fiduciary responsibility and authority of the representative. If assets are left in trust, the trustee assumes similar fiduciary responsibilities to carry out the terms of the trust as determined by the deceased taxpayer.

#### **Action**

---

The fiduciary is responsible for the affairs of the estate/probate. The fiduciary duties include:

- Notification to all creditors or potential creditors ([California Probate Code Section 8112](#))
- Seeking out and gathering all assets of the decedent ([California Probate Code Section 9650](#))
- Maintaining bank accounts, investments, property and business of the decedent ([California Probate Code Section 9700](#))
- Paying debts and distributing assets of the decedent ([California Probate Code Section 11420](#) and [11600](#))
- Filing all tax returns and paying all taxes of the decedent and estate ([Revenue and Taxation Code Section 18505](#))

The fiduciary can be held personally liable for failing to pay the tax liabilities of the decedent or estate. [Revenue and Taxation Code Section 19516](#) provides that a fiduciary who pays in whole, or in part, any claim other than claims for taxes, expenses of administration, funeral expenses, expenses of last illness or family allowances is personally liable to the state for the unpaid taxes, interest and penalties to the extent of such payment. Demands for payment of the decedents debts are filed through the probate of the estate and are to be paid before the distribution of assets to any beneficiaries or other groups of creditors holding a lesser priority for payment, as established in the California Probate Code [Section 9000](#) and [Section 11420](#).

[Revenue and Taxation Code Section 18505](#) requires a fiduciary of an estate to file returns on behalf of the decedent for the year in which death occurred, and for prior years, if returns for those years should have been filed but have not been filed by the decedent. In addition, if the estate generates a net income in excess of \$1,000.00, the fiduciary must file a 541 return for each of those years the estate is generating income.

## Reference

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

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### 9.2.2.2 Transferee Assessments On Probated Accounts

#### Background

---

When information is received that a probate has been closed and assets have been distributed, FTB may still be able to collect from either the fiduciary or the beneficiaries. Transferee assessments can also be pursued on beneficiaries of estates that have not been probated.

#### Purpose

---

To transfer the liability of a deceased taxpayer to either of the two following groups of individuals:

- The individual that acted in a fiduciary capacity for the decedent may be held personally liable. [Revenue and Taxation Code Section 19516](#) allows for the fiduciary of an estate to be held personally liable for payments or distributions paid to beneficiaries or other third parties, prior to the satisfaction of payment of taxes.
- Beneficiaries of the estate, those individuals that received assets from the taxpayer's estate, can also be held liable for the decedents unpaid taxes. [Revenue and Taxation Code Sections 19071 and 19073](#) establishes the secondary liability of a transferee of property of a taxpayer for the unpaid tax liability of that taxpayer.

#### Responsibility

---

The Decedent Team is responsible for identifying when the fiduciary or the beneficiaries have become liable for the decedents liability.

#### Action

---

Establish prima facie evidence of the transferee by using the following criteria:

- There must be a transfer of assets.
- The tax liability must have accrued before or in the taxable year the transfer was made.
- The transfer must have been made without full and adequate consideration.
- The transferor must have been left without assets sufficient to pay the tax liability because of the transfer.
- The transfer must have been made to actual beneficial owners.

Much of the documentation required to prove a transferee liability of either a fiduciary or beneficiary of an estate can be found in the records on the file in the probate court.

After transferee responsibility is established our next actions are:

- Send demand letters directly to fiduciary/beneficiaries.
- If no response within 30 days initiate a transferee assessment.
- Issue the Notice of Proposed Assessment manually, based on established audit procedures, allowing 60 days for protests.

((\*\*\*)

((\*\*\*)

## Reference

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[Revenue and Taxation Code Sections 19071 and 19073](#)

[Revenue and Taxation Code Section 19516](#)

[Probate Code Section 9203](#)

[Probate Code Section 11420](#)

[Probate Code Section 13109](#)

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

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### 9.2.2.3 Collector Responsibilities (Decedent Estate)

#### Background

---

The collector, also known as Franchise Tax Board (FTB) staff, has the responsibility to gather decedent information before *accounts* can be coded on the Taxpayer Information (TI) System and routed to the Decedent Functional Area.

#### Purpose

---

FTB staff must ensure accurate information and confirm deceased status of taxpayer.

#### Responsibility

---

It is the responsibility of FTB staff to confirm that the taxpayer is deceased by using both/either third party contact or on-line systems before the account is routed to the Decedent Team.

#### Action

---

Confirm the deceased status before coding TI by:

- Reviewing a death certificate provided by third party contacts via fax or correspondence.
- Checking [LexisNexis](#) using either the Social Security Death Index or California Death Records.
- Checking the Department of Motor Vehicles files for deceased coding on their drivers license.
- ((\*\*\*\*))

((\*\*\*\*)) Comments on ARCS regarding previous collection or investigative actions taken will prevent any duplication of effort. If in the course of gathering deceased information on the account, an active probate is identified, staff should immediately contact the Decedent Unit lead with that information. The lead will then expedite filing of a creditors claim.

#### Reference

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((\*\*\*\*))  
((\*\*\*\*))

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

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#### 9.2.2.4 Surviving Liable Spouse

##### **Background**

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If an account has a surviving liable spouse on any tax year, Account Receivable Collection System (ARCS) will route the account (or both files due to joint and separate liabilities) to the Decedent Functional Area, for a probate check to be completed on the deceased taxpayer.

##### **Purpose**

---

The account is to be held from proactive collections to allow for trust, estate, or probate issues to first be resolved.

##### **Responsibility**

---

The Decedent Team will hold and monitor the account within their functional area.

##### **Action**

---

Decedent Team will perform the following actions specific to the scenario:

- If a probate, trust or estate is located, file a claim or other legal action.
- File a lien in "Estate of".
- ((\*\*\*)
- ((\*\*\*) ((\*\*\*) ((\*\*\*)

##### **Reference**

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((\*\*\*)  
((\*\*\*)

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

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### 9.2.2.5 Order To Withhold (OTW) On Fiduciary / Beneficiary Interests In An Estate

#### Background

---

When a beneficiary or fiduciary of an estate has their own personal tax liability (not a liability of the estate or decedent), their interest in a probate proceeding may be an additional asset that can be attached by the Franchise Tax Board (FTB) staff per [Code of Civil Procedure Section 488.485](#).

#### Purpose

---

The code provides that a creditor may file a certified copy of judgment with the probate court to attach the interest of the heir, devisee, or legatee. The department meets the requirement of Code of Civil Procedure Sections 488.485 because our Order To Withhold ((\*\*\*\*)) has the same force and effect as an execution of judgment.

#### Responsibility

---

FTB staff must know the options required for sending an OTW to attach the interests of the beneficiary or fiduciary.

#### Action

---

The procedures for issuing an OTW against the interests of a beneficiary or fiduciary are:

- Send the original Order To Withhold to the fiduciary in care of the estate attorney. (Even if this is the person being levied).
- Send a certified copy of the OTW to the county clerk accompanied by a standard cover letter that explains the OTW is a copy only. Include an affidavit of mailing with the certified copy being sent to the county clerk.

#### Reference

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((\*\*\*\*))

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

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### 9.2.2.6 State Tax Lien On Decedent Estate

#### **Background**

---

A tax lien filed before the date of death remains in effect against the estate and is fully enforceable. A tax lien filed on a decedent after the date of death is also a valid lien against the estate of the decedent.

#### **Purpose**

---

The state tax lien filed in the name of the individual is valid against the right, title, or interest of others in respect to property, which passed into the estate.

#### **Responsibility**

---

It is the responsibility of Franchise Tax Board (FTB) staff to file liens on decedent estates when applicable.

#### **Action**

---

If FTB staff are filing a lien and know the taxpayer is deceased, a lien should be filed in the name of the estate of the decedent. These liens should be user initiated through the Accounts Receivable Collection System (ARCS) ((\*\*\*) as follows:

- "Estate of (taxpayers name)".
- The fiduciary of the estate should be sent the Notification of State Tax Lien (FTB 4901). An estate lien requires notification to the fiduciary of the estate to be enforceable.

#### **Reference**

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((\*\*\*)

((\*\*\*)

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

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### 9.2.2.7 Probate Process

#### **Background**

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After determining that the taxpayer is deceased, the Decedent Team will need to obtain information to determine if a probate has been opened in order to collect the liability from the estate. If the deceased is a California resident, probate information can be obtained by sending a Decedent Information Request ((\*\*\*\*)), to the superior court clerk of the respective county at the time of death. For out of state taxpayers, Decedent Information Request ((\*\*\*\*)) is mailed to the last known address on the Taxpayer Information (TI) System.

#### **Purpose**

---

When probate information is received, Franchise Tax Board (FTB) can file a probate claim with the court to secure outstanding tax liabilities. Probate claims filed on California residents gives the FTB a priority status over other creditors in solvent probates per [Revenue and Taxation Code Section 19516](#). An exception is Title 31, United States Code Section 3713, Internal Revenue Service (IRS) Priority in Insolvent Estates. The IRS will have priority of assets to satisfy their claim when there are insufficient assets in the estate to pay all the known creditors.

#### **Responsibility**

---

The responsibility of FTB staff are to notify the Decedent Team if they are not previously aware of the account. See unit procedures for transferring the account.

#### **Action**

---

The Team completes the following probate claim processes:

- Files timely creditor claims
- Amends claims
- Processes probate settlement offers
- Withdraws resolved claims
- Takes legal actions on rejected claims

## Reference

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[California Probate Code Section 7051 and 7052](#)

[California Probate Code Section 9104](#)

[California Probate Code Section 9201](#)

[California Probate Code Section 9250, 9253, 9254, and 9256](#)

[Revenue and Taxation Code Sections 19516 and 19517](#)

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

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### 9.2.2.8 Discharge Of Accounts

#### **Background**

---

The Decedent Team will discharge single deceased taxpayer accounts when there is no evidence of an open probate, or if the probate estate closes and is insolvent, or when there are no other avenues for collecting the unpaid balances from the assets of the decedents estate.

#### **Purpose**

---

Discharges allow the Franchise Tax Board (FTB) to close accounts as uncollectable due to deceased status of the taxpayer.

#### **Responsibility**

---

FTB staff of the Decedent Team will submit discharges to their lead for review of the discharge requests.

#### **Action**

---

Following established discharge procedures, accounts ((\*\*\*) can be recommended for Discharge A, (Taxpayer deceased, no estate, estate insolvent). Per [Government Code Sections 13940-13944](#) accounts ((\*\*\*) must be accompanied by a Discharge Summary.

If there is a [surviving liable spouse](#), that spouse should be pursued individually for payment of the liability.

#### **Reference**

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

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### **9.2.3 Innocent Spouse Program**

#### **9.2.3.1 Innocent Spouse Program**

##### **Background**

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**NOTE:** All questions regarding innocent spouse relief should be referred to the Innocent Spouse Program, Automated Call Distributor (ACD) (916) 845-7072. Assistance in Spanish is available.

Under federal and state income tax laws, when two people file a joint tax return, both individuals are treated as agreeing to joint and several liability. The California Franchise Tax Board (FTB) can collect any outstanding tax due from either spouse. However, there are provisions in the Revenue and Taxation Code, commonly known as "innocent spouse laws" that authorize the FTB to grant relief to qualifying taxpayers.

California innocent spouse laws were first introduced in the 1970's. Throughout the years these laws have been amended. The latest amendments were in 1999 when California conformed to the related portions of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998, "[Taxpayers' Bill of Rights III](#)".

Legislation was passed (effective on January 1, 2004) which provided that if an individual has been granted innocent spouse relief from the IRS, that individual is also entitled to relief under California income tax laws, if specified conditions are satisfied.

##### **Purpose**

---

The mission of the Innocent Spouse Program is to grant relief to those taxpayers who qualify, and to process requests for relief in a timely and efficient manner.

##### **Responsibility**

---

FTB Employees' Responsibility -

- When a taxpayer believes they may qualify for innocent spouse relief, FTB staff are responsible to transfer the taxpayer to the Innocent Spouse Program, ACD line (916) 845-7072 for further discussion and information.
- Enter comments on the Taxpayer Information System (TI) and Accounts Receivable Collection System (ARCS) stating a written request for relief was received and has been forwarded to the Innocent Spouse Program for review.
- Immediately forward the written request for relief to the Innocent Spouse Program at Mail Stop A-452.

## Innocent Spouse Program's Responsibility -

- When the Innocent Spouse Program receives a request for innocent spouse relief, a letter is sent to the requesting taxpayer or representative notifying them the request has been received. If Request for Innocent Spouse ((\*\*\*) has not been received, then it will be included with the letter acknowledging receipt.
- All collection actions are released against the requesting taxpayer. Comments are entered on TI and ARCS.
- Account is assigned to a specialist within 45-60 days of receipt of the request. The specialist enters comments on TI and ARCS and calls the requesting taxpayer or representative to inform them the account is assigned to him/her for review, evaluation and determination.
- The specialist determines what Revenue and Taxation Codes are applicable to the account, writes a letter to the requesting spouse or representative informing them of the legal requirements and requests for specific documentation. After receipt of Request for Innocent Spouse ((\*\*\*)), the specialist notifies the non-requesting taxpayer of the request for relief. The non-requesting spouse is given 30 days to respond and provide input.
- The specialist reviews the information provided from both spouses and uses whatever information is available to determine whether the statutory requirements for innocent spouse are met. The specialist will make the final written determination.
- When a request is approved or partially approved, the specialist will prepare a memo to the manager of the Innocent Spouse Program. The memo will outline the circumstances of the account and the factors that led to the determination.
- The specialist notifies each of the taxpayers of the type of innocent spouse relief that the taxpayer has been granted. The notices also advise the taxpayers of their rights to appeal the determination to the Board of Equalization (BOE). Comments are entered on TI and ARCS, ((\*\*\*)).
- ((\*\*\*)
- When the request is denied, the specialist notifies each of the taxpayers the request for innocent spouse relief has been denied. When applicable, the notices also advise the taxpayers of their rights to appeal the determination to BOE. Comments are entered on TI and ARCS.

**Action**

---

A taxpayer or representative who wishes to submit a request for innocent spouse must submit the request in writing. The request should include the following:

- Taxpayer's name
- Taxpayer's Social Security number
- Tax year(s) in question
- A statement explaining why the taxpayer believes they qualify for relief as an innocent spouse

If the taxpayer has a request for relief pending with the IRS, or has received a final determination of innocent spouse relief from the IRS, the taxpayer will need to provide:

- Copy of all correspondence
- Copy of the court order (if divorced or separated)
- [Form FTB 705](#) Request for Innocent Spouse
- If the taxpayer has a representative, include a Power of Attorney ([form FTB 3520](#))

The request must be mailed to:

Franchise Tax Board  
Innocent Spouse Program – Mail Stop A-452  
P O Box 2952  
Sacramento, CA 95812-2952

**Provisions For Relief Of Liability -**

There are six sections of the Revenue and Taxation Code (listed below) that may provide a spouse with relief from a joint tax liability. Under five of these sections the requesting taxpayer must meet the basic requirements:

- Filed a joint tax return for the year(s) for which they are asking relief of liability
- Submit form FTB 705, Request for Innocent Spouse
- Prove their eligibility for relief based on the provisions of the Revenue and Taxation Code, and must submit the request in writing
- Only [Revenue and Taxation Code Section 18534](#) does not require that a joint return be filed for the year(s) for which relief has been requested

The Legal Requirements of the Revenue and Taxation Code Sections are:

1. [18533\(b\): Relief from Additional Tax](#)

- Deficiency is due to non-requesting spouse
- No knowledge or reason to know of the unreported income or erroneous deductions
- Request within statute of limitations not later than the date that is two years after the date FTB has begun collection activities with respect to the taxpayer making the election

2. [18533\(c\): Relief by Allocation of Liability](#)

- Divorced or separated or living separately for 12 months prior to application for relief
- Deficiency due to non-requesting spouse
- No knowledge of the item causing the deficiency
- No direct tax benefit
- Request within statute of limitations not later than the date that is two years after the date FTB has begun collection activities with respect to the taxpayer making the election

3. [18533\(f\): Equitable Relief](#)

- Relief **Is Not** available under 18533(b) or (c)
- Joint tax return and deficiency assessment and/or no pay return considering all facts and circumstances but not limited to:
  - Deficiency due to non-requesting spouse
  - Reasonable belief that the tax would be paid
  - Marital status
  - Legal obligation
  - Hardship
  - Abuse
- Special Rule for 2004 through 2008

From January 1, 2004 through December 31, 2008, an individual who has filed a joint return will be granted relief from California personal income tax liability under state innocent spouse provisions if he or she has been granted relief under federal innocent spouse provisions. Similar relief will be granted at the state level if all of the following conditions are satisfied:

- The individual requests relief from the FTB under the state innocent spouse provisions.

- The facts and circumstances that apply to the understatement of tax and liabilities for which the relief is requested are the same.
- The spouse requesting relief provides FTB with a copy of the federal determination and any other supporting documentation that the FTB requests.
- The FTB cannot deny relief with respect to the request, in whole or in part, until federal action on the request for relief is final.

**Important:** The temporary relief provision applies to any unpaid tax liability.

- The Exceptions to the Special Rule
  - The temporary relief provision discussed above does not apply if one of the following applies:
    - Within 30 days of notification from the FTB, the non-requesting spouse provides information to the FTB indicating that relief should not be granted based on any one of the following:
      - Information indicates that the facts and circumstances for state relief are different than those for federal relief.
      - Information indicates that no federal relief has been granted or the federal determination granting relief has been modified, altered, withdrawn, or canceled.
      - Information indicates that the non-requesting spouse did not have the opportunity to participate in the federal administrative or judicial proceeding that resulted in the relief.
      - A court has revised the individual's tax liabilities in a marriage dissolution proceeding.

4. [18534: Relief from Community Income](#)

- No joint return filed
- Did not know of, and had no reason to know of, that item of community income
- Did not include for that taxable year an item of community income
- Unreported income was attributable to the other spouse

5. [19006\(b\): Relief by Court Order](#)

- Divorce decree issued January 1, 1977 and before January 1, 2003 and specifies tax year(s).
- Request Tax Revision Clearance Certificate prior to final divorce if:
  - Gross Income exceeds \$50,000 or
  - Joint liability for any year exceeds \$2,500

- Requesting spouse must pay tax on their income
- Relief cannot be granted on taxes already paid
- Divorce decrees issued after January 1, 2003 and specifies tax year(s)
- Request Tax Revision Clearance Certificate prior to final divorce if:
  - Gross income exceeds \$150,000 or
  - Joint liability for any year exceeds \$7,500
- Requesting spouse must pay tax on his/her income
- Relief cannot be granted on taxes already paid

6. [19006\(c\): Relief from Return Tax](#)

- Debt resulted from non-payment of tax on joint return when filed
- No knowledge or reason to know of the non-payment
- No relief on taxes already paid
- Requesting spouse must pay tax on their own income

**NOTE:** If our determination is appealed, FTB's Legal Department will independently review all available information.

**Reference**

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[Revenue and Taxation Code Section 19006\(b\) and \(c\)](#)  
[Revenue and Taxation Code Sections 18533 and 18534](#)  
[Form FTB 705](#)

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

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## 9.2.4 Contract Collections

### 9.2.4.1 In State Collection Account Referral (ISCAR)

#### Background

---

[Revenue and Taxation Code Sections - 19376 and 19377](#) authorize the Franchise Tax Board (FTB) to contract with private collection agencies for in state (ISCAR) and out of state (OSCAR) debt collection services. Referrals to ISCAR are typically in state taxpayers whose accounts FTB is not budgeted to pursue. Any questions regarding this program should be referred to the Contract Collection Group supervisor or lead.

#### Purpose

---

The Contract Collection Program extends FTB's reach by providing additional collection resources on accounts that FTB personnel are not budgeted to work.

#### Responsibility

---

Accounts meeting ISCAR criteria automatically (no manual referrals, except in the case of an associated taxpayer) flow into the ISCAR functional area. Prior to collection agency assignment, taxpayers are mailed a pre-collection letter, advising them that their account will be assigned to a private collection agency if not resolved within a specific period of time. If the account is not resolved, it is assigned to a private collection agency.

Prior to and during assignment, FTB's automated collection system continues to identify assets and take appropriate actions. The private collection agency will not receive credit for any payments resulting from an FTB action.

**NOTE:** Fees for ISCAR accounts are paid from the Delinquent Tax Collection Fund and are not associated to the taxpayer's account.

#### Action

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Any calls, correspondence, or questions received on accounts currently assigned to ISCAR should be referred to the Contract Collections Group at the public number (916) 845-5085.

## Reference

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((\*\*\*)  
((\*\*\*)

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

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#### 9.2.4.2 Out Of State Collection Account Referral (OSCAR)

### Background

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[Revenue and Taxation Code Sections 19376 and 19377](#) authorize the Franchise Tax Board (FTB) to contract with private collection agencies for in state (ISCAR) and out of state (OSCAR) debt collection. Accounts referred under OSCAR are typically delinquent taxpayers who have left the state and have no attachable California assets. Any questions regarding this program should be referred to the Contract Collection Group supervisor or lead.

### Purpose

---

The OSCAR program provides an out of state presence on accounts that are generally uncollectable due to FTB's limited statutory authority outside of California.

### Responsibility

---

All manual referrals to OSCAR are subject to lead review.

In addition:

- There must be a reasonable expectation that an outside collection agency will be able to collect on the account. For example, taxpayers with only social security income or in permanent hardship generally should not be considered for referral. Substantiation should also be provided.

OSCAR referrals must also meet the following criteria:

- Out of state address (United States only, no out of country addresses).
- ((\*\*\*\*))
- ((\*\*\*\*))
- No Non-Liable Spouse indicator on **any** taxpayer associated to the account.
- Account must have less than 25 open tax years.
- Any liens must have been filed at least 30 days prior to referral.
- 30 days have passed since a Notice of State Income Tax Due (STD) has been sent on any finalized assessment.
- 30 days have passed since any Earnings Withholding Order for Taxes (EWOT)/ Order To Withhold (OTW) has been issued **OR** the results of such action have been logged into ARCS.
- The account has not been previously assigned to OSCAR.

- A 45-day case hold has been added to ARCS to prevent automated action during the referral process. ((\*\*\*)
- Documented telephone contact advising the taxpayer of the potential of referring the account to an outside collection agency and of the additional fees that could be incurred because of referral or a form FTB 4902 sent at least 30 days prior to referral.

### Action

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After verifying 30 days have passed since any legal actions have been taken, or a form FTB 4902 has been mailed, the account is ready for referral to OSCAR. ((\*\*\*)

**NOTE:** OSCAR fees are added to the taxpayer's liability and are dependent on the contract between FTB and the private collection agency.

### Reference

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((\*\*\*)  
((\*\*\*)  
((\*\*\*)

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

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## **9.2.5 Offer In Compromise Program**

### **9.2.5.1 Offer In Compromise (OIC) Program For Individuals**

#### **Background**

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The Offer in Compromise (OIC) Program is for taxpayers who do not have, and will not have in the foreseeable future, the money, assets or means to pay their tax liability.

Consideration for a compromise is conditioned upon the taxpayer establishing the following:

- The amount offered is more than the Franchise Tax Board (FTB) can expect to be paid or collected within a reasonable period of time.
- The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability within a reasonable period of time.

California [Revenue and Taxation Code Section 19443](#) allows the Executive Officer and Chief Counsel, jointly, or their delegates, to compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7500) or less. Recommendations made jointly by the Executive Officer and Chief Counsel for compromises in which the reduction of tax exceeds seven thousand five hundred dollars (\$7500) must be reviewed and approved by the Franchise Tax Board.

In the case of a joint and several liability, the acceptance of an OIC from one liable spouse will not relieve the other spouse from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

#### **Purpose**

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The purpose of the Offer in Compromise Program is to allow a debtor to offer a lesser amount for payment of a NON-DISPUTED final tax liability.

#### **Responsibility**

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It is the responsibility of FTB staff to be aware of the OIC program and where to direct taxpayer's for information on the program.

#### **Action**

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Taxpayers or representatives who express an interest in applying for an OIC may obtain an OIC package: [Form FTB 4905PIT](#) sent directly from the department, or downloaded from the FTB OIC website. Questions from taxpayers and representatives regarding the OIC program may be referred to the OIC Public Assistance line or the OIC website.

To apply for an OIC, the taxpayer must sign and submit the FTB 4905. Before an OIC can be accepted for further processing, the following items are considered:

- All tax returns must have been filed. If the taxpayer has no filing requirement, this should be noted in the application.
- The tax liability is FINAL AND NON-DISPUTED.
- The taxpayer must submit all the supporting documentation required with the statement of financial condition. If a specific item does not apply, then they must indicate N/A. The OIC Specialist may find it necessary to request additional information.

The OIC Specialist will evaluate all submitted information and will make a determination based on the following:

- The taxpayer's ability to pay
- The amount of equity in the taxpayer's assets
- The taxpayer's present and future income
- The taxpayer's present and future expenses
- The potential for changed circumstances

## Reference

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[Revenue and Taxation Code Section 19443](#)

[Form FTB 4905PIT](#)

[Offer In Compromise web page](#)

OIC Public Assistance telephone number: (916) 845-4787

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

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