

## 9. SPECIAL PROCESSES SECTION

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**Last Revision: 11/05/2018**

### 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)

[California Taxes Information Center](#)

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#### FTB employee resources

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#### FTB public relations

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**Last Revision: 10/25/2018**

## 9.0.2.1 Alcoholic Beverage Control License (ABC) Withholds and General Information

### 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.

A liquor license hold is a collection tool that works like a lien. A hold prevents the liquor license from being sold or transferred by an entity with a tax liability. The hold is asserted by FTB through the escrow sale and will be released once the liability is fully satisfied. A liquor license can be sold or transferred, regardless of whether a business is active or not. The following types of liquor licenses can have a hold placed on them:

- #20 - Off-Sale Beer and Wine (only in certain counties/cities)
  - Retail Package Store or Liquor Store
- #21 - Off-Sale General
  - Grocery Store, etc.
- #47 - On-Sale General for Bona Fide Public Eating Place
  - Restaurants
- #48 - On-Sale General for Public Premises
  - Bar and Night Clubs
- #49 - On-Sale General for Seasonal Business
  - Seasonal Restaurants
- #57 - Special On-Sale General
  - Organizations Who Cannot Qualify for Club Licenses
- #75 – On- Sale General Brew-Pub
  - Brew-Pub Restaurants

Franchise Tax Board (FTB) reviews the ABC New Application Daily Report to search for pending transfer of a liquor license by an entity and will place a liquor license hold where appropriate.

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

### Purpose

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FTB can take appropriate actions, including placing a hold on a liquor license, upon learning of a potential liquor license sale.

## Responsibility

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FTB employees should recognize the possibility that an entity may possess a liquor license, conduct an investigation of the liquor license, and when appropriate, request a liquor license hold.

## Action

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FTB employees should ask appropriate questions from the taxpayer or business representative. Below are appropriate questions regarding the ABC license:

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

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

FTB employees should search the [Department of Alcoholic Beverage Control's website](#) for the license, and when 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.

Once FTB employees verify that the liquor license is subject to a hold, FTB employees must contact the Business Transfers Program to request to place a hold on the liquor license. (See FTB Internal contact list for e-mail id to Business Transfers Program) and send the Notice of Request to Refuse Liquor License Transfer [Form FTB 4243](#) to the business when the liquor license hold is verified.

**Note:** FTB employees should contact the taxpayer or business representative and explain the function and purpose of a liquor license hold. If the business fails to comply with its tax obligations in a timely manner, FTB employees

should then contact the Business Transfers Program to proceed with placing a hold on the liquor license.

## Reference

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[Business and Professions Code 24049](#)

[Revenue and Taxation Code Section 19262](#)

[Department of Alcoholic Beverage Control](#)

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**Last Revision: 09/24/2018**

## 9.0.2.2 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 to sell a liquor license, by sending a [Liquor License Transfer Notice to Withhold FTB 4242](#) to the escrow company.

### Purpose

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

### Responsibility

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

### Action

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FTB employees will send the notice to withhold funds to the escrow company holding the funds on a pending liquor license sale. Once the escrow company pays the unpaid liability, the FTB employee must submit a request to release the hold on the liquor license through the Business Transfers Program.

### Reference

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

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[Form FTB 4242](#)

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**Last Revision: 09/24/2018**



### **9.0.2.3 Seizure, Notification, Sale and Conclusion of Liquor License**

#### **Background**

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The Franchise Tax Board (FTB) has the authority to seize and sell any on-sale or off-sale liquor license, and is developing a method to actively pursue the seizing of liquor license. However, in practice, the California Department of Tax and Fee Administration (CDTFA) is the only state agency that seizes and sells liquor licenses. If CDTFA seizes a liquor license, FTB may receive either the full, or a prorated portion of the proceeds for the liquor license sale, depending on FTB's hold date of the liquor license, and pending other state agencies that may also have a hold on the license.

FTB may receive funds from CDTFA for a hold on the liquor license in the following:

- FTB will share in the fund with any other state or county agencies liquor license holds before the license was seized.
- The hold was place after the liquor license was seized, FTB will share in any funds after funds paid to agencies hold before the license was seized.
- No liquor license hold in place, OTW will need to be sent to the escrow company before the liquor license is transferred.

#### **Purpose**

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FTB can take appropriate actions, not only to request a liquor license hold, but may also seize and sell certain liquor licenses, if a tax liability exists.

Currently, only CDTFA seize the liquor license and notification is sent to the licensee (license holder), advising them the liquor license has been seized, and will be sold at public auction.

#### **Responsibility**

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

**Note:** If no hold on the liquor license, contact the Business Transfer Program. The Business Transfer Program is the only program authorized to place a hold on the license or issue OTW for any excess proceeds.

### Action

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Advise the taxpayer or 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 license hold, and possible jeopardy assessments.

If the license is sold by an agency, FTB employees 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 Alcoholic Beverage Control](#)

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## 9.0.2.4 Alcoholic Beverage License in Bankruptcy

### Background

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There are times when a taxpayer or business entity files a bankruptcy petition and their liquor license becomes an asset of the bankruptcy estate.

The account will be flagged bankruptcy when FTB receives notification that the taxpayer or business entity has filed bankruptcy. If Franchise Tax Board (FTB) has a hold on the liquor license, the Business Transfer Program may receive a demand for payment for the sale of the liquor license.

The Business Transfer coordinator will contact the Bankruptcy Section to determine the best course of action.

### Purpose

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Accounts that are flagged bankruptcy need to be addressed by the Bankruptcy Section.

### Responsibility

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FTB employees must make sure the Bankruptcy Section is aware of the pending sale of the liquor license or of the hold in place when the account is in bankruptcy.

### Action

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FTB employees should contact the Bankruptcy Section when the taxpayer or business entity has filed for bankruptcy and there is a hold or sale of a liquor license. Additionally, if there is a hold or sale of a liquor license on an account in Receivership or Assignment for the Benefit of Creditors, FTB employee should contact the Business Entity Bankruptcy Unit.

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## 9.0.2.5 Business Transfers General Information

### Background

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Business Transfers is a sale of the assets (inventory and equipment (aka Bulk Sales)) and/or liquor license. Business transfers and sales information is received from:

- Pacific Report
- Department of Alcoholic Beverage Control (ABC) New Application Daily Report

### Purpose

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Learning of a potential business sale allows Franchise Tax Board (FTB) employees to review its records and take appropriate actions if a tax liability exists.

### Responsibility

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FTB employees should recognize an entity is selling their assets and/or liquor license and take the appropriate collection action on outstanding liabilities.

### Action

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FTB employees 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.

### Reference

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[Department of Alcoholic Beverage Control](#)

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## 9.0.2.6 Bulk Sales Order to Withhold (OTW)

### Background

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Bulk Sales Order to Withhold (OTW) seizes the funds of non-compliant entities with assets such as inventory and equipment and/or 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

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

### Responsibility

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

### Action

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The Business Transfers program will issue an Order to Withhold-Special Paragraph [Form FTB 2900HP](#) (Partnership), [Form FTB 2900D BC](#) (Entity), or [Form FTB 2900 V6](#) (Individual) to the escrow company. These forms will change according to the collection circumstances. Refer to the unit procedures for the specific form. The OTW is faxed to the escrow company.

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 Transfers program will complete it.

## Reference

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[Revenue and Taxation Code Section 19262](#)

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**Last Revision: 09/24/2018**



## 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?
- How many income years are there without a tax return?
- Are there any attachable assets? (e.g., liquor license or property)
- Is there an open escrow?
- Are there other agencies in line to collect funds?

**Note:** If the escrow is closed and funds have been distributed, jeopardy assessments (J/A) are not appropriate.

### Purpose

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Initiating assessments allows the 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

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If the escrow closing date is unknown, call 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.
- Email the J/A request to the Business Transfers (BT) Program (FTB Business Transfer Desk mail id) and BT employee will obtain legal approval.

**Note:** If the case does not have an outstanding liability, FTB employee need to issue a Third Party Notice to the taxpayer and allow 10 calendar days before contacting the escrow company.

## Action

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If the escrow closing date is unknown, call 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 BT to issue jeopardy assessments, BT staff will follow the procedures described under Jeopardy Assessments. (See CPM section 7.0.3.2)

## Reference

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Business and Professions Code Sections [24049.0](#) and [24049.5](#)  
Revenue and Taxation Code Section [19262](#)  
[Department of Alcoholic Beverage Control](#)

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**Last Revision: 06/13/2018**

### 9.0.3.1 Collection Advisory Team (CAT)

#### Background

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The Collection Advisory Team (CAT) supports the department and the ARM Division (ARMD) by providing expert technical collection advice in regards to collection policy and law. CAT provides continuing education to ARMD employee and resolves issues regarding interest abatements, claim for refunds, subpoena duces tecum, nominee liens, signature fraud, legislative bill analysis and change proposals to name a few. CAT assists the department with litigation cases, works with Legal and the Attorney General's Office, represents the department in Small Claims Court Actions, and helps collectors with the seizure and sale of personal property. CAT serves as an Interagency Tax Collection Committee Member, and Division Liaison to Legislative Services Bureau, Legal, Internal Revenue Service, Employment Development Department, and Board of Equalization. They also maintain the Resource and Development Guide and lead or participate in many other special collection teams/projects.

#### Purpose

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CAT provides technical, legal research, and guidance on not only general collection tools and methods, but on the most complex collection issues facing ARMD. We serve to provide collection staff, management, and Legal with clear and accurate information to ensure the methods used to gain taxpayer compliance are being administered as intended by the law and collection policy.

#### Responsibility

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CAT is responsible for providing collection assistance to ARMD and ensuring FTB employee is aware of the types of actions that require their assistance.

#### Action

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In addition to general collection assistance, CAT members also assist with the following:

- ASK A Legal Expert
- ASK CAT
- Audit Liaison
- CAT Newsflash

- Claims of Exemption
- COTW/OTW Non-Compliance
- Claims for Refund
- CPM Re-write
- Criminal Investigation Referrals
- EWOT Non-Compliance Failure to Comply
- EWOT Non-Compliance Failure to Remit
- Excess Proceeds
- External Contact Requests
- Field Office Collections
- Forms Implementation and Review
- Hearing Officer
- Identity Theft
- Implementation or Communication Leads
- Relief of Liability - Injured Spouse
- IMDBPro
- Innocent Investor – Release of Lien
- Interest Waivers
- Informal Interpleader
- License Suspension
- Legislative Bill Analysis and Proposals
- Nominee Actions
- Jeopardy Assessments
- Transferee Actions
- Notice of State Tax Lien (NSTL) on Cause of Action
- Non Tax Debt Collections
- Order to Enter Private Property/Order for Transfer of Property (AKA Ex Parte Order)
- Order to Show Cause
- Pay Pal
- Professional Collector Newsletter
- Resource and Development Guide
- Signature Fraud
- Small Claims Court Actions
- Statutory Lien Date Comparison (SLD) with IRS, EDD, and BOE
- Subpoena Duces Tecum (SDT)
- Summons and Complaint
- Suspension of Interest on PIT Amended Returns
- Third Party Claims
- TOP 500 & I/A
- Training- Advanced Enforcements
- Training- CAT & RDG overview
- Trust Issues
- Warrant/Seizure Issues

- Tribal Account review
- Tribal Networking Team
- Limited Purpose Revivor
- Sale of Liquor License

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**Last Revision: 06/13/2018**

### **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 or business entity is a party (generally the plaintiff) to a lawsuit in which the taxpayer may become entitled to property or a money judgment. Franchise Tax Board (FTB) cannot file a NSTL on a Cause of Action without a state tax lien. ((\*\*\*\*)).

[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.

Notice of FTB's NSTL must be given to all parties who have made an appearance in the action or proceeding. The NSTL 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.

It should be noted that the provisions of state law imposing liens on property, including causes of action, may not be utilized in federal court proceedings or in Workers' Compensation cases.

#### **Purpose**

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

#### **Responsibility**

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FTB collection employees develop and obtain information related to the taxpayer's involvement and potential for receiving property or funds as a result of the court action. If at any time the account is resolved through other means or an additional assessment becomes final FTB collection employees should immediately contact the assigned Collection Advisory Team (CAT) advisor.

CAT advisors will review all NSTL requests for completeness. Once CAT approves the NSTL the request will be referred to Legal Counsel for pleading preparation and court filing.

## Action

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FTB collection employees will need to complete a NSTL worksheet and forward the worksheet 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).
- If available, a copy of the summons and complaint. To obtain this information, you may contact the attorney for the plaintiff or defendant. A copy can also be obtained from the case 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 to mail stop A-240.

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

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**Last Revision: 09/24/2018**



### 9.0.3.3 Interpleader

#### Background

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An Interpleader is a civil action ([Code of Civil Procedures 386](#)) used by a third party to have the court determine how property or funds should be distributed. Generally, Franchise Tax Board (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.

There are two types of Interpleader actions; formal and informal. Formal Interpleader actions (Summons and Complaint) are referred to the Attorney General's (AG) Office. Informal Interpleaders ([Civil Code 2924J\(c\)](#)) do not require referral to the AG's Office but are handled by Collection Advisory Team (CAT) advisors. This module deals specifically with the formal Interpleader.

#### Purpose

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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

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CAT advisors process the Interpleader (both informal and formal) and determine FTB's course of action. Formal Interpleader actions (Summons and Complaint) are referred to the AG's Office from CAT.

Informal Interpleaders do not require referral to the AG's Office but are handled by CAT advisors.

If excess proceeds exist after a trustee's sale of real property and the trustee is unable to determine the priority or validity of the various claims, the trustee will file a declaration of unresolved claims and deposit the funds with the county superior court. This process is meant to be more expeditious and economical than a traditional interpleader filed in which the involved parties have to be served a summons.

The trustee is required to issue notice to the potential claimants of his or her intent to deposit the surplus funds with the courts. The notice advises the

claimants that a claim must be filed with the court within 30 days from the date of the notice to deposit funds to pursue their claim to the surplus funds. However, the court is only obligated to consider the claims filed at least 15 days before the hearing date.

## Action

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When the department is named as a defendant in an Interpleader action (usually the result of a lien or an Order to Withhold), the department is served with a Summons and Complaint. Proper service on the department is either by mail addressed to the Chief Counsel, Legal Division or by personal service at FTB's Central Office. Please notify CAT immediately if proper service is not followed.

### Filing a Claim:

- Read the complaint in its entirety to understand the issues and the department's interest to determine how to respond to the action.
- CAT advisor must complete the referral documents and forward the file via email to CAT supervisor.
- The CAT supervisor or designee will forward the file to our legal department for their review and preparation.
- Once the documents have been approved by the assigned attorney, the advisor will be sent an email notifying the documents have been sent to the court.
- The account should be monitoring from time to time, to determine the outcome of the court action.

### Service by Mail

ATTN: CHIEF COUNSEL, LEGAL DIVISION  
**FRANCHISE TAX BOARD**  
PO BOX 2229  
SACRAMENTO CA 95812-2229

### Service in Person

FRANCHISE TAX BOARD  
9646 BUTTERFIELD WAY  
SACRAMENTO CA 95827

FTB's legal counsel logs in the Summons and Complaint and forwards it to CAT for appropriate action/response.

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

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

#### Background

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

A Subpoena Duces Tecum (SDT) is a document or writ also issued under the authority of [Revenue and Taxation Code Section 19504\(c\)](#). An SDT requires a party to produce or make available for examination or copying at a specified time and place, or both, any book, papers, or other data from any purpose. A court appearance is not required. This module deals specifically with an SDT.

There are two types of subpoena duces tecum. A financial subpoena which is served on a financial institution (if the taxpayer is not the financial institution) and a regular subpoena which is served on a person. A financial subpoena differs from a regular subpoena in that the California Right to Financial Privacy Act ([Government Code 7460](#)), requires FTB notify the taxpayer prior to serving the financial subpoena. For obvious reasons a financial subpoena is rarely utilized.

**Note:** The only difference between the regular subpoena and a financial subpoena, as stated above, is the requirement to notify the taxpayer prior to serving the subpoena.

#### Purpose

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An SDT provides FTB with a legal instrument to obtain and examine documents, from the taxpayer or third-party, when the taxpayer or third-party has voluntarily complied with FTB's requests. It is used to obtain potentially useful evidence for locating assets, investigating for a nominee or transferee action and/or resolving levy noncompliance issues.

#### Responsibility

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An SDT should be requested only when:

- All other means of collection have been exhausted; or

- A taxpayer, business entity, or institution will not provide the needed information as required by law without an SDT.
- A taxpayer has refused to sign the voluntary authorization to release information (financial institution)
- A taxpayer or business entity has refused to honor the Demand for Information ([FTB form 4973](#))

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

An SDT should not be used as a fishing technique; (i.e. arbitrarily asking for information in hopes that it will produce something of value to resolve the case). Such actions could indicate an abuse of authority and could jeopardize FTB's privilege to use such subpoenas as a collection tool in the future.

The Demand for Information should contain all of the necessary information (or questions) in support of the information needed for an SDT.

Requesting an SDT:

- Issue a Demand for Information for the books, papers, or other data ([1131J](#)) via certified mail (A Demand for Information must be issued except for financial institutions).
- The Demand for Information must include **ALL** information/documentation to be requested from the taxpayer or third-party )note: Anything not on the Demand for Information **CANNOT** be included on the SDT)
  - Copies of the businesses general journal, accounts payable journal, note payable journal, cash disbursement journal, and payroll ledger for (insert business name here) from (insert date) to present, if applicable.
  - Canceled checks (front and back) paid to (insert taxpayer's name here) by (insert business name here).
- Confirm receipt of the Demand for Information by the party subject to service: confirm that service was appropriate using the Secretary of State's "Business Search" if applicable.
- Ensure there are no process gaps (i.e., that service was on the agent for service of process, if applicable).
- Check with CAT to ensure all appropriate actions were taken prior to completing the SDT worksheet.
- Know the timeframe for the documents and only ask request relevant documents.
- Complete the SDT worksheet.

- Obtain your supervisor's approval before submitting an SDT to CAT.

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

FTB field office personnel 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

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Requests for SDTs are submitted to CAT on the fillable worksheet ((\*\*\*\*)).

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

- All other means of collection have been exhausted; or
- The taxpayer refused to sign a Voluntary Authorization to Release Financial Information to FTB [form FTB 2590](#), and the financial institution requires a SDT before releasing information; or
- An entity (business or individual) refuses to honor the Demand for Information, [FTB form 4973](#); or
- Based on circumstances of the account, FTB employee believes a Demand for Information will not be honored.
- Name and title of person to be served. 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, agent for service of process using the Secretary of State's "Business Search" if applicable. 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.
- If in doubt as to whom to serve, a CAT advisor may be contacted for assistance.
- A summary of relevant collections actions to ensure that other means of collection have been exhausted. This information can include, but is not limited to, all involuntary collection

action(s) in the last 180 days (or longer time period, if relevant), contact with taxpayer(s) and attempts made to voluntarily obtain the information. If any Orders or Demands were issued, include copies of return receipts with signature as evidence of receipt. If records are being obtained to establish a transferee and/or nominee situation, please include information regarding any documents (e.g. internal, external, etc.) obtained to further support your position.

- A statement whether the taxpayer refused to sign a Voluntary Authorization to Release Financial Information to FTB ([form FTB 2590](#)), and the financial institution requires a SDT before releasing information.
- A statement if an entity (business or individual refused to honor the Demand for Information ([form FTB 4973](#)))

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

### **Subpoena Service & Response**

- Personal Service
  - The field collector will serve the subpoena.
  - The person named on the subpoena is served or a person who represents the subpoenaed party; i.e. a relative, receptionist or secretary.
  - The field collector keeps the original and completes the Certificate of Service on the back of the subpoena.
  - The subpoenaed party is provided with a copy of the subpoena.
  - The collector may allow the party served to inspect the original if requested.
  - If the person served is not the party listed on the subpoena, mail a copy of the subpoena certified mail to that person immediately after serving.
  - The person served must be over 18 years of age.
  - Subpoena should be served within 6 months of issuance.
  - The subpoenaed party may ask for reimbursement of copying charges, 15 cents per page or \$15 per hour (Evidence Code 1563(b)(1)).

- Arrangements can be made to view documents and only copy the documents needed.
- An extension may be granted for a short time and must be in writing.
- If no compliance, contact CAT immediately so CAT may obtain an Order to Show Cause.
- The original subpoena must be returned to CAT even if it cannot be served or is no longer needed and will be retained in the CAT subpoena files.

### **Service on Financial Institutions**

- Service is accomplished pursuant to [Code of Civil Procedure Section 415.10](#) and [Government Code Section 7460, et seq.](#) These codes mandate that we serve the taxpayer with a copy of the Subpoena Duces Tecum prior to serving the financial institution. The subpoena allows 10 days for the taxpayer to quash the subpoena before we can require the financial institution to provide the documents. The financial institution can be served immediately after the taxpayer is served; however, the financial institution will not provide the documents until the 10-day period has expired.

### **Via Mail**

Service by mail is typically used when records are located out-of-state, but may also be used in-state.

- In state – Certified mail, return receipt requested with two copies of the Notice of Acknowledgment (NOAR), and return envelope, postage paid, addressed to the sender. If the NOAR is returned to us the subpoena is perfected 20 days after mailing. Service is not complete unless the NOAR is returned to FTB. ([Code of Civil Procedures Section 415.30](#))
- Out of state – [Code of Civil Procedure Section 415.40](#) governs out-of-state service. It provides that service may be accomplished by certified mail, return receipt requested, and postage prepaid. If return receipt is received the subpoena is perfected 10 days after mailing. The return receipt is proof of service. Service is not complete unless return receipt is returned to FTB. The Subpoena Duces Tecum should not be directed out-of-state unless:
  - The taxpayer or business entity requests we serve their custodian of records located out-of-state.



- 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 Procedures Section 415.50](#) governs service by publication. Since the publication method involves a judicial proceeding, the Attorney General 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.

### Quashing the Subpoena

The taxpayer has the right to quash the subpoena within 10 days of service. If the taxpayer attempts to “quash” the subpoena, CAT will notify the collector that they may not be getting the information/documents. The account will go before a judge who will decide.

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

### Reference

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[Revenue and Taxation Code Section 19504\(a\)\(c\)](#)  
[Government Code Sections 7460 and 7491](#)  
[Code of Civil Procedures Sections 415.10, 415.30, 415.40, and 415.50](#)  
[Code of Civil Procedures Section 416.10](#)  
[\(Evidence Code 1563\(b\)\(1\)\)](#)  
( (\*\* \*\* ))

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

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**Last Revision: 09/24/2018**

### 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 ([Government Code Section 11187](#) and [11188](#)). The Franchise Tax Board (FTB) may petition the superior court in the county in which the hearing or investigation is pending or the county in which testimony is designated in the subpoena to be given or documents or other items are designated in the subpoena to be given or documents or other items are designated in the subpoena to be produced for such and order. For clarity, this module refers to non-compliance of a Subpoena Duces Tecum (SDT).

#### Purpose

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An Order to Show Cause is generally used to enforce an SDT and other legal orders by requiring the served party to appear in the superior court. Failure to comply with an Order to Show Cause could subject the taxpayer to arrest and punishment for contempt of court.

#### Responsibility

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(FTB) employees request an Order to Show Cause when the person named on the SDT does not provide the documents by the date indicated on the SDT or the information provided is incomplete. FTB employees 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 such as:

- The subpoena party was in the hospital
- Death in the family
- Subpoenaed records were in the possession and under the control of someone else

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

## Action

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FTB employees prepare 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.

Once the Order to Show Cause is approved by CAT it is forwarded to the AG's office. Since the Order of Examination is in itself a court order, the taxpayer could be subject to contempt of court charges for failure to comply and an Order to Show Cause may not be necessary. The CAT advisor will obtain the approval of counsel in Legal and refer the request to the AG's office to obtain an Order to Show Cause. A copy of the referral letter will be sent to the assigned collector. The AG's office will prepare a Petition and Order to Show Cause. The AG's office should file the request in the county wherein the production of documents was to occur.

If the subpoenaed party fails to show good cause for failure to comply and still does not comply, the party is subject to arrest and punishment for contempt of court. If the subpoenaed party complies with the order, the AG will notify the CAT advisor that the litigation file is closed.

## Reference

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((\*\*\*)

[Government Code Section 11187](#)

[Government Code Section 11188](#)

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

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**Last Revision: 09/24/2018**

### 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.

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 assets. [California Civil Code Section 1227](#) cites the Fraudulent Conveyance statute on transfer of real property.

The taking of a nominee action alleges that the titled owner of the property/assets is a “nominee” of the taxpayer, and that the property/assets really belongs to the taxpayer.

#### Purpose

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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.

There are three common types of Nominee actions:

- 1) A nominee lien - makes property in the name of the nominee 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\(b\)](#).
- 2) A nominee OTW - issued to a financial institution to reach property held in the nominee’s name.
- 3) A nominee OTW or COTW - issued to attach rents paid in the name of the nominee.

## Responsibility

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FTB employees must identify accounts that potentially qualify for Nominee assessments. The prima-facie evidence case of a nominee liability is on the department. FTB collection employees obtain the facts and documents to establish the prima facie evidence that the taxpayer is attempting to hide assets to avoid creditors (FTB). A thorough, documented investigation is essential. A nominee action could result in immediate litigation, and the burden will be on the department to establish that the property in the name of the third party is the property of the taxpayer. Therefore, a nominee action should only be used in those cases where all other collection remedies have not resulted in resolution of the account. After establishing such a case (nominee) the burden of proof is shifted to the nominee.

Characteristics of a nominee lien:

- Transfer of property without adequate consideration and no escrow opened (i.e., quitclaim, grant, warrantee deed, or the deed states that the transfer was a gift).
- Failure to Record Conveyance.
- Property is maintained and controlled by taxpayer.
- Close relationship between taxpayer and nominee, most common are trusts, family members, corporations and partnerships.
- Funds such as bank accounts or investments are held in the name of a trust or other entity and the taxpayer has access to the funds.
- Taxpayer is an identified protester (FAN).

It must be established that the taxpayer is maintaining control of the property and/or receiving personal gain and not the nominee.

### Nominee Lien

A 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.

A nominee lien is appropriate in a transmutation situation due to Civil Code Section 5110.720, which states that transmutations are subject to the laws governing fraudulent transfers. Civil Code Section 5110.710 states, in pertinent part, that subject to Civil Code Section 5110.720, married persons may by agreement of transfer, with or without consideration, transmute community property to separate property of either spouse.

An example of a fraudulent conveyance is when a taxpayer who was the purchaser of real property, is liable for taxes, was the recipient of a Determination and a Demand and then quitclaimed this community property interest in the residence as a gift to his spouse. In quitclaiming his interest in the property, the taxpayer attempted to shield his assets and hinder collection of the tax. Such actions indicate an intent to frustrate collection activities through the divestiture of the property by fraudulent conveyance while still engaging the benefit of the property as his own.

To establish a Nominee OTW or COTW we must prove:

- Taxpayer has control of the assets and uses them to pay personal expenses not the nominee.
- If the Nominee is a business, we must prove that the taxpayer is using the business primarily for personal use and not to actually provide a service or product.

To establish a Nominee OTW or COTW, we must prove that the taxpayer has control of the assets and uses them to pay personal expenses not the nominee. If the Nominee is a business, we must prove that the taxpayer is using the business primarily for personal use and not to actually provide a service or product.

Collection Advisory Team (CAT) advisors will review the nominee request, work with the collector to obtain additional information to support the case, and obtain all levels of approval for the nominee action.

## **Action**

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Requests for nominee actions are submitted using CAT's Nominee Action Worksheet ((\*\*\*) with attached exhibits.

Exhibits documenting the action may include:

- Title transfer records,
  - Grant Deed
  - Deed of Trust
  - Deeds of Reconveyance
  - Escrow document
  - Tax Liens, Lien recorded before the transfer of property and after
  - Any third party claim to the property

- Particular documents relating to the transfer of title in the property
- Tax returns showing mortgage interest deductions
- Utility records of service
- Utility statements
- Tax payment documents
- Tax returns showing mortgage interest deductions
- Loan documents
- Escrow documents
- Copies of cancelled checks
- Copy of trust documents (revocable vs. irrevocable)
- Bank account information
- Accounting ledgers
- Etc.

### **Nominee Lien**

The taxpayer sells real property and the escrow closes without satisfaction of an existing tax lien.

Contact the title company and demand payment of lien and if payment is not forthcoming, obtain the following:

- The name and address of the buyer of the property.
- A copy of the escrow report issued in escrow.
- A copy of the deed showing taxpayer acquisition of the property.
- A copy of the deed showing the transfer of the property from the taxpayer to the new owner.

If the above information shows the escrow closed without satisfaction of the FTB lien, perform the following upon supervisor/lead approval:

- Send letter to new owner(s) advising the new owner is responsible for the lien.
- Send all the above information to CAT with a memo outlining the facts of the case and requesting approval for the issuance of a nominee lien and/or levy.



- CAT will obtain the approval of Legal Services Section for the issuance of a nominee lien and advise the representative of when the nominee lien can be filed.

### How is the Real Property Used?

FTB employees must determine how the property is being used:

- Current occupants of the property
- If the nominee is not a natural person determine:
  - Fictitious name statement has been filed with the county for the nominee entity (who registered the name and when?)
  - The nominee entity has qualified to conduct business with SOS (Who are the officers? When did the entity qualify? Are tax return filed? What does the business entity do?)
  - Is the nominee entity a "Church" and was the property actually attributes of a house of worship? (Possibly take pictures of the building. Are there any sign or symbols on the property indicating the building is a "church"?)

### Property Maintenance

Determine how is the property maintained? Who pays the bills? The following information should be obtained:

- Copies of the mortgage loan contract, payment documents, and loan balance. A Subpoena may be needed.
- Copies of property tax bills (and payment documents) prior to and after transfer of title to the nominee.
- Copy of Homeowner's Exemption claim for county property tax assessor.
- Copies of utility bills (and payment documents) prior to and after transfer of the title to nominee (Telephone, Electricity, Water-Sewer-Garbage, Gas, Cable Television, etc.).

### Additional Information

Where the nominee entity is a:

- Partnership
- Limited Partnership
- Corporation – Obtain copy of corporation returns and Statement of Officers information, copy of corporation minutes
- Trust – Obtain copy of trust documents (revocable vs. irrevocable)

Nominee Earnings Withholding Order for Taxes (EWOT), Continuous Order To Withhold (COTW), or Order To Withhold (OTW)

Exhibits documenting the action may include:

- Name of individuals, officer, and name of company
- Income source, 1099s, etc.
- Investment
- Bank account(s), checking, credit union, wire transfers
- Individual and/or entities who made payment(s)
- Interest in stocks in incorporated and unincorporated business held by individual or officer(s)
- Accounts receivable, account payables, general ledger, cash disbursement journals, petty cash journals, payroll ledger
- Loans to shareholders or officers and repayment schedules
- Court settlement
- Assets, such as: cars, trucks, vessels, airplane

The worksheet and exhibits should be forward to CAT at mail stop A-240.

### **Approvals Process**

FTB employees will prepare a memo requesting the nominee action and forwarded to CAT. The memo should be in narrative form and must include the following elements:

- A description of collection case and actions previously taken to collect the taxpayer's liability.
- The facts of the case that support the issuance of the request for the nominee action.
- Index of documentation.
- CAT will summarize the employee memo and seek Legal approval.

If approved by Legal, the CAT advisor will notify the collector and provide instructions regarding the filing of the nominee lien or issuance of the nominee EWOT, COTW, or OTW.

Once approved, the requesting collector issues the lien, EWOT, OTW, or COTW. The nominee action 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.

If the nominee action is **not** approved, the advisor will notify the collector of what additional information is required or why the nominee request cannot be approved.

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 or COTW.

## Reference

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((\*\*\*)

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

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**Last Revision: 09/24/2018**

### 9.0.3.7 Voluntary Authorization to Release Financial Records

#### Background

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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 which allows the Franchise Tax Board (FTB) to receive financial information from a taxpayer's financial institution without direct authorization from the taxpayer. The act also provides that the customer may authorize the disclosure of records to governmental agencies.

#### Purpose

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Generally, the Voluntary Authorization to Release Financial Records [FTB 2590](#) allows FTB to receive financial information from a taxpayer's financial institution. However, even without a signed form FTB 2590, FTB may obtain such financial information with a Subpoena Duces Tecum.

#### Responsibility

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Generally, FTB employees attempting to obtain financial information are responsible for first requesting a signed FTB 2590, Voluntary Authorization to Release Financial Records, from the taxpayer, if applicable, FTB employees should document the reasons and circumstances in which one could not be obtained.

#### Action

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When practical, FTB employees should request the taxpayer sign a Voluntary Authorization to Release Financial Records before requesting a Subpoena Duces Tecum.

The Voluntary Authorization to Release Financial Records must contain the following:

- Time period under which disclosure is authorized.

- Name of the agency or department designated to receive the records.
- 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, FTB employees must notify the taxpayer in writing of the examination and that upon written request, provide the taxpayer with the reason for the examination.

FTB employees must send the original signed [FTB 2590](#), Voluntary Authorization to Release Financial Records, and a copy of the notice sent to the taxpayer after receipt of the records, to the Collection Advisory Team for retention.

## Reference

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

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

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**Last Revision: 09/24/2018**

### 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 (i.e. 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, vessel, aircraft, etc. subject to warrant execution is stored in a garage, behind a locked gate, or enclosure. The levying officer is required to gain entry in the manner likely to cause the least damage and may decline to act on the order where he/she reasonably determines that to do so may involve substantial risk or bodily harm.

#### Purpose

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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(s).

## Responsibility

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FTB employees 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 employees or levying officer may observe and attest to the location of the asset. Legal counsel may not approve a request for an ex parte order if more than 90 days has elapsed since the appropriate party has seen the property to be seized.

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 (AG) appears in court for FTB. The FTB employee does not appear in court unless requested by the Deputy AG.

**Note:** Ex parte applications require that an appearance be made before the court. An appearance on behalf of the department must be made by an attorney. Legal lacks the ability to consent to having a non-attorney make an appearance before the court. The courts (and the AG) have strenuously objected to any court appearance on behalf of the department by a non-attorney.

## Action

---

A request for an order is made on the fillable form ((\*\*\*\*)). The documentation may be faxed or mailed to CAT. Mail stop A-240

- 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 FTB collection employee 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 employee for signature along with the declaration and court documents.

## Approval Process

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Upon receipt of the request by CAT, the unit supervisor will assign to an advisor who will:

- Review the ex parte order request and supporting documentation to ensure that the requested action is appropriate and meets the 90 day requirement. If the request appears incomplete or unacceptable, the advisor will contact the collector and/or collection supervisor to request additional documentation or explain the reason(s) the request is being rejected.
- Prepare the court pleadings, collector's Declaration and Certificate of Tax Due and Delinquency that are to be filed with the appropriate court to obtain the ex parte order.
- Obtain approval and signature from Legal Services on the appropriate court pleadings. Upon approval, all the necessary documents will be forwarded to the collector.
- Accompanying the court documents will be written instructions on how to file the court documents with the court and the levying officer.
- Once an Order to Enter Private Property is secured from a judge, it becomes public record. So, The Order to enter Private Property must be delivered to the levying officer immediately.

Although the levying officer may be equipped with an ex parte order at the time of seizure, there may be an instance where unbeknownst to FTB the taxpayer may move the property to a new location, transfer the ownership to a third party, or fail to turn over the property. If this occurs, then the levying officer will notify the court and the collector whose name appears on the warrant. FTB may, then, apply to the court of an "Order to Show Cause" hearing to which the taxpayer will be summoned to explain the failure to turn over the assets. (See CPM section 9.0.3.5)



## 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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**Last Revision: 09/24/2018**

### 9.0.3.9 Alter Ego

#### Background

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A corporation and the individual involved with the corporation as a principle and/or stockholder are separate "personalities" or "entities," likewise, a parent corporation is a separate entity from a subsidiary corporation. A corporation entity may be disregarded through an action of the court, where there is such unity of interest and ownership, that the separate personalities of the corporation and the individual no longer exist and the separation of personalities results in an inequality. This theory is termed "alter ego," a "second self." Other terms for an alter ego are "disregard of corporate entity" and "piercing the corporate veil. The theory may be used to collect a corporate liability from an individual or an individual liability from a corporation or a corporate liability from another corporation. The alter ego theory must be proven in court, and the burden of proof is on the party claiming that the alter ego exists.

#### Purpose

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The "alter ego theory" must consist of the following elements:

- Unity of ownership and interest. Mere ownership or control of stock does not, in itself, destroy the separate existence.
- A fraud or similar injustice would result if the alter ego were not established. The theory does not depend on the presence of actual fraud, but bad faith in one form or another usually exists.

The characteristics of an alter ego are generally made of the following:

- One party has total or substantial control of another party or entity. Control may be through the use of a party's family members.
- Lack of corporate meetings and/or records.
- The taxpayer has engaged in personal transactions with the alter ego party without approval of the Board of Directors and/or shareholders.
- Co-mingling of assets with little or no consideration between the parties involved.
- The taxpayer is the only authorized signer on the corporate bank account.

- Corporation was undercapitalized. The initial capital was inadequate for the undertaking.
- The failure to segregate funds of the parties involved.
- A party's treatment of the alter ego's funds/assets as their own.

## **Responsibility**

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The "alter ego theory" may be utilized in resolving an account that would otherwise be considered uncollectible. If the theory appears appropriate, consider whether the liability is large enough to substantiate the costs. While there is no set minimum, the liability should include at least a ((\*\*\*\*)) tax liability. All other means of collection should be exhausted prior to referring an alter ego issue because of the time and expense required to litigate this type of case.

## **Action**

---

Since the burden of proof is on the department, the request will generally be completed by field office personnel who will use field investigation techniques to gather sufficient evidence.

A request for an alter ego action, should be sent to the Collection Advisory Unit Supervisor along with a memorandum containing the following information:

- Taxpayer name and account number.
- A breakdown outlining the amount due by year, including the date to which interest is computed.
- A summary outlining the alter ego elements present in the account, citing all the relevant alter ego characteristics; including copies of any supporting documents.
- A summary of all collection actions to date.
- Lien recording information and copies of the recorded county liens. If the potential collection will involve personal property, a Secretary of State lien should also be recorded.

An advisor in Collection Advisory Unit will review the information submitted, and consult with our legal department to determine if pursuit of the "alter ego theory" is appropriate. If, in the department's opinion, sufficient evidence exists, the advisor will request a deputy attorney general be assigned to file a court action to prove the alter ego.

The deputy attorney general will notify the Collection Advisory Team Unit of the court's decision. Based on the decision, one of the following courses of action may be appropriate:

- If the decision is not favorable and an appeal is not warranted, the litigation file will be closed.
- If the decision is favorable and the deputy attorney general notifies the department that payment is forthcoming, follow up for the payment. When the payment posts, insure that any necessary account corrections are made. When that is accomplished, the litigation file will be closed.
- If the department is required to enforce the judgment, the Collection Advisory Team Advisor will attempt to collect through a written demand for payment, followed up by telephone call. If unsuccessful and the account has been unrefereed or discharged, the collection account will be transferred to the appropriate field office. The file will be commented stating the reason the account is being referred, with instructions to pursue the assets of the alter ego to satisfy the tax liability. At this point, the litigation file will be closed.
- If the account was retained for collection, the advisor will send a memorandum to the assigned collector explaining the decision.

## Reference

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

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**Last Revision: 09/24/2018**

## 9.0.3.10 Charging Order

### Background

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A Charging Order under the California Corporations Code sections 15522, 15523, [16504](#), and [Code of Civil Procedures section 708.310](#) is the only method available for the Franchise Tax Board (FTB) for collection against a taxpayer's interest in a partnership or limited liability company (LLC).

Generally, assets in a partnership (general or limited) or LLC are not liable upon a judgment for unpaid taxes rendered against a taxpayer who is a partner or member in a partnership or LLC. Conversely, partnership or LLC assets are not subject to execution unless the judgment is against the partnership or LLC itself. However, upon an action brought by FTB, the superior court can grant a Charging Order to "charge" the unpaid balance owed to FTB against the taxpayer's interest in the partnership or LLC and order the partnership or LLC to distribute the taxpayer's (i.e., the partner or member) share to FTB (i.e. the creditor) instead of the taxpayer.

In effect, it is a court ordered lien on the partnership interest of the taxpayer. Additionally, the court may order foreclosure on a taxpayer's partnership or LLC interest under specified circumstances.

### Purpose

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A Charging Order permits FTB to reach the assets of a partnership or LLC which are generally not liable for the taxpayer's liabilities to FTB.

### Responsibility

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FTB employee must determine which of the taxpayer's assets can be levied or garnished upon and the proper legal mechanism to be used to levy or garnish upon those assets.

Generally, FTB may levy upon only those assets paid to the taxpayer (partner or member) by the partnership or LLC. However, FTB cannot levy upon the partner's investment in the partnership or LLC or directly against the assets held by the partnership or LLC as these assets do not belong to the taxpayer. Thus, FTB employee must determine when to pursue collection by an Earnings Withholding Order for Taxes (EWOT), Order to Withhold (OTW), Continuous Order to Withhold (COTW) or Charging Order when partnership or LLC interests are involved.

Generally, partners may receive one or more the following types of distributions or payment from a partnership.

- **Ordinary Income:** Each partner may be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners are satisfied, and must contribute toward the losses.
- **Interest:** A partner, who in aid of the partnership makes any payment or advance beyond the amount of the capital which he/she agreed to contribute, may be paid interest from the date of the payment or advance.
- **Guaranteed Payments:** Without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership.

Further, a partner may elect to either received his/her distribution of the partnership's income or may elect to have his/her share returned to the partnership as an increase in his/her capital investment.

However, because a partner or member may not elect to receive such payment or may elect to have such payments be applied to his/her capital investment, FTB may not be able to levy or garnish such payments by EWOT, OTW, or COTW. Thus, it may be effective to reach the partnership's or LLC's assets directly by a Charging Order.

FTB employee may locate assets of a partnership or LLC by performing the following:

- Determine the type of interest (i.e., a general partnership, limited partnership, or LLC by reviewing the taxpayer' returns
- Locate K-1
- Review the partnership or LLC tax returns ([565](#))
- Ask for Partnership Agreements
- Check Filed Certificates with the SOS
- Demand for Information ([FTB, form 4973](#))

A Charging Order should be considered when:

- All other means of collection have been exhausted.
- The taxpayer has attachable assets held in partnership form.

- The partnership and taxpayer have been notified of the state tax lien (filed with [County Recorder](#) and [Secretary of State](#)) and neither has made any constructive attempts to cooperate.
- COTWs and OTWs are ineffective or unenforceable, when FTB suspect collusion or deceit.
- Collection by alternative methods would involve a greater expense in time, effort or money. An example of a greater expense is an out-of-state court action.
- It has been determined that the partnership generates enough profit, or has enough assets to warrant the action.

Difficulties in enforcing the Charging Order may include:

- No profits due the taxpayer.
- The partnership can offset any prior indebtedness the taxpayer has in the partnership before complying with the court order.
- The partnership may not be marketable without the tax debtor/partner, making the attempt to sell his interest of no beneficial purpose.
- A [Subpoena Duces Tecum](#) may be necessary to examine the partnership records, agreements, and the Articles of Partnership prior to requesting the Charging Order. A [Subpoena Duces Tecum](#) should be requested if compliance is not gained and a receiver has not been ordered to conduct an examination.

## Action

---

FTB employee can initiate a Charging Order request by providing the Collection Advisory Team Supervisor with a summary of all collection actions and a memorandum requesting the Charging Order Action.

The memorandum sent to the Collection Advisory Team should contain the following information:

- Taxpayer's name and current address.
- Names and addresses of other partners.
- Name, address and federal employer identification number (FEIN) of the partnership.
- Liability of the tax including the YEAR, TAX PENALTY, INTEREST, COSTS, PAYMENTS, and TOTAL.
- Lien information including certificate number, date recorded, county, book, page, and the year on which each assessment is established. Provide a recorded copy of the county lien to the

Collection Advisory Team. A SOS lien must be filed prior to requesting a charging order.

- Collection narrative including:
  - A summary of collection actions. The summary should reflect a concerted effort to collect the debt without having to resort to this civil proceeding. The court will be more apt to consider the seriousness of the matter and grant a receiver if it can be shown that we have been more than reasonable without results. The summary should include the dates, type of collection action (letter, telephone call, legal actions, etc.) and the result of the action.
  - Partnership asset information. The information needs not be specific unless a supplemental order is contemplated. Although a Charging Order will not attach to specific properties, it should be known whether the partnership has real property, personal property and/or intangible personal property and/or intangible personal property. This is necessary to ascertain whether or not the partnership is of value.
  - Identify type and extent of partnership operations. Briefly explain whether the partnership is conducting a trade, occupation or profession; indicate the percentage of share, and if the taxpayer is a particular class of partner (junior or senior). If this cannot be determined by reviewing the records, the department may be able to have the court make the determination.
  - Any additional comments.
- Enclosures to be forwarded with the memorandum are:
  - Copies of the latest California partnership return ([Form FTB 565](#)). If [FTB Form 565](#) is unavailable or it is known that the partnership has an interest from out-of-state sources, obtain copies of the federal partnership returns.
  - Copies of any correspondence, including the notification of state tax lien letter sent to each partner, which provided the notice of the department's encumbrance.
  - Copies of any relevant documents received through the use of a [Demand to Furnish Information](#) or [Subpoena Duces Tecum](#).
- A Collection Advisory Team advisor will:
  - Review the account to ensure that the action is appropriate.



- Request that the Attorney General's office petition for a Charging Order, and if warranted, the appointment of a receiver. Telephone the assigned deputy for a status report if our request is not acted on within a month. Unnecessary delays and lingering could be damaging to our and may be used to indicate that the order is not warranted.
- Once informed of the order, request a copy of any notification sent by the court or receiver. The contents of the court order will determine how and when the account will be collected.
- Relay the information and copies of the documents to the collector so they can effectively follow up with the responsible party; either the partnership or the receiver. Advise the assigned collector as to whether a new referral will be required and if supplemental orders are needed. Offer to assist if problems or questions arise while enforcing the charging order.

Further, a supplemental order appointing a receiver may be obtained at the same time or after the Charging Order has been obtained from the court.

The receiver would notify the taxpayer's co-partners that to pay over the taxpayer's share of the profits or distribution normally paid to the taxpayer and the taxpayer partner must be remit payment through the receiver. It should be noted that even though a receiver is requested, the court is not obligated to make the appointment.

Additional (supplemental) orders are required if the receiver is to perform any other functions other than receive payments. Again, the court must be convinced of the need for supplemental orders. Typically, the orders would authorize the receiver to:

- Conduct an examination of the partnership. The request and court order would specify the partnership must produce its books and records, as well as an accounting of partnership assets and/or,
- Sell the taxpayer's interest in the partnership.

## Reference

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

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**Last Revision: 10/22/2018**

### 9.0.4.1 General Bankruptcy Information for Business Entities and Personal Income Tax

#### Background

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Bankruptcy is a legal process found under Title 11 of the United States Bankruptcy Code (U.S.C.) involving a person or business that allows relief from certain obligations. The filing of the bankruptcy triggers an automatic stay preventing any collection action against the delinquent debtor. The stay remains in effect until the debtor is granted an order of discharge, or the bankruptcy case is dismissed, or closed (business entities).

- Dismissed – The bankruptcy case was not successfully completed. Once the case is dismissed, there is no protection under bankruptcy and collection actions should continue.
- Discharge– Is granted to a debtor by the bankruptcy court when the bankruptcy case is completed. A discharge order permanently prohibits Franchise Tax Board (FTB), or any other entity, from taking any action to enforce collection of debts relieved under the bankruptcy code.
- Closed – The court case was closed. In general, an entity that filed a chapter 7 or chapter 11 liquidation is out of business after the close-out of the bankruptcy; an entity that filed a chapter 11 reorganization is continuing business and, depending on the plan, discharged of the pre-petition or pre-confirmation debts.

When the debtor files bankruptcy there is an automatic collection stay, normal collections must stop, and all levies immediately released. FTB employees must first verify the debtor has in fact filed for bankruptcy. The debtor may need to provide a copy of their bankruptcy petition and/or proof of the bankruptcy filing.

The Bankruptcy Unit should be contacted regarding any Earnings Withholding Order for Taxes (EWOT) (individual only), Order to Withhold (OTW), or Continuous Order to Withhold (COTW) payment received while the debtor is in bankruptcy.

#### **OTW and Safe Deposit Box:**

An OTW issued prior to the bankruptcy petition date that attaches to safe deposit box may need to be released. Contact the Bankruptcy Unit lead to determine if the safe deposit box may require a release. This applies if an

FTB employee is holding a safe deposit box and the debtor files bankruptcy (see internal contact for bankruptcy phone number).

#### Outstanding Lien:

- If the lien, issued prior to the bankruptcy, is recorded at the County Recorder's Office after the bankruptcy, it must be released as filed in error.
- If the lien is issued during the bankruptcy, it must be released as filed in error.
- If the lien, issued prior to the bankruptcy, is recorded before the bankruptcy, it is a valid lien.

Although the [Bankruptcy Code \(11 U.S.C.\)](#) has several chapters under which petitions are filed, the most common type of bankruptcies filed are:

- Chapter 7 (liquidation) - A debtor surrenders his or her non-exempt assets to a bankruptcy trustee who then liquidates the property and distributes the proceeds to pay the debtor's creditors according to priority.
- Chapter 11 (reorganization) - A debtor in-possession or trustee continues to operate the debtor's business (BE) or personal assets (PIT) and pays the creditors according to a repayment plan.
- Chapter 11 (liquidation) - Chapter 11 may be used to liquidate the assets of a debtor. Management may remain in place or a trustee may be designated.
- Chapter 13 (repayment) - The debtor develops a plan to repay its creditors and must be confirmed by the court. The debtor makes payments to a trustee who distributes the funds to creditors according to the plan. This chapter is restricted to wage/salary earners and self-employed individuals who operate small businesses and fall within the debt limits.

Alternatives not generally subject to the rules of bankruptcy proceedings:

- Receivership - An arm or administering hand of the court. The receiver is appointed by the court (State Superior, usually, or Federal), or privately appointed. The appointment of a receiver puts all the property subject to the suit into the custody of the court. Once the assets are sold, the receiver distributes the proceeds to the creditors according to a formula approved by the court. A receivership is not always used to liquidate assets. In some cases, the court may appoint a receiver to serve as custodian. In that case,

the collection actions may continue because the entity or individual, not the receiver, is in charge of filing and paying taxes.

- Business Entities
  - The Business Entities Bankruptcy Unit brings the ((\*\*\*) account into the bankruptcy functional area to prevent a collection action during the proceedings.
- Personal Income Tax
  - Generally, if the individual has a liability, we do not cease collection action. The case remains in collections while the receivership is being reviewed. If it is determined that collection action should cease, the Bankruptcy Unit will route the ((\*\*\*) case into the bankruptcy functional area.
- Federal Deposit Insurance Corporation (FDIC) Receivership
  - This is a statutory federal receivership. When an insured depository institution fails, the FDIC is appointed receiver, a bar date is set, and FTB files a claim, if needed. The bank is not taxable by the State of California once placed into an FDIC receivership.
- General Assignment for the Benefit of Creditors (ABC)
  - It is a voluntary transaction providing a speedy liquidation of the entity's assets and distribution to the creditors. It doesn't require court consent in California. It is similar to a Chapter 7 liquidation, but faster and less expensive. The entity (assignor) turns over its assets to a third party (assignee). The assignee liquidates the assets and settles with the creditors.

## Purpose

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The Bankruptcy Unit, in the Special Programs Bureau, 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

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The Bankruptcy Unit is responsible for any action taken on the account of a bankrupt debtor. Furthermore, the Bankruptcy Unit will code the accounts of debtors 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 debtors.

## Action

---

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

New EWBS information interfaces daily with the Taxpayer Information System (TI), or the Business Entity Tax System (BETS), Accounts Receivable Collection System (ARCS), and Taxpayer Folder (TPF). Once corresponding accounts are located, TI (Taxpayer Status)/BETS ((\*\*\*\*)), ARCS (We have), and TPF (Overview) will be coded BANKRUPT/BANKRUPTCY CHPT. The bankruptcy petition date is used to prevent any involuntary actions, credit offsets, refunds, etc.

ARCS accounts coded BANKRUPT/BANKRUPTCY CHPT will be located in function states ((\*\*\*\*)) (Chapter 7, Assignment for the Benefit of Creditors, Receivership), BB (Chapter 11) or ((\*\*\*\*)) (Chapter 13) (Individual only). Any system-recognized OTWs or liens violating the stay are automatically released.

Any FTB employee 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. Employees should obtain a copy of the petition or discharge notice from the debtor or representative and contact the Bankruptcy Unit. The Bankruptcy Unit will enter the information into EWBS and route the ARCS account to the appropriate bankruptcy functional area.

## Reference

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

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

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

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

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

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

((\*\*\*)

((\*\*\*)

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

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**Last Revision: 09/24/2018**

## 9.0.4.2 Bankruptcy Terminology

### Background

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Bankruptcy has specific terminology.

### Purpose

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Bankruptcy terminology assists Franchise Tax Board (FTB) employees and bankruptcy advisors with their workloads.

### Responsibility

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It is the responsibility of FTB employees and bankruptcy advisors to be aware and understand the terminology used in bankruptcy.

### Action

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FTB employees and bankruptcy advisors should familiarize themselves with these terms.

### Reference

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((\*\*\*)

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

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**Last Revision: 06/13/2018**



## 9.0.5.1 In State Collection Account Referral (ISCAR)

**PIT Only. Currently not in use**

### Background

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[Revenue and Taxation Code Section 19377](#), authorizes the Franchise Tax Board (FTB) to contract with private collection agencies for in-state (ISCAR) 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 Out-of-State Revenue Collection Team (formerly Private Debt Collection Program) manager or supervisor.

### Purpose

---

The Private Debt 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 Collection Tax 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 Out-of-State Revenue Collection Team.

## Reference

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((\*\*\*)

((\*\*\*)

((\*\*\*)

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

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**Last Revision: 10/31/2018**

## 9.0.5.2 Out Of State Collection Account agencies for Referral (OSCAR)

**Currently, there are no referrals to the OSCAR program.**

### Background

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Revenue and Taxation Code Sections [19376](#) and [19377](#) authorize the Franchise Tax Board (FTB) to contract with private collection in state (ISCAR) and out of state (OSCAR) debt collection. Accounts referred under OSCAR are typically delinquent taxpayers or an out of state Business Entity (BE) that have left the state and do not have attachable California assets.

**Note:** Private collection agency referrals are limited to out of state PIT 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

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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. If the business entity is out of business or no assets 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).
- Business entity must be active.
- No known assets in California.
- ((\*\*\*) (\*\*\*)).
- Account must have less than 25 open tax years.

- Liens filed ((\*\*\*)).
- Any liens must have been filed at least 30 days prior to referral.
- Prior protested liabilities have been addressed.
- Not currently in bankruptcy.
- No prior assignment to OSCAR
- ((\*\*\*)).
- No Non-Liable Spouse indicator on **any** taxpayer associated to the account.
- 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.
- No Non-Liable Spouse indicator on **any** taxpayer associated to the account.
- A 45-day case hold has been added to ARCS to prevent automated action during the referral process. ((\*\*\*)
- ((\*\*\*)

## Action

---

After verifying 30 days have passed since any legal actions have been taken (lien, Order to Withhold (OTW), suspension), a request for contact has been mailed, or a form FTB 4902 has been mailed, the account is ready for referral to OSCAR. ((\*\*\*) Currently, there is no Contract Collection Lead Liaison with the referred accounts.

**Note:** OSCAR fees are added to the taxpayer's liability and are dependent on the contract between FTB and the private collection agency. 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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**Last Revision: 06/13/2018**

### 9.0.6.1 Offer in Compromise Program for Business Entities and Personal Income Tax

#### Background

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The Offer in Compromise (OIC) Program is for individual taxpayers and business entities, e.g., corporations, partnerships, Limited Liability Companies, and Limited Liability Partnerships that do not have, and will not have in the foreseeable future, the money, assets, or means to pay their tax liability.

Consideration for an OIC 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 involving a reduction in tax in excess of seven thousand five hundred dollars (\$7500) must be reviewed and approved by the three member Board of FTB.

In the case of a joint 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.

Previously, in order to apply for an OIC with the EDD, Office of Tax Appeals (OTA) and FTB separate applications were needed for each agency. To relieve some of the paperwork burden for taxpayers or their representatives, the State's three taxing agencies have developed a single OIC application form ([DE 999CA](#)). Taxpayers can use this form for any of the three agencies.

#### Purpose

---

The purpose of the OIC program is to allow individual taxpayers and business entities 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 employees to be aware of the OIC program and where to direct taxpayers for information on the program.

## Action

---

Taxpayers or representatives who express interest in submitting an OIC may obtain an OIC package. [FTB 4905BE](#), [FTB 4905PIT](#), or Form [DE 999CA](#) can be sent directly from the department, or downloaded from FTB's website. Questions from taxpayers and representatives regarding the OIC program may be referred to the OIC Public Assistance line ((\*\*\*)

To apply for an OIC, the taxpayer must complete, sign and submit [FTB 4905BE](#), [FTB 4905PIT](#), or Form [DE 999CA](#) to FTB. Before an OIC can be accepted for further processing, the following items are required:

- 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 is not disputed*.
- A completed OIC application with supporting documentation:
- For business entity taxpayers, all supporting documentation listed in the Checklist of Required Items on Page 3 of Form FTB 4905BE must be submitted. If the taxpayer does not own a listed item, they must indicate "None." If a specific item does not apply, they must indicate "N/A." The OIC specialist may find it necessary to request additional information.
- For individual taxpayers, all supporting documentation listed in the Checklist of Required Items located on Page 2 of Form FTB 4905PIT must be submitted. The OIC specialist may find it necessary to request additional information.

The OIC specialist will evaluate all submitted 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

As a condition of approval, we may require the taxpayer to enter into a collateral agreement. A collateral agreement is a contractual agreement between the taxpayer and FTB.

Generally, a collateral agreement may be required if the taxpayer has significant potential for increased earnings. A collateral agreement may also be required if the taxpayer has an asset with significant equity that might be liquidated within a reasonable time. By signing a collateral agreement, the taxpayer agrees to pledge to FTB a percentage of income that exceeds a specified threshold amount. This may include income from the sale of assets. Generally, the collateral agreement period is five years.

After acceptance of an OIC, an individual taxpayer must continue to file their returns and pay any future tax liabilities timely, or their OIC may be rescinded and the original amount of the compromised liability reinstated.

**Note:** Taxpayers should *not* submit payment with their offer. They should wait until FTB requests the funds and then submit payment by cashier's check or money order.

## Reference

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[Revenue and Taxation Code Section 19443](#)  
[Offer in Compromise public webpage](#)  
[Form FTB 4905BE](#)  
[Form FTB 4905PIT](#)  
[Form DE 999CA](#)

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

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**Last Revision: 06/13/2018**



## 9.2.1.1 Decedent Estate Proceedings

### Background

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An estate is a taxable entity that comes into existence upon the death of the taxpayer (the decedent). The estate is comprised of all the decedent's assets and will be distributed on behalf of the decedent by one of the following methods:

- A court process known as probate, or
- By the way of a trust or similar legal device, that established prior to the death of the taxpayer, or
- In some instances, the assets may be transferred directly to beneficiaries of the estate.

Probate is one such method in which the decedent's assets are distributed from the estate, specifically, probate is a legal process through which certain assets of the decedent's debts are settled and the decedent's property is distributed from the estate to heirs and beneficiaries under the supervision of the superior/probate court. 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 the decedent does not have a will. 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.

### Purpose

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FTB employee must ensure that probate matters are pursued diligently in the superior/probate court.

### Responsibility

---

The probate process begins when a petition is presented to the Probate Court in the county where the taxpayer died or owned real property. Ordinarily, a decedent's estate is administered and settled by personal representative (either an "executor or an "administrator") who, by the granting of general letters testamentary or general letters of administration (i.e., a will), is empowered to take charge of the decedent's estate. These

letters establish the fiduciary responsibility and authority of the personal 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.

The personal representative of the decedent's estate is required to make a reasonable effort to identify creditors of the decedent. The personal representative is required to provide any reasonably ascertainable creditor with a [Notice of Administration of a Decedent's Estate \(Notice\)](#). The notice is to be provided within 90 days after the date the personal representative receives letters of administration or within 30 days from when the representative first has knowledge of the creditor.

Creditors of a decedent, including a state agency, are required to file a claim in the estate proceedings within specific timeframes to obtain payment of a debt. The FTB's recourse when estate assets have been distributed before a claim is filed is to pursue a transferee assessment against the beneficiaries that received the estate assets. (See [CPM section 9.2.2.3](#))

After determining that the taxpayer is deceased and notification has been received from the personal representative, the Decedent Team will need to determine if a probate claim needs to be filed. However, if notification has not been received from the personal representative, 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.

### **Notification of Death**

FTB employee obtains information that a taxpayer is deceased from many sources.

The [Department of Vital Statistics](#) provides FTB employee with monthly updates of deaths occurring in California since 1995. FTB employee use this information to automatically update the Taxpayer Status *field* on the Taxpayer Status Display field. ((\*\*\*\*))

FTB employee also obtain decedent information from third party contacts such as; spouses, trustees, executors, executrixes, employers, attorneys, landlords, neighbors, and relatives by any of the following:

- Correspondence
- Telephone contact resulting from notices or bills issued in the taxpayer's name
- Returned mail marked *deceased*

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

## Action

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When a taxpayer is deceased:

- Obtain verification of the date of death from:  
Lexis/Nexis using SSN if unable to locate DOD, search Death records using name and DOB
- Copy of the Death Certificate (fax copy is okay)
- Legacy.com (and then select more options.)
- [Social Security Death Index](#)

Code TI with date of death and the case will auto route to ARCS decedent functional state.

- Check ARCS account history. If TI has been coded with a DOD and the account has never auto-routed to the decedent unit, route the case to Initial Hold DC01.
- Always check for a liable spouse with a separate ARCS account and check payor file for assets or banks to pursue.
- Collection actions may continue against a surviving liable spouse. A surviving liable spouse may be a good source of information regarding the decedent's assets and whether or not a probate exists for the decedent's estate. Please contact the Decedent Team using the email ID: ((\*\*\*)
- If surviving spouse calls on a non-joint tax year, regardless of the ARC's functional state, assist him/her following your unit procedures then transfer call to the decedent ACD (see internal contact list), send an email to: ((\*\*\*)
- If the account is flagged deceased in error and TP is calling, assist him/her. If you are unable to remove the deceased flag in TI, ask your lead to remove it. This call does NOT need to be transferred to the decedent team. If TP has an ARCS account, route it to ((\*\*\*)
- ((\*\*\*) If there is a liable spouse with no separate ARCS account, send an email to: ((\*\*\*) to check probate. If no probate is located they might suggest that you continue the collection actions on the surviving liable spouse.

**Note:** If there is a trust with possible assets, send an email to: ((\*\*\*) For Immediate assistance contact the decedent leads (see internal contact list). The Decedent Unit may decide to take the case to pursue the trust.

\*\* Please note the response time is one to two business days when contacting the decedent unit through the mail ID: ((\*\*\*)

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

- Notification to Franchise Tax Board no later than 90 days after the date letters are first issued. ([California Probate Code Section 9202 \(c\)](#))
- 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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**Last Revision: 10/22/2018**

## 9.2.1.2 Transferee Assessments on Probated Accounts

### Background

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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.

### Purpose

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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 decedent's 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

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Every fiduciary who pays in whole, or in part, and claims (other than for taxes, expenses of administration, funeral expenses, and expenses of last illness or family allowances) is personally liable to the state for the unpaid taxes. A fiduciary is only required to use a reasonable diligent effort to identify potential creditors. The fiduciary cannot be held liable for payments made if they were not aware of the claim.

In instances where the fiduciary knew of the liability and elected not to resolve it, the representative can be held personally liable for the outstanding liabilities of the decedent.

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

## Action

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In order to hold the fiduciary personally liable, the Franchise Tax Board (FTB) must first prove that the assets were improperly distributed in violation of the order of priority and the fiduciary had personal knowledge of our claim to the estate assets.

### Transferee Liability of Beneficiaries with Probate

Beneficiary liability is not dependent upon knowledge of the decedent's liability, but revolves on proof of the transfer of assets without consideration. When the estate fails to pay taxes, the transferee process affords the state a separate remedy to satisfy the outstanding tax liabilities of the decedent. Probate Code Section [9203](#) allows that if property in an estate is distributed before the expiration period for a public entity to file a claim, that entity has a claim against the distribution to the full extent of the public entities claim. The beneficiary assumes a liability equal to the amount of the unpaid tax liability to the extent assets were received.

### Transferee Liability of Beneficiaries without Probate

In an estate that has not been probated, the beneficiaries can be pursued for the open liabilities. In general, under the Probate Code Section [13109](#), a person is individually liable for the unsecured debts of a decedent when that person received payment or property from a decedent's estate. When no probate is opened, and assets were distributed, FTB can pursue collection of the balance due on the decedent's account from each beneficiary to the extent of their share of the distribution of assets. Once the beneficiaries have been identified and the improper distribution has been established, demand letters should be issued to the beneficiaries.

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 or in Case Management under the Cases tab.

After transferee responsibility is established our next actions are listed below.

Consult with CAT before proceeding with the steps below.

- Send demand letters directly to fiduciary/beneficiaries.
- Request a copy of the final accounting directly from the probate court.
- If review of the information form either the fiduciary/beneficiaries or the probate court indicates improper distribution, then a demand for payment is sent directly to the fiduciary or beneficiaries of the estate.
- If no response or payment is received within 30 days, initiate a transferee assessment.
- Issue the Notice of Proposed Assessment manually, based on established audit procedures, allowing 60 days for protests.

((\*\*\*)

#### Protest of Transferee Assessments

- The transferee assessments that are protested are handled by CAT.
- Forward all protest information to CAT supervisor by email or inter-office mail, mail stop A240.
- The NPA can be appealed to Office of Tax Appeals.
- If the fiduciary and/or beneficiaries appeal the transferee liability, employee must wait until the appeal process has been completed before any actions are taken.

#### 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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**Last Revision: 06/13/2018**

### 9.2.1.3 Collector Responsibilities (Decedent Estate)

#### Background

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The collector has the responsibility to gather decedent information before accounts can be coded on TI and routed to the Decedent Functional Area.

#### Purpose

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FTB employee's must ensure accurate information and confirm deceased status of taxpayer.

#### Responsibility

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It is the responsibility of FTB employees to confirm that the taxpayer is deceased by using third party contact and/or on-line systems before the case is routed to the Decedent Team.

#### Action

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When the employee identifies or receives information that the taxpayer is deceased, the employee should do the following:

Confirm the deceased status and locate the date of death, before coding TI by doing the following:

- Review the death certificate provided by third party contacts via fax or correspondence.
- ((\*\*\*)
- ((\*\*\*) Locate obituary.

((\*\*\*) Comments in Taxpayer Folder (TPF) 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, the employee should immediately contact the Decedent Team lead with that information. This information should be uploaded to Case Management. The lead will then expedite filing of a creditor's claim.

The following information should be commented in the TPF:

- Name of estate, attorney, fiduciary, or executor
- Probate Number or Case Number
- Date of Death
- Executor Name

**Note:** Even if a taxpayer and/or spouse is deceased, you must work any correspondence unrelated to the Deceased Status on the account (i.e., penalty waiver request, tax computation, etc.)

## Reference

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((\*\*\*)

((\*\*\*)

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

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**Last Revision: 06/13/2018**

## 9.2.1.4 Surviving Liable Spouse

### Background

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

### Purpose

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

### Responsibility

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If a probate exists the Decedent Team will hold and monitor the account within their functional area.

### Action

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

### Reference

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

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

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**Last Revision: 06/13/2018**

## 9.2.1.5 State Tax Lien Against Deceased Taxpayer

### Background

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A notice of state tax lien recorded or filed before the taxpayer's date of death remains in effect against the property owned by the taxpayer and follows such property into the estate and is fully enforceable. A notice of state tax lien recorded or filed against the decedent after the date of death is also a valid lien against any probate property in the decedent's estate (but would not reach any property that passed to heirs automatically at the time of death). Notices of State Tax Liens against a deceased taxpayer should be issued in the name of the taxpayer only, not "Estate of."

### Purpose

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The notice of state tax lien recorded or 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

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It is the responsibility of Franchise Tax Board (FTB) employee to record or file notices of state tax liens against decedents when applicable and notify the personal representative and/or Administrator.

### Action

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If FTB employee are recording or filing a notice of state tax lien and know the taxpayer is deceased, a notice of state tax lien should be recorded or filed in the name of the deceased taxpayer only, do not include "Estate of." These liens should be user initiated through the Accounts Receivable Collection System (ARCS) ((\*\*\*) as follows:

- The fiduciary of the estate should be sent the Notification of State Tax Lien (FTB 4901). A lien recorded or filed in the name of the deceased taxpayer requires notification to the personal representative and/or Administrator of the estate to be enforceable.

## Reference

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((\*\*\*)

((\*\*\*)

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

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**Last Revision: 06/13/2018**

## 9.2.1.6 Probate Process

### Background

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After determining that the taxpayer is deceased and notification has not been received from the representative, 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. Probate information can be obtained through an online search for most counties. If the online search is not available, and the deceased is a California resident, probate information can be obtained by sending a Decedent Information Request [form FTB 4777](#), to the superior court clerk of the respective county at the time of death. For out of state taxpayers, Decedent Information Request [form FTB 9897](#) is mailed to the last known address on the Taxpayer Information (TI) System.

### Purpose

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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

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

### Action

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The Decedent Team completes the following probate claim processes:

- File timely creditor claims
- Amend claims
- Process probate settlement offers
- Withdraw resolved claims
- Take legal actions on rejected claims



- Pursue beneficiaries through transferee assessments

## 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 Section 19516](#)

[Revenue and Taxation Code Section 19517](#)

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

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**Last Revision: 09/24/2018**

## 9.2.2.1 Innocent Joint Filer Program

### Background

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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 the entire amount of tax due from either spouse/RDP who signed the joint tax return. However, provisions in the Revenue and Taxation Code (R&TC), provide that a taxpayer may be relieved from joint and several tax liability if that taxpayer meets the requirements for innocent joint filer relief. Generally, [R&TC Section 18533\(i\)](#) conforms to IRC Section 6015, the federal innocent spouse relief statute.

California innocent joint filer laws were first introduced in the 1970s. Throughout the years, these laws have been continually amended. In 1999, California conformed to related portions of the IRS Restructuring and Reform Act of 1998, and enacted the "California Taxpayer's Bill of Rights Act of 1999," which added provisions to [R&TC Section 18533](#) to expand the existing innocent spouse relief available to taxpayers.

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

There are six sections of the Revenue and Taxation Code (R&TC) that may provide a spouse relief from a joint tax liability:

- [\(R&TC 18533 \(b\)\)](#) Relief from Additional Tax
- [\(R&TC 18533 \(c\)\)](#) Relief by Separate Allocation of Liability
- [\(R&TC 18533 \(f\)\)](#) Equitable Relief
- [\(R&TC 18533\(i\)\)](#) Relief by IRS Determination
- [\(R&TC 19006\(b\)\)](#) Relief by Court Order
- [\(R&TC 19006\(c\)\)](#) Relief from Return Tax

**Note:** All questions regarding Innocent Joint Filer or Registered Domestic Partners (RDP) should be referred to the Innocent Joint Filer Program.  
(\*\*\*\*)

## Purpose

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

## Action

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The basic requirements for requesting Innocent Spouse relief are:

- A joint return was filed for the year(s) relief has been requested.
- Income was omitted, or erroneous deductions caused the liability
- Self Assessed Joint liability was not satisfied

A taxpayer or representative, who wishes to submit a request for innocent joint filer relief must complete and submit an FTB 705, *Innocent Joint Filer* application, and provide a supporting statement explaining why the taxpayer believes he or she qualifies for relief as an innocent spouse.

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

- Copy of all correspondence with IRS regarding a request for federal innocent spouse relief for the tax year at issue.
- Copy of any applicable court orders (if the taxpayers are divorced or legally separated).
- Completed [FTB 3520, Power of Attorney](#), if the taxpayer has a representative.

The request must be mailed to:

INNOCENT JOINT FILER PROGRAM MS A452  
**FRANCHISE TAX BOARD**  
PO BOX 2966  
RANCHO CORDOVA, CA 95714-2966

## Responsibility

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The Innocent Joint Filer Program is responsible for recommending approval/denial of the requests for relief of a spouse's liability.

We send a letter to the requesting taxpayer or representative notifying them we received the request for innocent spouse relief.

- Generally, we suspend all collection actions against the requesting taxpayer. However, we keep the taxpayer's state tax refund and we may submit account information to the Federal Treasury Offset Program to offset the taxpayer's federal tax refund. If we grant relief, the taxpayer may be entitled to a refund. Interest continues to accrue while we review the request.
- The specialist writes a letter to the requesting spouse/RDP or representative informing them of the legal requirements for relief, and requests specific documentation.
- The specialist notifies the non-requesting spouse of the request for relief, and requests specific information and documents to assist FTB in making its determination of the requests for relief.
- Once a determination is made, the specialist issues a Notice of Action or a Notification to each taxpayer to advise them of FTB's determination, and their right to appeal the determination to the Office of Tax Appeals (if applicable).

### **Provisions for Relief of Liability**

Section 18533 provides four types of innocent spouse relief for California taxpayers, traditional innocent spouse relief, relief by separate allocation of liabilities, equitable innocent spouse relief, and relief by IRS determination.

### **Traditional Relief from Additional Tax – R&TC Section 18533(b)**

To qualify for relief from additional tax, a taxpayer must meet **all** of the following conditions:

- Filed a valid joint tax return for the tax year.
- On the tax return, there is an understatement of tax attributable to erroneous items of the other individual filing the joint tax return.
- The person requesting relief establishes that in signing the joint tax return, he or she did not know of, and had no reason to know of, that understatement.
- Taking into account all the facts and circumstances, it is inequitable to hold the requesting individual liable for the tax deficiency attributable to that understatement.

- The individual requests relief within the applicable statute of limitations for requesting relief.

### **Relief by Separate Allocation of Liability – R&TC Section 18533(c)**

Under this type of relief, we review the joint tax return to determine which spouse/RDP is responsible for the assessed additional tax, penalties, and interest. We assign the liabilities to the responsible spouse/RDP. To qualify for this type of relief, we require that the taxpayer file a joint tax return and meet **all** of the following conditions:

- The requesting taxpayer was divorced, legally separated, terminated a registered domestic partnership, or lived apart from the other individual who filed the joint tax return for 12 months prior to making the request for relief.
- The individual who requests relief has the burden of proving his or her portion of any deficiency.
- However, relief is not available if FTB demonstrates that the requesting spouse had actual knowledge of the item(s) giving rise to the deficiency at the time the tax return was signed.
- They submitted a completed [FTB 705, Innocent Joint Filer](#) within the applicable statute of limitations.

### **Equitable Relief – R&TC Section 18533(f)**

- If a taxpayer filed a joint tax return and does not qualify for relief for a deficiency under [R&TC Section 18533\(b\)](#) or (c), FTB will then consider whether the requesting spouse should be granted discretionary equitable innocent spouse relief under section (f). Section (f) applies to self-assessed unpaid taxes reported on a joint return and deficiency assessments.
- In making its determination on whether to grant equitable innocent spouse relief under section (f), FTB looks for guidance to IRS Revenue Procedure 2013-34. This document provides a list of factors that the IRS uses in making a determination whether to grant equitable relief.

Some of the factors we consider include:

- Current Marital/RDP status.
- If the requesting spouse is no longer married to the non-requesting spouse this factor weighs in favor of relief.

- If the requesting spouse is still married to non-requesting spouse this factor is neutral.

#### Economic Hardship

- If denying relief will cause the requesting spouse economic hardship this factor will weigh in favor of granting relief.
- If denying relief will not cause the requesting spouse to suffer economic hardship this factor will be neutral.

#### Knowledge or Reason to Know

- If the requesting spouse is able to demonstrate that he/she experienced abuse including physical or emotional abuse from a spouse/RDP or was restricted access to financial information it will weigh in favor of granting relief even if the requesting spouse knew or had reason to know of the items giving rise to the deficiency/underpayment.
- Legal obligation such as a divorce decree or court order that provides who is legally responsible to pay the tax liability
- Whether the requesting spouse received a significant benefit from the understatement or erroneous items that created the liability.
- The requesting spouse's compliance with income tax in taxable years following the year at issue.
- Whether the requesting spouse was in poor physical and mental health.

#### **Relief by IRS Determination – 18533(i)**

If the IRS granted innocent spouse relief, we may grant relief from self-assessed unpaid state tax liabilities or an assessed deficiency of additional taxes.

To qualify for this type of relief the taxpayer must meet all of the following conditions:

- Filed a valid joint tax return for the tax year.
- Submitted a completed FTB 705, *Request for Innocent Joint Filer Relief*.

- All applicable facts and circumstances are the same for the federal and state income tax liabilities.
- Provide a copy of the final IRS determination letter showing that the IRS granted full or partial relief.
- The IRS granted relief for the same tax year(s).

### **Relief by Court Order – R&TC Section 19006(b)**

Under this statute, a taxpayer who is in the process of obtaining a divorce can seek to have the divorce court issue an order relieving him or her of an unpaid joint tax liability.

A taxpayer may qualify for relief by court order if:

S/he obtained a divorce/termination of registered domestic partnership from his/her spouse/RDP, and the court issued an order relieving him/her of the unpaid tax due from a joint liability. The following items must be included in the divorce/registered domestic partnership termination court order:

- A specific reference to California state income tax.
- The specific tax year(s) for which the taxpayer is requesting relief.
- The amount or percentage of the total tax liability each taxpayer is responsible for paying.
- A court order alone is not effective for FTB to revise the joint liability if the gross income reported on the tax return exceeds \$150,000, or the tax liability exceeds \$7,500. If these amounts are exceeded, the taxpayer must obtain from FTB, and file with the court, a Tax Revision Clearance Certificate. A court order that incorporates the certificate becomes effective when served on FTB.
- If a taxpayer has not provided the court with the certificate during the divorce proceeding, he or she may return to court and request that the court reopen the divorce proceeding to provide the requested relief.
- A taxpayer may only be relieved of income that he or she did not manage, control, or earn. No relief is available where the tax has been paid.

**R&TC 19006(c)) Relief from Return Tax**

If the joint tax liability is not revised by a court order or if it was revised by the court but the order did not separately state the tax liabilities for the tax years for which the revision is granted, a spouse may seek relief from paying the tax liability, including interest and penalties shown on a jointly filed return. To qualify for relief, all of the following requirements must be met:

- The individual seeking relief filed a joint return.
- The tax is not fully paid (a paid tax liability cannot be relieved).
- The individual seeking relief establishes that he or she did not know of and had no reason to know of the nonpayment when the return was filed.

The determination is made without regard to community property laws.

**California Stand Alone Provisions (No Corresponding Federal Provisions) Which Grant Relief From:****Community Income – R&TC Section 18534**

If the requesting taxpayer failed to report community income on a married filing separate tax return, s/he may be entitled to relief if s/he meets **all** the following conditions:

- FTB issued a Notice of Proposed Assessment (NPA) as a result of unreported community income, or the requesting taxpayer did not include an item of community income on their separate tax return for that taxable year.
- The requesting taxpayer must show that s/he did not know of, and had no reason to know of, that community income item.
- Proof that the unreported income was attributable to the requesting taxpayer's spouse/RDP.
- The requesting taxpayer must show it would be inequitable to hold him or her liable for the unpaid tax or the Notice of Action amount.
- Notice of the request for relief is provided to the other joint filer.

The taxpayers have a right to appeal to the Office of Tax Appeals only if the appeal is based on a protest of the NPA.



**Note:** If FTB employees receives written request from the taxpayer, and that does not contain all the necessary documentation, the information should be referred to the Innocent Joint Filer Unit. The information should be uploaded to the Taxpayer Folder (TPF). A Case Management case should be open and information be sent to the Special Programs workbasket. If additional information is required, the specialist handing the case will request the information from the taxpayer.

To verify that the taxpayer has been granted relief look for the Non-Liable Spouse (NLS) transaction code on TI. The code will be viewable on the Tax Year Information screen. The code will read Full NL or Partial NL.

## 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](#)  
[Form FTB 714](#)  
[Form FTB 705](#)

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

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