

TAX COMPLIANCE GUIDELINES

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INTRODUCTION

The Employment Development Department (EDD) administers the Unemployment Insurance (UI) and Disability Insurance (DI) programs for the State of California. The EDD Tax Branch collects contributions for UI, DI, and the Employment Training Tax (ETT). The contributions are used to fund the UI, DI, and employment training programs. These programs provide financial assistance to individuals who:

- Become unemployed through no fault of their own.
- Are in need of occupational retraining to help them return to the workforce.
- Are too ill or injured to work due to non-work related causes.

Tax Branch collects California Personal Income Tax (PIT) that employers withhold from their employees' wages. When these funds are remitted to the EDD, they are transferred to the Franchise Tax Board (FTB). In addition, Tax Branch has contracted with the Department of Industrial Relations (DIR) to collect various fees and penalties.

Collection Division (CD), a division within Tax Branch, is responsible for administering the employment tax and benefit overpayment collection programs. The employment tax programs are designed to encourage voluntary compliance by employers, claimants, and their representatives. Involuntary collection action may be necessary to reach the goal of full compliance.

The principal mission of CD is to maximize accounts receivable collections and promote voluntary compliance. CD has programs that qualifying employers may use if the full liability cannot be paid. Programs include offers in compromise and installment programs. CD may use statutory involuntary collection action to collect contributions from employers and responsible persons. CD secures delinquent tax returns to ensure timely and prompt resolution of claims for benefits and collects liabilities that are owed to the EDD.

INTRODUCTION
(cont'd.)

CD must responsibly serve the needs of the people of California in an efficient and effective manner. CD strives to incorporate a balanced approach by providing quality customer service while posting unfiled tax returns to the system and collecting final liabilities.

CD is comprised of three major operations:

- Central Operations (CO)
- Field Operations (FO)
- Administration Section

**COLLECTION
PROGRAM
FUNCTIONS**

CO and FO staff conducts tax collection activities on assigned and unassigned delinquent accounts that include:

- Working with employers, internal customers, and other governmental agencies to collect and, in some instances, resolve tax liabilities and delinquencies.
- Ensure long-term compliance with the California Unemployment Insurance Code (CUIC).
- These activities include:
 - Initiating appropriate action for the timely and efficient resolution of delinquent returns and taxes.
 - Monitoring installment agreements.

**CENTRAL
OPERATIONS
FUNCTIONS**

CO provides the following essential advisory and/or support services to:

- Provide customer service and account resolution to employers and claimants who contact the EDD because they received delinquency notification(s) and/or collection activities were commenced against the employer and/or responsible person.
- Process bankruptcy and probate claims.
- Process Notices of State Tax Lien, including subordination and partial releases.
- Process liquor and contractor license holds.
- Assist with complex legal problems and refer complex cases to the Office of the Attorney General for advice and in some cases counsel.
- Administer the Offer in Compromise (OIC) program.
- Facilitate Interagency Intercepts.
- Collect UI and DI benefit overpayments.
- Collect various DIR fees and penalties.
- Attend tax hearings on behalf of the EDD.

**FIELD
OPERATIONS
FUNCTIONS**

FO conducts collection activities on the assigned delinquent tax accounts that may require collection actions and contact with employers, representatives, and responsible persons for resolution.

A field investigation is often necessary in order to resolve a delinquent account. Field staff are permitted to conduct on-site meetings with employers at their places of business. Field staff may also conduct inspections to evaluate business activities and properties.

**FIELD
OPERATIONS
FUNCTIONS**
(cont'd.)

FO also provides the following functions:

- Attend tax hearings on behalf of the EDD.
- Initiate holds on liquor, farm labor, and contractor licenses.
- Initiate compliance complaints and citations.
- Initiate the issuance of warrants for the seizure and sale of real and personal property.
- Meet with delinquent taxpayers to secure payment of amounts due, review financial statements, and determine ability to pay.
- Receive and respond to initial contacts that request subordination of liens.
- Initiate collection actions.

**PROMOTE
VOLUNTARY
COMPLIANCE**

To improve service to employers, maintain good customer service, and encourage voluntary compliance with the CUIC, Tax Branch provides the following:

- California Employer Newsletter
- *California Employer's Guide* (DE 44)
- *Household Employer's Guide* (DE 8829)
- Internet access to the EDD at www.edd.ca.gov
- Outreach seminars
- Small Business Employer Advisory Committee
- e-Services for Business
- Facebook, Twitter, and YouTube

**AUTHORITY TO
ENFORCE
COLLECTION**

The laws authorizing CD to enforce collection activities are contained in the following:

- Business and Professions Code
- Civil Code
- Code of Civil Procedure
- Commercial Code
- Corporations Code
- Family Code
- Government Code
- Penal Code
- Probate Code
- Revenue and Taxation Code
- California Unemployment Insurance Code
- United States Bankruptcy Code
- United States Code
- California Code of Regulations
- Code of Federal Regulation

When voluntary compliance is not obtained, CD may take involuntary collection actions. These actions may include:

- Citation hearing
 - Compliance complaint
 - Earnings Withholding Orders for Taxes (EWOT)
 - Earnings Withholding Orders (EWO)
 - Lien on cause
 - Notice of Levy (NOL)
 - Notice of State Tax Lien
 - Intercept
 - Personal responsibility assessment
 - Successor liability assessment
 - Warrant
 - Summary Judgement
-

**COLLECTION
POLICIES**

The EDD follows the collection practices contained in the Rosenthal Fair Debt Collection Practices Act (RFDCPA) cited in Sections 1788 through 1788.33 of the Civil Code. The EDD endorses the principles listed in the RFDCPA in an effort to ensure that CD exercise fairness, honesty, and regard for the rights of the taxpayer during collection activities.

Below are guidelines to be used when contacting taxpayers:

- When talking with the taxpayer:
 - Be a good listener.
 - Speak in a clear and precise manner.
 - Be considerate of the diversified employer community.
 - Be flexible in setting appointments.
 - Keep the appearance and/or tone of your voice professional.
 - Treat the taxpayer in a fair and equitable manner.
 - Verify information supplied by the taxpayer.
-

**PROHIBITED
COLLECTION
ACTIVITIES**

The following types of activities are prohibited under the RFDCPA, and Tax Branch staff is not to use these collection activities:

TYPE OF ACTIVITY	EXAMPLES OF IMPROPER ACTIVITY
Harrassment	<ul style="list-style-type: none"> • Use obscene or profane language. • Contact a taxpayer without identifying oneself as a representative of the EDD. • Make a taxpayer accept a collect phone call or pay for a telegram. • Communicate by phone or in person with the taxpayer with such frequency as to be unreasonable and thus cause harassment. • Cause a phone to ring repeatedly or continuously to annoy the taxpayer. • Use involuntary collection actions (i.e., liens, warrants, offsets) while the employer is bankrupt.
Make threats against the taxpayer	<ul style="list-style-type: none"> • Use, or threaten to use, violence or to inflict physical harm to the person, reputation, or the property of any person. • Tell a taxpayer they have committed a crime. • Disclose information about the taxpayer to a third party that would defame the taxpayer. • Tell a taxpayer they will be arrested or imprisoned. • Threaten to take property (i.e., by lien, warrant, offset, etc.) unless such action is contemplated and permitted by law.

**PROHIBITED
COLLECTION
ACTIVITIES**

(cont'd.)

TYPE OF ACTIVITY	EXAMPLES OF IMPROPER ACTIVITY
Providing false information to a taxpayer or about a taxpayer	<ul style="list-style-type: none"> • Use of false names in the performance of their duties. • Falsely state or imply: <ul style="list-style-type: none"> ○ That you are an attorney. ○ That legal papers being sent to the taxpayer have been written by an attorney. ○ That the collector works for a consumer reporting agency or that the taxpayer will be reported to one. • Misinform the taxpayer regarding the purpose of the collection action. • Misinform the taxpayer concerning their legal rights in the collection of the debt.

**PROHIBITED
COLLECTION
ACTIVITIES**
(cont'd.)

TYPE OF ACTIVITY	EXAMPLES OF IMPROPER ACTIVITY
Unfair collection activity/practices	<ul style="list-style-type: none"> • Communicate with a taxpayer's employer unless necessary to collect the debt. • Communicate with a taxpayer's family except to locate the taxpayer and/or assets. • Refer the taxpayer's name to a list commonly called "Deadbeat List." • Print anything on an envelope other than the name, address, and phone number of the tax collector or taxpayer. • Initiate judicial proceedings in a county other than the county in which the taxpayer incurred the debt or in the county where the taxpayer resides. • Initiate judicial proceedings against a taxpayer when there is no legal right to do so. • Communicate with the taxpayer, other than with statements of amounts due, when the taxpayer has requested their attorney represent them (unless the attorney fails to communicate with the collector). • Collect amounts greater than the debt due.

**REPORT
DELINQUENCIES**

A tax report delinquency occurs when an employer fails to file the required reports electronically or online through e-Services for Business at www.edd.ca.gov/e-Services_for_Business, to comply with the e-file and e-pay mandate, within the time limits established by the California Unemployment Insurance Code (CUIC).

Assembly Bill (AB) 1245 requires all employers to file employment tax returns and wage reports electronically and remit payroll tax deposits by Electronic Funds Transfer (EFT) to the EDD. This requirement will be referred to as the e-file and e-pay mandate.

January 1, 2017: Employers with 10 or more employees were required to file electronically and pay by EFT.

January 1, 2018: All remaining employers are required to file electronically and pay by EFT.

For more information on this mandate, visit www.edd.ca.gov/EfileMandate.

Since January 18, 2011, the reports required of most employers are:

FORM	CUIC SECTION
<i>Payroll Tax Deposit, DE 88ALL</i>	1088(b)
<i>Employer of Household Worker(s) Quarterly Report of Wages and Withholdings, DE 3BHW</i>	1088
<i>Employer of Household Worker(s) Annual Payroll Tax Return, DE 3HW</i>	1088
<i>Quarterly Contribution Return and Report of Wages, DE 9</i>	1088(a)
<i>Quarterly Contribution Return and Report of Wages (Continuation), DE 9C</i>	1088(a)

**REPORT
DELINQUENCIES -
HISTORICAL**

Between January 1, 1995, and December 31, 2010, the reports required of most employers were:

FORM	CUIC SECTION
<i>Payroll Tax Deposit (DE 88)/Payroll Tax Deposit Return Envelope (DE 88E), DE 88/DE 88E</i>	1088(b)
<i>Quarterly Wage and Withholding Report, DE 6</i>	1088(a)
<i>Annual Reconciliation Statement, DE 7</i>	1088(e)
<i>Quarterly Contribution Return (Voluntary Plan), DE 3D</i>	1088(c)
<i>Employer of Household Worker(s) Quarterly Report of Wages and Withholdings, DE 3BHW</i>	1088
<i>Employer of Household Worker(s) Annual Payroll Tax Return, DE 3HW</i>	1088

REPORT TYPES**PAYROLL TAX DEPOSITS**

Section 1088 of the CUIIC requires that a subject employer file *Payroll Tax Deposits* (DE 88) electronically or online through e-Services for Business at www.edd.ca.gov/e-Services_for_Business to comply with the e-file and e-pay mandate to:

Pay employer taxes of Unemployment Insurance (UI) and Employer Training Tax (ETT).

Submit deposits of Disability Insurance (DI) and Personal Income Tax (PIT) withheld as required by law.

Deposits of UI and ETT are due quarterly, while withholdings of DI and PIT are generally due at the same time as federal due dates. Penalty and interest are charged on late deposits.

For payroll tax deposit payments that are not made electronically, there is a 15 percent penalty on the amount due.

Effective January 1, 2017, credit cards will be accepted as an electronic payment that satisfies both the AB 1245 e-file and e-pay mandate Sections 1088(h)(1) (2) and 13021(d)(1) of the CUIIC. As a result, employers using credit cards to remit DE 88 payments beginning January 1, 2017, will not incur a 15 percent non-compliance penalty.

QUARTERLY CONTRIBUTION RETURN AND REPORT OF WAGES (CONTINUATION) (DE 9C)

Employers are required to file a DE 9C electronically or online through e-Services for Business at www.edd.ca.gov/e-Services_for_Business each quarter with the following information:

- The name and Social Security number of each employee.
- Total subject wages for each employee.
- The PIT wages for each employee.
- Amount of PIT withheld for each employee.
- Grand total of subject wages, PIT wages, and PIT withheld for the quarter.

**QUARTERLY
CONTRIBUTION
RETURN AND
REPORT OF
WAGES
(CONTINUATION)
(DE 9C)
(cont'd.)**

The DE 9C is due January 1, April 1, July 1, and October 1 each year. If the filing due date falls on a Saturday, Sunday, or legal holiday, then the filing date is the next business day. The DE 9C is delinquent if not received electronically within 30 days after the due date.

The information from the DE 9C is used to:

- Post wage information.
- Calculate UI and DI benefits.
- Update the Franchise Tax Board (FTB) PIT Table, which provides PIT withholding figures.

Even if an employer has no employees for a particular quarter, but anticipates employees in future quarters, a DE 9C must be filed quarterly, either electronically or online through e-Services for Business. An automated search identifies missing returns and issues a demand for the missing DE 9C.

After the demand is issued and the employer does not file a DE 9C, a Section 1114 of the CUIC penalty will be added. The Section 1114 penalty is \$20 (\$10 for periods prior to the 3rd quarter 2014) for every item listed on the DE 9C.

Penalties for non-compliance with the e-file and e-pay mandate are \$20 per wage item.

If a reporting error has been made on a previous DE 9C, a *Quarterly Contribution and Wage Adjustment Form* (DE 9ADJ) should be used to file the corrected information.

**QUARTERLY
CONTRIBUTION
RETURN AND
REPORT OF
WAGES (DE 9)**

Employers are required to file a DE 9 quarterly to reconcile payroll tax deposit payments submitted during the quarter for withholdings of DI and PIT, employer payments of UI and ETT, and to reconcile the total subject wages reported on the DE 9C. The DE 9 is due January 1, April 1, July 1, and October 1 each year. If the filing due date falls on a Saturday, Sunday, or legal holiday, then the filing date is the next business day. The DE 9 is delinquent if not received electronically within 30 days after the due date.

A final DE 9 must be filed within 10 working days after an employing entity closes a business.

A DE 9 must be filed each quarter even if there is no payroll during the quarter. If the employer fails to file a completed DE 9 within 60 days of the due date, an estimated assessment is issued for that quarter. In addition, a Section 1112.5 of the CUIIC penalty of 15 percent (10 percent for periods prior to the 3rd quarter 2014) of the estimated contributions and PIT withheld will be charged. Penalties for non-compliance with the e-file and e-pay mandate are \$50 per return.

If a reporting error has been made on a previous DE 9, a DE 9ADJ should be used to file the corrected information.

**QUARTERLY
WAGE AND
WITHHOLDING
REPORT (DE 6)**

Between January 1, 1995, and December 31, 2010, employers were required to file a *Quarterly Wage and Withholding Report* (DE 6) each quarter with the following information:

- The name and Social Security number of each employee.
- Total subject wages for each employee.
- The PIT wages for each employee.
- Amount of PIT withheld for each employee.
- Grand total of subject wages, PIT wages, and PIT withheld for the quarter.

The information from the DE 6 was used to:

- Post wage information.
- Calculate UI and DI benefits.
- Update the Franchise Tax Board (FTB) PIT Table, which provides PIT withholding figures.

Even if an employer has no employees for a particular quarter, a DE 6 must be filed quarterly if it is anticipated that there will be employees in future quarters.

After the demand was issued and the employer did not file a DE 6, a Section 1114 of the CUIIC penalty was added. The Section 1114 penalty is \$10 for every item listed on the DE 6.

If a reporting error was made on a previous DE 6, a *Tax and Wage Adjustment Form* (DE 678) was used to file the corrected information.

**ANNUAL
RECONCILIATION
STATEMENT
(DE 7)**

Between January 1, 1995, and December 31, 2010, employers were required to file an *Annual Reconciliation Statement* (DE 7) annually to reconcile tax deposit payments submitted during the year for withholdings of DI and PIT, employer payments of UI and ETT, and to reconcile the total subject wages reported during the year on the DE 6. The DE 7 was due on the first business day of the subsequent year and was delinquent if not postmarked on or before January 31 of that year. If January 31 fell on a Saturday or Sunday, the employer had until the next business day to file the DE 7 timely.

A final DE 7 was required to be filed within 10 working days after an employing entity closes a business.

If an employer failed to file a completed DE 7, an estimated assessment was issued for each active quarter on the employer's account. In addition, a Section 1117 of the CUIC penalty was charged. The Section 1117 penalty is \$1,000 or five percent of contributions, whichever is less. This penalty is after a demand had been sent and a DE 7 was not received within 45 days. When a DE 7 was received after or an assessment was issued, the penalty may have been reduced to five percent of total contributions due.

If a reporting error was made on a previous DE 7, a DE 678 was used to file the corrected information.

**QUARTERLY
CONTRIBUTION
RETURN (DE 3)**

Prior to January 1, 1995, employers were required to file a *Quarterly Contribution Return* (DE 3) (similar to a DE 9) and a *Report of Wages* (DE 3B) (similar to a DE 9C). The DE 3 was used by employers to report UI, ETT, and DI taxable wages and the amount of PIT withheld. All amounts due were submitted with the DE 3. The DE 3B was used to report each employee's name, Social Security number, and quarterly wages.

The DE 3/DE 3B had the same due and delinquency dates as the DE 9/DE 9C and the end of quarter DE 88 payment. Payment must accompany the DE 3, including all funds that were payable by the employer, as well as trust fund withholdings.

**COLLECTION
MANAGEMENT**

Collection management is defined as a series of actions taken to ensure that the interests of the people of California are fully protected. Collection management incorporates the successful integration of an automated collection system with individual case assignment for intensive collection actions. To protect the interest of the state, criteria have been established for how the collection inventory and cases are to be worked in both the automated centralized environment and for individual case assignment.

Adjustments may be made to case inventories:

- To equalize workloads.
- To allow for improvements in customer service to employers, taxpayers, claimants, other members of the public, and business communities with whom we serve.

Collection management includes the following:

- Applying a progressive system of collection actions and tools with involuntary actions taken only when all other voluntary actions are no longer effective.
- Providing accurate information and support to our customers.
- Evaluating and acting upon customer concerns or requests in an objective, impartial, and timely manner.
- Conducting Section 1735 of the California Unemployment Insurance Code (CUIC) investigations while pursuing collection of corporate liability.
- Identifying aged accounts to be worked and resolved.
- Utilizing staff and technological resources effectively.
- Resolving all accounts in an expedient manner.
- Transferring accounts when appropriate.

**COLLECTION
MANAGEMENT**
(cont'd.)

Questions concerning collection management should be directed initially to a manager for a discussion of specific local issues and how they impact the overall collection management process. Program management team members are also available to discuss collection management issues.

TIME FRAMES

To ensure timely collection resolution, specific tasks have been identified for effective collection management. In reviewing assignments, staff and managers will discuss cases or workloads that pose a particular challenge or offer a unique opportunity for professional growth and added program knowledge. Assignments that have not been worked within the time frames will be identified. A partnership between staff and management will then ensure that these assignments are fully worked in the most efficient and effective manner possible.

**REIMBURSABLE
ACCOUNTS**

In lieu of the contributions required by employers, an entity, as defined in Section 803(a) of the CUIC, may elect to reimburse the Unemployment Insurance Fund the cost of benefits paid to claimants. Reimbursable accounts generally are public entities hospitals, religious, charitable, educational, and nonprofit organizations. An application is required to be filed by the entity and approved by the EDD. Section 803(h) of the CUIC authorizes the EDD to terminate the election of any entity that is delinquent in the payment of advances or reimbursements required by the Director.

Notices of State Tax Lien (DE 2181) may not be filed on governmental agencies. If an entity is delinquent, the entity may be contacted. A meeting with the entity must be requested if payment in full is not made. In addition, an investigation to determine the responsible person for the entity should commence. The area program manager must pre-approve **ALL** compliance actions.

**CONTACT
EMPLOYER**

Professional conduct and demeanor are important when communicating with customers. The first contact with an employer gives them a lasting impression of the Employment Development Department (EDD). Employers expect and deserve quality customer service from every EDD employee. This expectation is consistent with the EDD Vision Statement. The first contact with an employer is an excellent opportunity to gain the employer's attention, cooperation, and full compliance.

Understanding and learning how to motivate people are important compliance enforcement tools. Developing these skills requires an insight of the business methods and characteristics of the individuals that make up the diversified employer community. Generally, you will encounter four basic types of employers:

- Willing to pay/able to pay
- Willing to pay/unable to pay
- Unwilling to pay/able to pay
- Unwilling to pay/unable to pay

Staff should develop, with training and experience, their own technique for motivating an employer to pay voluntarily. Experience leads to expertise.

Staff should also develop an approach to effectively deal with each of the four types of employers that may be encountered in collection activities. Knowing when and how to respond or initiate necessary action is a prerequisite to becoming an effective compliance person.

Contact with employers is made by letter, phone, office meeting, or field calls to the employer's place of business. The degree of urgency or type of collection assignment will determine the type of contact to initiate first.

**ENTITY
VERIFICATION**

California recognizes many types of business entities. The different entity types provide opportunities for people to raise capital in different ways and to limit the degree of personal liability. The six major forms of business entities are sole proprietorship, general partnership, limited partnership, limited liability partnership, limited liability company, and corporation. Corporations are the most popular form of a business entity.

Entity types and their descriptions are outlined below:

Sole Proprietorship

A sole proprietorship is one individual who owns and operates one or more businesses. The assets of the individual may be used to satisfy the liability of the business.

General Proprietorship

Sections 16100 through 16962 of the California Corporations Code (CCC) are known as the Uniform Partnership Act of 1994. As provided in Section 16101(9) of the CCC, a partnership is an association of two or more persons to carry on as co-owners of a business for profit.

The partners jointly own the firm and share in its profits or losses. Section 16306 of the CCC states that all partners are liable jointly and severally for all obligations of the partnership. The assets of the individual partners, as well as the partnership assets, may be used to satisfy the liability.

A partnership agreement may be formal or informal, written or oral. The intention to form a partnership may be determined from the acts, conduct, and statements of the parties. General partnerships originate in common law and do not require formal authorization.

Statement of partnership papers are filed with the county clerk or recorder's office and are indexed by the name of the partnership. All partners' names and addresses are listed on the statements.

**ENTITY
VERIFICATION**
(cont'd.)Dissolution of Partnership

Whenever a partnership is dissolved, a notice of the dissolution shall be published at least once in a newspaper of general circulation in the place where the business was operated. This notice is filed with the county clerk within thirty days after the publication.

Limited Partnership

Sections 15900 through 15912.07 of the CCC is known as the Uniform Limited Partnership Act of 2008. A limited partnership is a partnership formed by two or more persons, having members as one or more general partners and one or more limited partners.

Limited partners are not liable for any obligation of a limited partnership unless named as a general partner. The assets of the limited partnership and all general partners are jointly and severally liable for the full partnership debt.

The limited partnership is not dissolved if a limited partner withdraws, dies, or is substituted.

The words "limited partnership" or "L.P." must appear at the end of the firm name. Limited partners' names are not shown.

The Secretary of State (SOS) indexes certificates of limited partnership by the name of the limited partnership. The certificates will list the name and address of the general and limited partners, as well as the agent for service of process.

Foreign Limited Partnership

A foreign limited partnership is a limited partnership formed under the laws of any state other than this state or under the laws of a foreign country. A certificate of registration should be on file with the SOS. The same information as described above for a limited partnership will be shown, as well as the location where the partnership was formed.

Dissolution of Limited Partnership

A certificate of dissolution must be filed with the SOS. It will include the name of the limited partnership, file number, and the date of dissolution.

**ENTITY
VERIFICATION**
(cont'd.)**Limited Liability Company**

Sections 17701.01 through 17701.17 of the CCC are known as the California Revised Uniform Limited Liability Company Act. Limited liability companies (LLC) are a cross between a limited partnership and a corporation. The LLCs must have one or more members. The owners are designated as members instead of shareholders or partners.

In order to form an LLC, articles of organization must be filed with the SOS and a SOS file number will be issued. The LLC Unit within the SOS will provide copies of the documents and the date of filing.

The LLCs are treated as corporations for collection purposes. Members must be assessed under Section 1735 of the California Unemployment Insurance Code (CUIC) when individual responsibility is identified.

Limited Liability Partnership

Sections 16951 through 16962 of the CCC permit licensed persons to render professional limited liability partnership services. Limited liability partnerships (LLP) are limited in those businesses dedicated to the practice of public accountancy, law, architecture, engineering, or land surveying. The two types of LLPs are Registered Limited Liability Partnerships (RLLP) and foreign LLPs.

The assets of the LLP and a partner assessed under a Section 1735 of the CUIC assessed partner are responsible for the liabilities.

A RLLP is formed when a partnership, other than a limited partnership, files a registration with the SOS. It must be submitted by one or more of the partners authorized to execute a registration. A foreign LLP must be a registered LLP pursuant to an agreement governed by the laws of the foreign jurisdiction and denominated or registered as an LLP under the laws of that jurisdiction.

The name of the RLLP shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP."

**ENTITY
VERIFICATION**
(cont'd.)

LLPs possess some qualities of a partnership as well as some qualities of a corporation. The partners are required to be licensed under the provisions of the Business and Professions Code to practice law, professional accountancy, or architecture, or be related to a RLLP to provide facilities to or services related or complementary to the professional LLP.

Verification or copies of the registration documents for both entities are located in the Limited Liability Unit at the SOS.

The LLP members must be assessed under Section 1735 of the CUIIC to be held individually responsible for LLP tax liabilities.

Corporations

Sections 100 through 2319 of the CCC are known as the General Corporation Law. A corporation is an entity, separate and distinct from its members. The entity holds title to the assets. A corporation may be either domestic or foreign.

A domestic corporation operates and is incorporated in the state in which it is chartered. Section 200 of the CCC provides that applicants must file articles of incorporation with the SOS. A corporate account number is issued by the SOS.

A foreign corporation operates in California and is incorporated in another state. Section 2105 of the CCC sets forth the filing requirements for foreign corporations. The SOS will issue a certificate of qualification for a foreign corporation.

Private Corporation

The term "private corporation" refers to a corporation founded by and composed of private individuals for private purposes.

Public Corporation

The term "public corporation" refers to a corporation created by the State for political purposes and to act as an agency in the administration of civil government.

Nonprofit Corporation

The term "nonprofit corporation" applies to any corporation formed for other than profit reasons. A federal exemption under United States (U.S.) Code, Title 26 (Internal Revenue Code), Section 501(c)(3) must be obtained. Examples include religious, charitable, and education institutions.

**ENTITY
VERIFICATION**
(cont'd.)De Jure and De Facto Corporations:

These issues arise only in the formation stage of the corporation.

A **de jure** corporation is one that is organized in full compliance with all of the state requirements.

A **de facto** corporation operates as if it were a corporation although it has not completed the legal steps to become incorporated (has not filed its articles of incorporation, for example) or has been dissolved or suspended but continues to function. The court temporarily treats the corporation as if it were legal in order to avoid unfairness to people who thought the corporation was legal.

Termination

The corporate existence may be terminated by:

- Voluntary dissolution
- Involuntary dissolution
- Proceeding by the state

Suspension

Suspension of a corporation for nonpayment of franchise taxes under Section 23301 of the Revenue and Taxation Code does not terminate the corporate existence. The corporate entity remains the employing unit and legal entity that incurs liability under the CUIB by reason of any employment of persons and payment of wages during the suspension period.

**OTHER ENTITY
TYPES**Association

Section 21300 of the CCC defines an association as including any lodge, order, beneficial association, fraternal or beneficial society or association, historical, military, or veterans organization, labor union, foundation, or federation, or any other society organization, or association, or degree, branch, subordinate lodge, or auxiliary thereof. The association and a Section 1735 of the CUIB assessed responsible person are responsible for the liabilities.

**OTHER ENTITY
TYPES (cont'd.)**Estate

In case of death of a person, an executor of the estate may be named in a will. If no executor is named, or if no will exists, courts may appoint an administrator of the estate. Like trustees, executors and administrators are not usually considered employees of the estate, but perform services applicable under a fiduciary capacity. A new EDD employer payroll tax account number is not required unless employees are hired. The estate is the employing unit and is responsible for the liabilities.

Joint Venture

A joint venture is the undertaking of two or more persons or entities joined to carry out a single business transaction or operation. Its existence depends on the intent of the parties. A joint venture has neither a predecessor nor successor and the unity of enterprise theory does not apply. The joint venture ceases when the specific reason for its formation is complete. The joint venture is the employing unit and is responsible for the liabilities.

Public Agency

A public agency includes every governmental subdivision, district, public and quasi-public corporation, public agency and public service corporation, town, city, county, city and county, municipal corporation, whether incorporated or not. The public agency is responsible for liabilities.

Trust

A trust is the designation of a third party (trustee) to manage assets for the benefit of another party. A new employing unit is created if employment services are performed for the trust. The trust is the employing unit and is responsible for the liabilities.

FIRST PERSONAL CONTACT

The EDD's policy is to make timely contact with the taxpayer after case assignment. In general, 15 calendar days is considered to be a timely initial contact but may be adjusted, not to exceed 90 days, due to workload volume. Adjustment of contact time frames requires management approval. A representative's primary goal is to make the first contact within established time frames and to gain full compliance with an early resolution. Use of the phone is generally the most cost-effective way of speaking with the taxpayer.

Prior to contact:

- Analyze the account and the liability.
- Prepare to explain the liability.
- Have questions ready to update missing account information.
- Anticipate questions and have the answers.
- Be familiar with:
 - The EDD's policy on the Rosenthal Fair Debt Collection Practices Act, Sections 1788 through 1788.33 of the Civil Code.
 - Confidentiality policies.
 - *Employers' Bill of Rights* (DE 195).
 - The CUIIC and other California laws.
- Know the laws related to payment agreements and collection remedies.
- Determine the owner or authorized person to be contacted.

Making contact:

- Make sure you are speaking to the owner or authorized person.
 - Explain the purpose of your call. Make a demand for immediate payment in full of outstanding liabilities including filing and payment of delinquent returns.
 - Communicate clearly and do not use acronyms.
 - Explain the advantages of full compliance if the taxpayer cannot provide definite compliance dates.
-

IDENTIFY THE TAXPAYER

It is critical to speak to the person responsible for the payment of the liability. Confirm that the person who is contacted is the owner, partner, responsible person, or authorized agent. This may include someone having a power of attorney. An individual responsible for payment may not include the person who prepared the tax return, unless that tax preparer also has check writing authority. It is the responsibility of the employer to contact their accountant or bookkeeper for return adjustment information and to provide any power of attorney information.

PAYMENT HISTORY

Analyzing the taxpayer's payment history will assist in locating unapplied payments or payments that have resulted in a refund.

PHONE CONTACTS

Good communication requires the following skills:

SKILLS	DESCRIPTION
Speak clearly	Be precise and enunciate clearly.
Keep it simple	Communicate so the other person understands. Avoid the use of legal or technical terms unless it is absolutely necessary. Never use jargon or EDD acronyms that the customer may not understand.
Be objective	Do not allow personal thoughts or opinions to interfere with understanding the employer's financial problems.
Do not presume to know	Wait until there is sufficient information before making a decision and giving a response. Restate the conversation to ensure understanding.
Stay focused	Listen and understand what the taxpayer is trying to explain.

PHONE CONTACTS
(cont'd.)

SKILLS	DESCRIPTION
Balance the communication	Effective communication requires one speaker and one listener at a time. Each should have ample time to speak or respond without interruption.
Never argue	Keep the mood pleasant and professional.
Summarize the outcome of the call	Confirm agreements that have been reached and the dates and amounts that are due. Set up any follow-up dates if documents are to be provided.
Ask the right questions	Knowing when and how to ask specific questions is necessary.
Use option thinking	Consider all available alternatives to move the case forward to a rapid resolution.

A positive attitude contributes noticeably to performance, productivity, and good customer service. It is a skill that is developed individually.

Learn to use the tools and resources available and consider all options available.

OFFICE MEETING

Things to do before the taxpayer arrives:

- Schedule interview room.
- Complete all the steps in reviewing and analyzing the account.
- Review all of the documents that were previously submitted.
- Prepare a list of questions.
- Determine additional information needed to resolve report delinquencies.

**PREPARATION
FOR THE FIELD
CALL**

Be prepared to discuss the problems with the taxpayer at the place or location of the field call.

Items to take:

- Proper identification and business cards.
- *Contribution Receipt Book* (DE 10).
- Extra copies of forms the taxpayer may need.
- GPS or a current map.
- Laptop.

Things to do prior to leaving for the field call:

- Prepare travel itinerary in accordance with your office practices and policies.
- Sign out per your office practices and policies.
- Conduct a safety check of the vehicle to be used. If using a state vehicle, make sure the travel log, and accident report forms are in the glove compartment.
- Comply with additional office procedures and seek advice related to the business location.

**RETURNING TO
THE OFFICE**

Upon returning to the office, discuss any case issues or problems with the manager.

**COLLECTION
LETTERS**

Some taxpayers will respond to:

- Phone calls
- Field visits
- Letters

Each collection case requires individual treatment. Knowing when to use each type of contact is a skill that is acquired through experience.

The EDD has several form letters that may be used when corresponding with a taxpayer. The appropriate letter should be used. Every letter will contain the name of the representative or other authorized person familiar with the case and the office address and phone number.

Collection letters should be mailed as follows:

- Ordinary mail: Use in most cases.
 - Certified mail: Use if proof of delivery is necessary.
 - Certified mail with return receipt: Use if it is suspected that the taxpayer has moved and a receipt is needed to show the address of delivery.
-

ESCROW

Escrow is a contractual arrangement between parties, whereby an independent, trusted third party receives and disburses money or documents for the parties, with the timing of such disbursement dependent on the fulfillment of conditions set by the parties. Escrows are best known in the context of real estate, but are also used for other financial transactions. The escrow process guarantees that the property being purchased is free and clear of encumbrances, including Employment Development Department (EDD) liability.

The two most common types of escrows for the EDD collections are the sale or refinance of real property and the sale of a business. The escrow company will contact the EDD to determine the amount due and withhold money from the proceeds of the sale to remit to the EDD.

The escrow holder is required to withhold sufficient money from the proceeds of the escrow to cover any amounts due to the EDD. Failure to withhold may make the escrow holder liable for the full amount of any *Notice of State Tax Lien* (DE 2181).

In addition to escrows, there are other situations where the EDD may be contacted for a demand for payoff when there is a sale or transfer of assets, such as:

- Liquor license
- Personal property
- Real property
- Surplus funds

ESCROW
(cont'd.)

A DE 2181 is recorded in the county where the property is located and/or filed with the Secretary of State (SOS).

This chapter covers the different types of demands for payment that are requested from:

- Attorneys
 - Banks
 - County tax collectors
 - Escrow companies
 - IRS
 - Business owners
 - Private parties
 - Reconveyance companies
 - Title companies
 - Trustees in bankruptcy
 - Trustee services
-

**RESPONSIBILITY
FOR DEMAND
AND CLEARANCE**

The responsibility of issuing a demand and clearance has been divided as follows:

TYPE OF SALE OR TRANSFER	RESPONSIBLE AREA
Business with a liquor license	The Area Audit Office (AAO) issues escrow clearances on the sale of businesses for employers within their jurisdiction. Special Procedures Section, Offset Group (SPS, OG), processes the liquor license demand/transfer if there is a hold on the liquor license.
Business without a liquor license	Audit issue escrow clearances on the sale of businesses for employers within their jurisdiction.
Excess funds	SPS, OG
Home equity loans	Special Procedures Section, Lien Group (SPS, LG) - Full pay Special Procedures Section, Special Procedures Group (SPG, SPG) - Partial pay
Surplus funds	SPS, OG - Full pay SPS, SPG - Not paid in full
Liquor license	SPS, OG
Mortgage refinance	SPS, LG
Personal property	SPS, LG - Full pay SPS, SPG - Partial pay
Real property	SPS, LG

**RESPONSIBILITY
FOR DEMAND
AND CLEARANCE**
(cont'd.)

Field personnel who have case assignments may be requested to assist in the escrow process.

**SALE OF A
BUSINESS**

Section 1731 of the California Unemployment Insurance Code (CUIC) provides that any person or entity that acquires an employer's business or substantially all of the assets shall withhold in trust sufficient money or other property to cover the employer's liability. The withholding shall continue until the employer produces a certificate from the EDD stating that no amounts are due.

Section 1732 of the CUIC provides that upon the request of the seller or buyer, the EDD shall issue a statement showing the amount due by the seller. If the EDD fails to issue the statement within 30 days, it is equivalent to stating that there is no amount due. However, if the EDD issues the statement, the buyer shall withhold and pay to the EDD the amount due, not to exceed the purchase price.

If the EDD issues a certificate stating that no amounts are due or fails to issue an amount due statement within the 30-day period, the seller is still responsible for any amount then or thereafter determined to be due. However, the buyer is released from any further liability on the seller's account.

Section 1733 of the CUIC provides that any buyer that fails to withhold money or other property from the sale or fails to pay the amount withheld shall be personally liable for the employer's amount due up to but not exceeding the purchase price.

The EDD uses a *Certificate of Release of Buyer* (DE 2220) to notify the buyer that they are released from any further liability on the seller's account.

**SALE OF A
BUSINESS**
(cont'd.)Escrow Notification

When staff receives written notification of a pending business escrow, a copy of the notification should immediately be faxed to the appropriate responsible area. Staff will inquire if sufficient funds are available to satisfy the EDD liability and, if so, may not initiate further collection activity.

Demand and Clearance

The AAO is responsible for issuing escrow clearances on the sale of businesses. Escrow clearances are required when a business is either partially sold or sold in its entirety. When there is a partial sale of a business, the demand for delinquent taxes will include the total tax liability due from the seller.

The AAO will contact the assigned staff immediately upon receipt of an escrow clearance demand. The assigned staff may be asked for assistance on the account. The responsibility for the issuance of the DE 2220 remains with the AAO.

Statement of Amount Due

The AAO shall issue a Requirements for Certificate of Release of Buyer Statement of Amounts Due Under Section 1732 of the California Unemployment Insurance Code (DE 4874) showing the amount of any contributions, interest, and penalties claimed to be due. The DE 4874 should include all liabilities due as well as estimated assessments, final or non-final. Estimated assessments should be issued for any missing returns, including periods not yet delinquent. The DE 4874 is mailed to the escrow holder.

**SALE OF A
BUSINESS**
(cont'd.)Payments

The payment of any amount demanded in the DE 4874 shall be submitted to the AAO as directed.

The amount due must be paid in the form of cash, cashier's check, money order, or escrow check. Checks written on the seller's checking account will delay the escrow clearance until the check has cleared the account.

If any other enforced compliance is in effect, that action must be terminated or modified after the funds are received. The AAO will notify the assigned staff that funds have been received.

If sufficient funds are not available from the escrow process, collections should continue against the seller.

Certificate of Release of Buyer

A request for clearance on behalf of a buyer is granted using a DE 2220 when:

- The seller is registered and has
 - No open delinquency case.
 - No outstanding liabilities.
 - No outstanding form delinquencies.
- The seller is not registered and
 - The business has no employees.
 - The business is a type that would not require employees.
- The seller is disposing of a portion of the business and
 - A *Notice of State Tax Lien* (DE 2181) secures the full amount of the EDD liability, and
 - The remaining portion of property is sufficient to secure the EDD liability.
- The seller is not registered but
 - The business is a type that would require employees, then
 - The AAO will prepare an estimated amount due, and
 - Send a demand to the escrow company using form DE 4874.

**SALE OF A
BUSINESS**

(cont'd.)

Additional Requirements

When the seller's account has delinquent returns or missing payments, the buyer is notified that additional conditions must be met. A DE 4874, with instructions to withhold an amount equal to the known delinquent taxes plus any estimated amounts, is sent to the escrow holder with copies to each party. Additional conditions may include:

- Missing reports:
 - *Payroll Tax Deposit* (DE 88).
 - *Quarterly Contribution Return and Report of Wages* (DE 9).
 - *Quarterly Contribution Return and Report of Wages-Continuation* (DE 9C).
- Liability is due:
 - A Notice of State Tax Lien covers all unpaid amounts.
 - Liabilities are due that have not had a Notice of State Tax Lien filed.
- A final return is due:

Final returns must be filed within 10 days of closure of the business.

It is important to remember that the release of a buyer does not release the seller if any liability is identified in the future.

File Retention

All escrow information will be retained by the AAOs for one year.

EXCESS FUNDS The EDD may be notified of excess funds from foreclosure proceedings upon the real property of a taxpayer. Any entity having a legal claim filed against the foreclosed property may file a claim after the property has been sold. If funds remain over and above the claim of the foreclosure, those having junior liens will be paid from the excess funds according to their recording priority. The SPS, OG receives a copy of all notices of default and all notices of sale on properties having a Notice of State Tax Lien recorded. Claim information is provided and completed by SPS, OG.

HOME EQUITY LOANS When a taxpayer applies for a home equity loan requesting funds from a financial institution based upon real property owned, the request/demand is processed as outlined in the Real Property section of this chapter.

SURPLUS FUNDS The IRS will seize and sell assets when their tax liens have not been satisfied.

If there are surplus funds from the sale, the EDD may file a demand for these funds. The SPS, OG prepares and monitors all IRS surplus demands.

- LIQUOR LICENSE** When a business being sold has a liquor license, the following actions will be performed:
- The SPS, OG will only process the liquor license demand/transfer.
 - The SPS, OG will contact the assigned staff to verify any outstanding delinquencies and to confirm the amount to be included in the demand.
 - The AAOs will complete the escrow clearance process and issue a DE 4874 for any outstanding delinquencies.
 - When the AAO learns of a sale that involves both a business and its liquor license, it determines the status of the liquor license:
 - If the liquor license is clear, the AAO will complete the buyer release process.
 - If the liquor license has a hold on it, the AAO will notify SPS, OG.
-

**MORTGAGE
REFINANCE**

Taxpayers refinancing a mortgage on real property will need a clear title. When a Notice of State Tax Lien has been recorded, the lending institution will open an escrow and request a payoff demand of the Notice of State Tax Lien or a subordination of the Notice of State Tax Lien.

When assigned staff is made aware of a taxpayer's refinance action, advise the escrow holder to fax a demand request to SPS, LG.

**PERSONAL
PROPERTY**

Personal property is described as any property that is not classified as real property. Usually, the transferring of personal property is not handled through an escrow; however, the filing of a Notice of State Tax Lien with the SOS will provide notice to the buyer or a lender of delinquent tax liabilities.

When a Notice of State Tax Lien has been filed with the SOS, the escrow will be processed by SPS, LG.

Personal property includes, but is not limited to:

- Aircraft
 - Automobiles
 - Boats
 - Heavy equipment
 - Mobile homes
 - Office equipment
 - Recreational vehicles
 - Stock on hand
 - Tangible assets
 - Trucks
 - Vessels
-

REAL PROPERTY A title search will provide notice to an escrow holder or lender of a Notice of State Tax Lien encumbering real property. All Notices of State Tax Lien must be paid and released before title to the encumbered property is cleared.

When the escrow holder or lender is processing an escrow with respect to the encumbered property, they will send the EDD a demand for a payoff amount or the release of the recorded liens. In response to the request, SPS, LG will prepare either a demand for the liability covered by the Notices of State Tax Lien, or a status letter advising that the Notices of State Tax Lien have been released. The 30-day limitation described in Section 1732 of the CUIIC does not apply to the sale of real property.

The demand request must be in writing and sent to:

Employment Development Department
Lien Group, MIC 92G
PO Box 826880
Sacramento, CA 94230-6880

Or

Fax: 1-916-464-2711

Correspondence regarding a demand related to real property and covered by a Notice of State Tax Lien must be directed to SPS, LG.

**INVOLUNTARY
COLLECTION
DETERMINATION**

Involuntary collection action may be initiated immediately if any of the following situations occur:

- A taxpayer fails to:
 - Respond to Employment Development Department (EDD) notices or correspondence after being contacted by an EDD representative.
 - Respond to phone calls.
 - Provide requested information.
 - Remain current on an installment agreement.
 - Remain current on filing and paying quarterly requirements (active employers).
 - Make payments or payments are returned as “non-sufficient funds” or “stop payment.”
 - Negotiate an acceptable method of payment.
 - Appear for an interview.
- A taxpayer is:
 - In the process of liquidation of assets.
 - Moving out of the state/country.
 - Otherwise uncooperative or evasive regarding the business entity.
- If:
 - Bankruptcy appears imminent.
 - A jeopardy assessment has been issued.
 - It is necessary to protect the EDD’s interest.
 - The taxpayer has a history of non-compliance.
 - Assets are identified that were not disclosed by the taxpayer.
 - Statute of limitations is nearing expiration.

Care must be taken when deciding on the appropriate involuntary collection action. Staff must be able to distinguish between liability that is due or delinquent.

**TYPE OF
INVOLUNTARY
ACTION**

Involuntary actions can be taken using the following methods:

- Earnings Withholding Order for Taxes (EWOT), Jeopardy Withholding Order for Taxes (JWOT)
- Interagency offsets
- Notice of Levy (NOL)
- Warrants

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Accounts receivable	NOL – effective for one year
Aircraft	Warrant
Assets requiring an execution sale	Warrant
Assignee for benefit of creditors	NOL on the assignee to secure dividends that may be payable to the taxpayer, if the assignment has been recently terminated and there are funds to be returned.
Automobile	Warrant
Bank account	NOL
Boat/trailer	Warrant
Bonds: <ol style="list-style-type: none"> 1. Surety 2. United States (U.S.) Savings 3. Security deposits by other agencies 	<ol style="list-style-type: none"> 1. Claims filed by Special Procedures Section, Special Procedures Group (SPS, SPG) 2. Not attachable 3. Offset
Campaign funds	NOL

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Cash in possession of taxpayer	Warrant
Cash in possession of third party	NOL
Cemetery plot, land held for sale	Warrant
Cemetery plot, taxpayer's family/spouse	Not attachable
Certificate of deposit – matured	NOL
Church – bank account	NOL
Commissions plus salary	EWOT/JWOT
Commissions – straight	NOL if individual is treated as an independent contractor EWOT if individual is treated as an employee
Community property – other than wages	Issue an NOL or Warrant depending on type of asset When enforcement is being taken against the community property of a spouse who is not a taxpayer or is not personally responsible for the liability, the NOL or Warrant must explain this fact.
Consigned property – taxpayer's	Warrant
Consignment sales – proceeds	NOL
Contracts payable to taxpayer	NOL

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Denti-Cal payments	NOL
Disability Insurance (DI) benefits	Not attachable for taxes – can be offset for a benefit overpayment
Equipment: <ul style="list-style-type: none"> • Sale of Equipment <ol style="list-style-type: none"> 1. No escrow 2. With escrow 	Warrant <ol style="list-style-type: none"> 1. Warrant or NOL 2. Issue a demand to clear the Notice of State Tax Lien
Escrow funds: <ol style="list-style-type: none"> 1. Amounts covered by a Notice of State Tax Lien 2. Amounts not covered by a Notice of State Tax Lien 	<ol style="list-style-type: none"> 1. Issue a demand to clear the Notice of State Tax Lien 2. NOL
Financial institution accounts: <ul style="list-style-type: none"> • Banks • Credit Unions • Savings and Loans 	NOL
Funds held by Trustees in bankruptcy	Not attachable, unless they are funds to be returned to the taxpayer, then use NOL
Furniture and fixtures – commercial	Warrant
Furniture and fixtures – personal and residence	Not attachable

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Horse racing purse	NOL
Individual Retirement Account (IRA)	Not attachable
Inheritance	Warrant
Insurance dividends	NOL
Insurance proceeds – business: <ul style="list-style-type: none"> • Errors and Omissions • Malpractice Insurance • Fire Insurance • Interruption of Business • Personal Injury 	Warrant if proceeds are for personal property damage
Interest	NOL
Lien on cause	Refer to SPS, SPG
Life insurance policy – loan cash value	Warrant
Liquor – unopened	Warrant
Lottery – proceeds/winnings	Offset
Machinery	Warrant
Medi-Cal payments	Offset
Mobile home – dealer sales	Warrant
Motor vehicles – on-road/off-road	Warrant

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Partnership property	Warrant – Partnership property is not subject to levy for the individual debt of one of the partners incurred either prior to the formation or after the dissolution of a partnership.
Payments for services rendered to state agencies	Offset
Perishable items	Warrant – Requires special consideration for storage, board, care and maintenance, or immediate sale.
Personal property in warehouse	Warrant
Personal property being sold	<ul style="list-style-type: none"> • Warrant prior to the sale. • NOL to the buyer.
Progress payments (continuing periodic payments to taxpayer)	<ul style="list-style-type: none"> • Warrant – effective for two years. • NOL – effective for one year.
Promissory note	Warrant
Property in custody of the law	<p>Property that is no longer required for security and is to be returned to the taxpayer is subject to attachment (i.e., bail posted for a charge that has been cleared, property used as evidence, etc.).</p> <p>See property types in this table for the method of attachment.</p>
Prosthetic and orthopedic devices – for taxpayer's personal use	Not attachable

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Real property: <ul style="list-style-type: none"> • Land • Taxpayer's personal residence, including a mobile home • Rental 	Warrant
Recreational equipment	Warrant
Refunds from other state agencies	Offset
Rent	NOL to each tenant
Retirement funds	Not attachable
Rolling stock	Warrant
Safe deposit box	Warrant with drilling instructions.
Sales tax deposit	Not attachable unless being refunded, then offset prior to refund to the taxpayer.
Security deposits	Offset
Stock	NOL
Stock in trade	Warrant
Surplus funds from third-party sale	NOL
Tangible personal property	Warrant

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
Trailer(s): <ul style="list-style-type: none"> • Camping • Freight • Motor home • Utility • Vehicle transport 	Warrant
Trusts – family	NOL or Warrant
Trusts – held for a third party	Not attachable: <ul style="list-style-type: none"> • Federal regulations prohibit the attachment of payroll withholding. • Special bond deposits for other taxing agencies. Warrant: <ul style="list-style-type: none"> • Undisclosed beneficiary of a trust account.
Trusts – inmate	Not attachable
Trusts – living	Refer to a Special Procedures Advisor.
Trusts – spendthrift	Not attachable
Unemployment Insurance (UI) benefits	Not attachable for taxes – can be offset for benefit overpayments.
Vacation trust funds	NOL – should be served at the time and place designated by the union.
Vehicles	Warrant

**TYPE OF
INVOLUNTARY
ACTION**
(cont'd.)

IF IDENTIFIED ASSET IS	METHOD OF ATTACHMENT
<p>Wages/Salaries:</p> <ul style="list-style-type: none"> • Private businesses • Private businesses operating on military bases • Military businesses with either private or federal employees • Federal employees • Post office employees 	<p>EWOT</p> <p>If the taxpayer is in the military, the base commander may also be contacted for assistance in collection.</p>

STATE TAX LIEN/NOTICE OF STATE TAX LIEN (DE 2181)

A state tax lien is a form of security interest imposed by law upon property to secure the payment of taxes. A state tax lien may be imposed for failure to pay required taxes. The filing of a Notice of State Tax Lien is a public notice that the state (or one of its departments) has a claim against all property owned by the taxpayer. The Notice of State Tax Lien also establishes the Employment Development Department’s (EDD) priority when there are competing liens.

The authority for all state tax liens derives from Section 7170 of the Government Code (GC). Per Section 1703 of the California Unemployment Insurance Code (CUIC), a state tax lien is created on the date of the first system generated billing (discovery statement) to the taxpayer of the amount due, the finality date of an assessment, or the date of the written notice of rescission provided under Section 1875 of the CUIC for an Offer in Compromise (OIC). Each of these dates is known as the lien arose date. This means the lien is perfected and enforceable without a recorded Notice of State Tax Lien.

Section 7171(a) of the GC allows the EDD to record a Notice of State Tax Lien with the county recorder in the same county where real property is located. Notices of State Tax Lien may be recorded in more than one county. Sections 7171(b) and 7220 of the GC allows the EDD to file a Notice of State Tax Lien with the Secretary of State (SOS) on personal property. The EDD must record and/or file a Notice of State Tax Lien no later than 10 years from the lien arose date.

For a better understanding of this procedure, the following terms have specific meanings:

TERM	DESCRIPTION
Create date Choate date Lien arose date	These three terms are interchangeable and result from any of the following: <ul style="list-style-type: none"> • Date of discovery statement for an amount due. • Finality date of an assessment. • Date of an OIC rescission.
Filed	Notice of State Tax Lien is filed with the SOS.

**STATE TAX
LIEN/NOTICE OF
STATE TAX LIEN
(DE 2181)
(cont'd.)**

TERM	DESCRIPTION
Lien	An encumbrance upon an asset placed by creditors.
Mother lien	Original Notice of State Tax Lien.
Notice of State Tax Lien	Public Notice of a State Tax Lien.
Recorded	Notice of State Tax Lien recorded with the county recorder.
State tax lien	Statutory lien authorized by Section 1703 of the CUIIC.
Silent lien	Statutory lien for which no paper has been issued.
Statutory lien	Authorized by Section 1703 of the CUIIC, a perfected and enforceable state tax lien. Also known as a silent lien.

**EMPLOYER
NOTIFICATION**

Employers are notified on cycled billing statements, such as *Notice of Amount Due* (DE 6601), *Statement of Account* (DE 2176), etc., of any outstanding balances on their account. If an employer does not respond to the notifications, the outstanding balance is then referred to collections and the employer will receive a *Collection Notice* (DE 6485).

The notification on the DE 6485 reads:

We may take collection actions without further notice as provided for in the California Unemployment Insurance Code. Actions may include:

- Filing of State Tax Liens.
- Garnishment of your wages.
- Seizure and sale of your assets.
- Interagency intercepts.

If the employer does not respond to the DE 6485 within 45 days, the Accounting and Compliance Enterprise System (ACES) will automatically move the account to an evaluation stage that will review the account for the next appropriate action.

**REQUIRED
INFORMATION**

Pursuant to Section 7171(c) of the GC, the Notice of State Tax Lien recorded or filed shall include all of the following:

1. The name* and last known address of the taxpayer.
2. The name of the agency giving notice of the lien.
3. The amount of the unpaid tax.
4. A statement that the amount of the unpaid tax is a lien on all real or personal property and rights to such property, including all after-acquired property and rights to property, belonging to the taxpayer.
5. A statement that the agency has complied with all of the provisions of the applicable law for determining and assessing the tax.

A Notice of State Tax Lien is not valid without the above listed information.

*County recorders will not record a Notice of State Tax Lien with **ETC** or **ETAL** after the liable individual's or corporate names.

LIEN PRIORITY

When sufficient funds are not available to clear all liabilities, priority must be established to determine the recipient of the funds.

All statutory liens are subordinate to mechanic liens (Stop Order) as set forth in Section 3193 of the Civil Code.

The Notice of State Tax Lien recording date establishes priority when a general creditor's lien is against the same person or entity as the EDD's lien.

When priority for payment must be established between competing state tax liens or between a state tax lien and a federal lien, the first statutory lien that comes into existence has priority as provided in Section 7170.5 of the GC.

**PURPOSE OF A
STATE TAX LIEN**

A recorded or filed Notice of State Tax Lien:

- Allows the EDD to obtain funds from an escrow.
 - Establishes the EDD's priority with respect to third parties.
 - Extends the time for taking involuntary action.
 - Provides notice to the public of the EDD's lien and encumbrances of real and personal property.
-

**COUNTY LIEN
FEES**

Section 7174(d) of the GC authorizes a lien release fee to be added to the taxpayer's account. The lien release fee amounts vary by county. Section 7171(d) of the GC allows an additional fee for Notices of State Tax Lien with an out-of-state address. Each county bills the EDD monthly for the recordation fees. The Special Procedures Section, Lien Group is responsible for authorizing and approving payment.

Pursuant to Sections 27361.3 and 7227 of the GC, the EDD is exempt from a recording fee for the release of an erroneous Notice of State Tax Lien.

**SECRETARY OF
STATE FILING
FEES**

Section 7227 of the GC requires a fee of \$2 for filing a certificate of release. However, there is no fee for filing a certificate of release if the Notice of State Tax Lien is erroneous.

The SOS requires that the fees are submitted with releases that need to be filed.

**LIEN
EXTENSIONS**

Under the provisions of Section 7172(c) of the GC, to prevent a recorded or filed Notice of State Tax Lien from expiring and to remain within the statute of limitations, a Notice of Extension of State Tax Lien must be recorded with the county recorder or filed with the SOS within 10 years from the recording or filing date. The 10-year period may be crucial.

California Constitution Article 13, Section 30, provides that every tax shall be conclusively presumed to have been paid after 30 years from the time it became a lien unless the property subject to the lien has been sold in the manner provided by the Legislature for the payment of the tax.

**NOTICE OF STATE
TAX LIEN
IDENTIFICATION**

The EDD's liens are prefixed with a letter depending on when the Notice of State Tax Lien was issued. The following table explains each letter of the EDD's liens:

LETTER	IDENTIFIES
G	Automated Notices of State Tax Lien began on January 18, 2011.
W	Automated Notices of State Tax Lien issued from June 3, 1988, through January 17, 2011.
M	Manual Notices of State Tax Lien began on April 3, 1972. Sections 7174(c) and (d) of the GC allows agencies to charge the taxpayer release of lien fees and mandates agencies to send the release of liens to the county recorder for recordation.
P	Manual Notices of State Tax Lien issued prior to April 3, 1972. No lien fees. Release of liens were sent directly to the taxpayer to record with the county recorder.
K	Manual Notices of State Tax Lien issued from February 27, 1975, to September 30, 1986.
N	Manual Notices of State Tax Lien issued in the early 1960s for a very short period of time.

LIEN RELEASES

Section 7174(c)(1) of the GC directs the EDD to record a Certificate of Release in the office of the County Recorder where the Notice of State Tax Lien is recorded not later than 40 days after the liability is satisfied.

Section 7174(e)(1) of the GC requires the EDD to file a Certificate of Release with the SOS not later than 40 days from the date of full satisfaction.

Section 7174(d) of the GC provides that the cost of recording the Certificate of Release is an obligation of the taxpayer and may be collected in any manner provided by law for the collection of the tax. The EDD includes lien fees in the penalty column of the Notice of State Tax Lien.

In accordance with Section 7174(f) of the GC, if payment for the liability is made by personal or business check, the 40-day period does not commence to run until the financial institution upon which it was drawn has paid the check.

ERRONEOUS LIENS

A Notice of State Tax Lien is considered erroneous if it is recorded with the county recorder's office, or filed with the SOS and one of the following conditions exist:

- An incorrect employer name or entity was used.
- The lien was recorded after the bankruptcy petition date.
- Liability was established in error.
- When an assessment is cancelled and the liability stated on the associated Notice of State Tax Lien represents the entire amount of the cancelled assessment.
- The employer timely petitioned assessments.
- The lien was recorded after a taxpayer is deceased.

CAUTION: A Notice of State Tax Lien may be recorded against a decedent's estate.

- The lien is recorded after the liability is paid in full.
-

**LIENS THAT
ARE NOT
ERRONEOUS**

Examples of situations where the Notice of State Tax Lien is not erroneous:

- Payment is received after the recording date of a Notice of State Tax Lien.
 - The lien was recorded prior to dissolution of partnership.
 - Part of the liability includes a cancelled assessment.
 - Release of a partner in a partnership does not make the Notice of State Lien erroneous to the other partner. Written proof is required to release a partner as erroneous (e.g., a copy of the dissolution of partnership papers with either a newspaper public notice or a statement with a notarized signature from the remaining partner).
 - A business is awarded to a spouse in a divorce. The EDD was not a party to the divorce proceedings and cannot be bound by the decree.
-

LICENSING

Section 7145.5 of the Business and Professions Code (B&PC) authorizes the Contractors State License Board (CSLB) to suspend a license or refuse to:

- Issue a license.
- Reinstate a license.
- Reactivate a license.
- Renew a license.

The above actions may occur if a licensee fails to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by the CSLB, the Department of Industrial Relations, the Employment Development Department (EDD), or the Franchise Tax Board (FTB).

When a contractor has violated the provisions of the California Unemployment Insurance Code (CUIC), the EDD may request the CSLB to take disciplinary action against the license holder.

LICENSE REQUIREMENTS

All businesses or individuals who construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the CSLB if the total cost (labor and materials) of one or more contracts on the project is \$500 or more. More information can be found in Sections 7026, 7028, and 7048 of the B&PC.

ISSUED TO CORRECT ENTITY

Section 7065 of the B&PC states that a license may be issued to an individual, a partnership, a corporation, or a limited liability company. The license is issued to the individual owner, to the partnership, to the corporation as it is registered with the Secretary of State (SOS), or to the combination of licensees who are parties to the joint venture. Section 7075.1(a) of the B&PC provides that a contractor's license is not transferable.

A license is issued to one individual or to one entity and cannot be used by another. For example, a sole proprietorship would be in violation for using a license as an individual and as a responsible managing employee or a responsible managing officer in a corporation.

If a partner leaves the business, the existing license is canceled. See Section 7076 of the B&PC regarding additional information on the cancellation of licenses.

VALID TIME PERIOD

A license is issued for two years and will expire on the last day of the month in which it was issued. An active license must be renewed every two years. If a license is inactive, the renewal period is four years but it is considered “on hold” by the CSLB and must be restored to an active status to resume contracting.

REQUESTING A CSLB HOLD

The taxpayer’s license may be active, cancelled, revoked, or suspended. The following conditions must exist prior to requesting a CSLB license hold from Special Procedures Section, Offset Group:

- The taxpayer’s account balance must be over \$1,000 in accordance with current EDD policy.
- Assessments must be final; a discovery *Statement of Account* (DE 2176) and a *Collection Notice* (DE 6485) must have been sent.
- A *License Demand Notification* (DE 7145) notifying the contractor of the EDD’s intent to request the CSLB to suspend or delay the license renewal must have been sent to the taxpayer no less than 15 days and no more than six months prior to requesting a license hold.
- If an Offer in Compromise agreement is rescinded, a written notice of rescission and a notice of the amount of reestablished liability that is due and payable, as provided under Section 1875(c) of the CUIC, must have been sent in the same name as the CSLB license holder.

It is not necessary for a Notice of State Tax Lien to have been filed or recorded prior to requesting a hold.

The CSLB has authorized the EDD to request action and release on the same contractor’s license as many times as the EDD deems necessary. However, it is current Collection Division policy that if a license has been released due to the establishment of an installment agreement and a default causes a second hold to be placed, full payment is necessary for the second hold to be released.

SAMPLE OF DEMAND LETTER TO CONTRACTOR

EDD  DE 7145
P.O. BOX 431804
LOS ANGELES, CA 90043-9998



ZYX CONSTRUCTION CORP.
722 CAPITOL MALL
SACRAMENTO CA 91111-1000

Letter ID: L0000000000
Issued Date: December 8, 2016
Case ID: 0-000-000-000

Account ID: 000-0000-0

You have failed to pay your Employment Development Department (EDD) tax liability in the amount of \$15,000.00. This amount includes accrued interest through December 8, 2016.

Demand is hereby made for payment in full within ten (10) days from the date of this notice.

Section 7145.5 of the Business and Professions Code provides that a contractor's license may be suspended for failure to pay or resolve all outstanding liabilities to the EDD. The Contractors State License Board will soon be advised of your outstanding liabilities. **The license suspension will stay in effect until the liability is either paid in full or satisfactory arrangements have been made for the payment of this liability.**

If you have any questions, please contact the representative at 888-435-4990.

**FARM LABOR
CONTRACTORS'
LICENSES**

A farm labor contractor (FLC) as defined in Sections 1682 and 1682(b) of the Labor Code (LC) must be licensed by the Department of Industrial Relations' Labor Commissioner as set forth in Section 1683 of the LC.

The Employment Development Department (EDD) is authorized by Section 1141 of the California Unemployment Insurance Code (CUIC) to notify the Labor Commissioner that an FLC is delinquent in the payment of worker contributions, State Disability Insurance (SDI), or Personal Income Tax (PIT), either by self-assessment or by a final EDD assessment. Section 1690.1 of the LC authorizes the Labor Commissioner to refuse to issue or renew any license until the licensee has fully paid the amount of the delinquency.

The Labor Commissioner must receive the request for stop order prior to the license expiration date.

After a stop order has been issued, the Labor Commissioner must be notified in writing when the liability is paid or when acceptable arrangements for payment have been made.

**EXPIRATION
DATES**

Section 1688 of the LC provides that when a license is first issued, it shall run to the next birthday of the applicant. Each license shall then be renewed within the 30 days prior to the licensee's birthday and shall run from birthday to birthday.

For partnerships, the oldest partner's birthday is used, and for a corporation or LLC, the anniversary date of incorporation is used.

**LICENSE
DEMAND
NOTIFICATION**

A *License Demand Notification* (DE 7145) is a letter stating the EDD's intention to request that the Labor Commissioner stop the renewal of a license and is sent to the taxpayer.

If there is no response from the taxpayer after 15 days (10 days plus five days for mailing), an *FLC Hold/Release Consolidation* (DE 6454) is sent to the Labor Commissioner pursuant to Section 1690.1 of the LC.

SAMPLE OF DEMAND LETTER TO FLC

EDD  DE 7145
PO BOX 989150
WEST SACRAMENTO, CA 95798-9150



JOHN SMITH FLC
722 CAPITAL MALL
SACRAMENTO CA 905814-4703

Letter ID: L0000000000
Issued Date: December 29, 2016
Case ID: 0-000-000-000

Account ID: 000-0000-1

You have failed to pay your Employment Development Department (EDD) tax liability in the amount of \$22,000.00. This amount includes accrued interest through March 29, 2017.

Demand is hereby made for payment in full within ten (10) days from the date of this notice.

Farm Labor Contractor's License Number:0001

Failure to pay or contact this office may result in the EDD requesting a stop order be placed against the renewal of your Farm Labor Contractor's License, pursuant to the provisions of Section 1690.1 of the Labor Code. **The stop order will stay in effect until the liability is either paid in full or satisfactory arrangements have been made for the payment of this liability.**

If you have any questions, please contact the representative at 888-435-4990.

SAMPLE OF STOP ORDER

EDD  DE 6454
PO BOX 826880 MIC 92H
SACRAMENTO, CA 94280-0001



Letter ID: L000000000
Issued Date: April 13, 2017
Case ID: 0-000-000-000

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LICENSING & REGISTRATION UNIT
1515 CLAY STREET, SUITE 401
OAKLAND, CA 94612

Name of Licensee: JOHN SMITH FLC
License Number: FLC0000000
Expiration Date of License: February 04, 2017
DBA: JOHN SMITH FLC

This employer has failed to pay worker contributions to the Employment Development Department (EDD) in the amount of \$8,000.92. This employer has a total liability of \$22,000.46 with interest through April 13, 2017.

Pursuant to the provisions of Sections 1690.1 of the Labor Code, EDD requests a stop order be placed against the renewal of the employer's Farm Labor Contractor's License until the liability is either paid in full or satisfactory arrangements have been made for the payment of this liability by the employer.

Your assistance in this matter is greatly appreciated.

If you have any questions, please contact the representative at the telephone number below.

Sincerely,

Tax Compliance Rep.
Collection Division
1-888-435-4990

**INTERAGENCY
OFFSETS**

An interagency offset is a procedure that the EDD uses to collect a liability owed by a person or entity from any money due to that person or entity by another government agency. The source falls into two categories:

- State: An agency within the State of California

State offsets are received from various state agencies and are deducted from monies paid for a variety of reasons.

- Federal: Department of Treasury

Federal offsets are deducted from federal income tax refunds and are a result of the Treasury Offset Program (TOP).

**STATE
OFFSETS**

Section 12419.5 of the Government Code (GC) authorizes the State Controller's Office (SCO) to collect money due to one state department by a person or entity, by deducting the amount from any money that may be owing to such person or entity by another state department. This procedure is called offset. Requirements are defined in Section 8790 of the State Administrative Manual (SAM).

The amounts payable to a person or entity may have resulted from:

- A tax refund
- Lottery winnings
- License fees
- Payment for services or materials furnished

An allowable offset can be initiated on any final amount due or when a statement has been sent, except in the case of bankruptcies, assessments that are not final, and assessments that have been petitioned.

A Notice of State Tax Lien (DE 2181) is not required to be recorded with a county or filed with the Secretary of State (SOS) when requesting an offset. Section 12419.4 of the GC provides an immediate lien in the amount of the unpaid taxes against all property held or owned by other state agencies.

**STATE
OFFSETS**
(cont'd.)

Pursuant to Section 8776.6 and 8790 of the SAM, the taxpayer must be notified 60 days prior to being offset. This requirement is met when a *Collection Notice* (DE 6485) is sent to the taxpayer.

Sources of state offset:

1. Franchise Tax Board (FTB):
 - Personal Income Tax (PIT) refunds
 - Lottery winnings
 - Unclaimed property
2. FTB: Bank and corporation tax refunds
3. California Department of Tax and Fee Administration (CDTFA)
4. Other state agencies

An offset overpayment **CANNOT** be held for future liabilities (i.e., the filing of delinquent reports or be offset to another agency).

**FTB
INTERAGENCY
INTERCEPT
COLLECTION
PROGRAM**

The SCO must approve an agency's participation in the Interagency Intercept Collection Program (Offset). A written Request-to-Participate must be submitted to the SCO.

**MULTIPLE PIT
OFFSET
PRIORITIES**

Section 12419.3 of the GC states that when multiple agencies request an intercept for the same taxpayer, the FTB will channel any intercepted funds to agencies in the following order:

1. The non-payment of child or family support accounts enforced by a local child support agency.
2. The non-payment of child or family support accounts enforced by someone other than a local child support agency.
3. The non-payment of spousal support accounts enforced by a local child support agency.
4. The non-payment of spousal support accounts enforced by someone other than a local child support agency.
5. The non-payment of penalties to the Restitution Fund.
6. The benefit overpayment accounts administered by the Employment Development Department (EDD) if no signed reimbursement agreement exists, or if two consecutive payments on a reimbursement agreement are delinquent at any time.
7. Other offset accounts in the priority determined by the SCO.

**OTHER STATE
AGENCIES'
OFFSETS**

Funds from the following cannot be offset:

- Bureau of Unclaimed Property (This property does not belong to the state, but to the individuals.)
- DentiCal*.
- Workers' compensation awards*.
- Refunds of retirement contributions.
- Unemployment Insurance (UI) or Disability Insurance (DI) benefits.

*These funds belong to private organizations.

SECURITY DEPOSITS

Under the provisions of Section 12419.4 of the GC, the EDD is authorized to offset against:

- Security deposits held by various state agencies' treasury trust bank accounts, except for CDTFA, or any other state agency whose deposits are held by a private financial institution.
- Bonds deposited by the agencies holding the items with the State Treasurer.

However, an offset against the security deposit may not be made until the deposit is due to be refunded to the taxpayer.

FEDERAL LEVY

Section 926.8 of the GC provides that whenever a federal agency, in the collection of taxes or amounts owing to it, is authorized by federal law to levy administratively on credits owing to a debtor, it may file a certificate of claim with the state against funds owing by the state to such debtor. When a request for payment is received under this procedure, amounts due the state by the debtor are first offset before any payment is made to the federal government. Subject to the provisions in Section 12419.4 and 12419.5 of the GC, the SCO shall issue the warrants payable to the United States Treasury. Refer to Section 8790.6 of the SAM for SCO procedures.

FEDERAL OFFSETS

The TOP is a result of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 as set forth in Section 6402(e) of Title 26, United States Code (U.S.C.), and Part 285.8 of the Title 31, Code of Federal Regulations. This act allows the Secretary of the Treasury to offset federal tax refund payments to collect past due, legally enforceable state tax obligations reported to the Secretary of Treasury by states. Effective January 1, 1999, the IRS tax refund offset program was merged into TOP, operated by the Bureau of the Fiscal Service (BFS) (previously known as the Financial Management Service), a bureau of the U.S. Department of Treasury.

**BUREAU OF
FISCAL SERVICE
OFFSET
PROCESS**

When an offset occurs, the BFS notifies the taxpayer that their refund has been sent to the EDD. In the notice to the taxpayer, the BFS provides the amount and date of the offset and the Taxpayer Assistance Center's contact phone number and address.

**PRIORITIES
FOR FEDERAL
OFFSET**

Federal law indicates how a tax refund payment will be applied when a taxpayer has debts with multiple agencies. The payment priorities are mandated by Section 6402(e) of the Title 26, U.S.C. Before authorizing the BFS to disburse a tax refund payment, the IRS will apply any amount of refund to federal tax liabilities of the taxpayer. Then, the tax refund payment will be reduced and applied to a taxpayer's debts in the following order of priority:

- IRS income tax liabilities.
 - Past due child support assigned to a state.
 - Any past due, legally enforceable debt owed to a federal agency.
 - Past due child support not assigned to a state.
 - State tax liabilities.
-

INTERIM REPORTING

Interim reporting is accelerated reporting of subject wages and payment of contributions and withholdings. Interim reporting may be required of the employer under the provisions of Section 1115 of the California Unemployment Insurance Code (CUIC).

Active employers may be placed on interim reporting to prevent an increase in their tax liability. Interim reporting is used to assure that the employer remains current while liquidating delinquent liability. The employer will be required to continue on interim reporting until all delinquent liabilities are satisfied and the financial condition of the business has stabilized.

For ease of reconciliation and control, the reporting periods should coincide with the employer's payroll period or be made at least on a monthly basis. The *Interim Contribution Return* (DE 2858) will be used by the employer to file interim returns and pay the amounts due to the designated field office.

Employers that have been placed on interim reporting by the Employment Development Department (EDD) pursuant to Section 1115 of the CUIC are not relieved of the deposit requirements under Sections 13021(c) and (d) of the CUIC for withholdings.

REQUIREMENTS FOR INTERIM REPORTING

Authority to require the filing of returns and payment of contributions at less than quarterly periods has been delegated by the EDD Director to Senior Tax Compliance Representatives and above.

Section 1115 of the CUIC requires any of the following findings:

- The employing unit is insolvent.
- The employing unit is delinquent and a substantial amount of contributions due.
- The employing unit has discontinued or is about to discontinue business at any of its known locations.
- The business is of a temporary or seasonal nature.

**REQUIREMENTS
FOR INTERIM
REPORTING**
(cont'd.)

When the interim reporting periods have been determined, a demand letter is sent to the employer as notification of the required filing periods. The demand letter must provide the employer with at least 10 days advance notice. The initial interim report and payment will start at the beginning of the current quarter and continue to the end of the next pay period that occurs after the demand letter is sent. All interim reports and required contributions are due the first day after the end of the interim reporting period and become delinquent if not filed and paid within 10 days of the due date.

Example: If an employer is placed on monthly interim reporting as of July 1 and the demand letter is sent August 17, the employer will be required to submit the first interim return covering the period July 1 through August 31 by September 1. If the interim report and payment are not received by September 10, a penalty of 15 percent (10 percent for periods prior to 3rd quarter 2014) of the amount due plus interest will be added.

The written notice shall be served in person or by mail. If the notice is sent by mail, it should be sent by certified mail. When possible, the notice should be hand delivered to the employer along with the reporting form DE 2858.

**TERMINATION
OF
REQUIREMENT**

The case assignee will determine when to terminate the interim reporting requirement.

**LIQUOR
LICENSE
HOLDS**

Section 24049 of the Business and Professions Code (B&PC) authorizes the Employment Development Department (EDD) to request from the Department of Alcoholic Beverage Control (ABC) to place a hold on certain types of liquor licenses.

A liquor license hold is a lien specifically on the liquor license. A recorded *Notice of State Tax Lien* (DE 2181) is not required.

A hold establishes a priority to any monies received from the sale of the liquor license and prevents the transfer of a liquor license from the seller to the buyer until the conditions of the hold have been met. In order to establish priority, an *Order to Withhold Transfer of Liquor License* (DE 271) must be on file with the ABC. The hold is in effect until released or the liquor license is revoked by the ABC.

Holds may be placed on a liquor license if the taxpayer has an established liability with the EDD.

**TYPE OF
LICENSE**

TYPE	DESCRIPTION
20	<p>Off-Sale Beer and Wine: A liquor license must be in a moratorium county.</p> <p><u>Section 23817.5 of the B&PC Off-Sale Beer and Wine License Moratorium</u></p> <p>A countywide moratorium on the issuance of original Type 20 licenses will exist after January 1, 1995, in 48 counties. There are 10 counties where a countywide moratorium does not exist. Call Special Procedures Section, Offset Group (SPS, OG) for further information.</p>
21	Off-Sale General
47	On-Sale General Eating Place
48	On-Sale General Public Premises
49	On-Sale General Seasonal
57	Special/Seasonal

**TYPE OF
LICENSE
(cont'd.)**

Holds may not be requested on the following types of licenses:

TYPE	DESCRIPTION
40	On-Sale Beer
41	On-Sale Beer and Wine for Bona Fide Public Eating Place
42	On-Sale Beer and Wine Eating Place
51	Club
70	On-Sale General Restrictive Service

**LIQUOR
LICENSE
DEMANDS**

When a **liquor license** is to be sold or transferred and the EDD has a DE 271 on file, the escrow holder must request a liquor license demand from the EDD. The SPS, OG, is responsible for preparing the liquor license demand.

When a **business** is sold and a liquor license is involved, a separate demand is issued for the liquor license proceeds. The SPS, OG, will prepare the liquor license demand and an Area Audit Office in the Field Audit and Compliance Division will prepare the business sale demand. Escrow holders may not be aware of an ABC hold. If a request for an escrow clearance is received, notify the SPS, OG, immediately if a liquor license is involved.

Delinquent reports should be obtained or a liability assessed prior to the issuance of a liquor license demand.

**ESTABLISH
LIABILITY FOR
LIQUOR
LICENSE
DEMAND**

IF	THEN
The employer is operating a diversified business on the same premises, for example, a restaurant, bar, and cocktail lounge.	Include liability covering all operations.
The employer has multiple licensed premises in California.	The entire liability of the entity should be included in the demand.
The seller is operating the business pending transfer of license.	Contact employer to obtain delinquent and/or final return(s).
Required reports have not been received.	Prepare a Section 1126 of the California Unemployment Insurance Code (CUIC) estimated assessment. When the assessment has been mailed, include the amount due in the demand plus the Section 1135 of the CUIC penalty on an assessment that is not final.
The employer is continuing in business until the expected date of transfer.	Prepare an assessment including estimated wages to the date of transfer.
A liability is incurred by an individual, other than the holder of the liquor license, who is using the liquor license being transferred.	The liability follows the liquor license. The licensee is liable when another person is using their liquor license and a tax liability is incurred.
The employer has multiple licensed premises in California.	The entire liability of the entity should be included in the demand.

INSUFFICIENT FUNDS IN ESCROW PRO RATA

If the demand for payment from the EDD, California Department of Tax and Fee Administration, Franchise Tax Board, or a county with an unsecured property tax exceeds the amount of the funds in escrow, the various agencies will prorate the funds in escrow. The pro-rata demand is prepared by the agency with the largest liability. Once the agencies come to an agreement, a demand will be made to the escrow agent. The SPS, OG will prepare an amended demand with the EDD's prorated liability amount.

Since the entire liability was not collected from the seller due to the pro-rata on the liquor license, the remaining balance must still be collected from the seller. With respect to the liquor license only, the buyer would not be liable pursuant to Section 1733 of the CUIIC with respect to the liquor license only. However, the buyer may still be liable pursuant to Section 1733 of the CUIIC with respect to the purchase of other assets, if any.

DISBURSEMENT OF MONEY IN ESCROW

After the disbursement of funds to the agencies and/or counties with a hold, the remaining escrow funds are distributed to the payment of claims in the following order as directed by Section 24074 of the B&PC:

1. Internal Revenue Service and other taxing agencies.
 2. Wages or salaries accrued prior to the sale, transfer, or opening of an escrow.
 3. Payments of secured creditors.
 4. Mechanics liens.
 5. Escrow fees.
 6. Payments on claims of goods sold.
 7. All other claims reduced to court ordered judgments.
 8. Payment of other claims.
-

PAYMENT RECEIVED

When full payment in the form of cash, cashier's check, money order, or certified check is received, notify the SPS, OG to release the liquor license hold. Personal or business checks are not acceptable for immediate release. No written release is provided to the taxpayer.

NOTICE OF LEVY A *Notice of Levy* (DE 8005) is issued to attach the credits or personal property of any delinquent account. This includes active, inactive, and responsible person accounts. The issuance of a Notice of Levy is authorized by Section 1755 of the California Unemployment Insurance Code (CUIC) and attaches funds in an account as defined in Section 9102(a)(2) of the California Commercial Code (CCC).

The Notice of Levy may be issued to:

- Financial Institutions, including:
 - Banks
 - Savings and loan institutions
 - Credit unions
 - Trust companies

The Notice of Levy requires that any funds held at the time of receipt of the Notice of Levy be remitted to the Employment Development Department (EDD).

- Third-Party Accounts Receivable:
 - A third party who has been served a Notice of Levy must surrender assets within five days after the assets are payable to the taxpayer.
 - A Notice of Levy to a third party remains in force for one year and may be renewed.
- Credit Card Processors: A Notice of Levy to a credit card processor remains in force for one year and may be renewed.

Section 1755(a) of the CUIC directs that the Notice of Levy be served in person or by first class mail. Section 1755.1 of the CUIC allows for service electronically:

- Not later than three years after the payment of any contributions, penalties, or interest became delinquent. Only during this period, a recorded Notice of State Tax Lien is not necessary.

Or

- Within 10 years from the recording of a judgment or the filing of a Notice of State Tax Lien.

A stop notice (mechanics lien) has priority over a Notice of Levy as outlined in Section 9456 of the California Civil Code.

ISSUANCE

The Notice of Levy is a four-part form. A voucher, two copies of the notice, and an answer page are mailed, served, or electronically transmitted.

METHOD OF SERVICE

A Notice of Levy can be serviced via:

- Regular USPS mail
- In person
- Electronic media

RESULTS

When a response to the Notice of Levy is received, use the following table to determine the next action:

IF	THEN
A partial payment or payment in full with guaranteed funds is received from other than the Notice of Levy	Issue an <i>Amendment to Notice of Levy</i> (DE 8016). For accounts receivable Notice of Levy, issue a DE 8016 to each account receivable.
Failure to remit	Section 1757 of the CUIIC provides that failure to surrender credits or other personal property shall make that person liable for the value of the credits or other personal property up to the amount specified in the Notice of Levy.
Failure to respond	Contact the recipient of the levy to verify receipt and emphasize the instructions on the front of the Notice of Levy.
Negative response <ul style="list-style-type: none"> • Taxpayer not identified • Unable to locate • No funds at this time 	<ul style="list-style-type: none"> • Contact the payee and give specific personal information that helps identify the taxpayer. • Issue another Notice of Levy.
Taxpayer has filed bankruptcy	Verify the exact date and time of the bankruptcy filing. The EDD will not automatically release a Notice of Levy when the taxpayer files bankruptcy after the Notice of Levy is served.

**PROCESS
PAYMENTS**

When payments are received in response to a Notice of Levy:

- Prepare a DE 8016 to modify or release a Notice of Levy. A Notice of Levy may be released in whole or in part.
 - If an overpayment occurs as the result of a Notice of Levy, the overpayment must be returned to the taxpayer.
-

**OFFERS IN
COMPROMISE**

Sections 1870 through 1875 of the California Unemployment Insurance Code (CUIC) on Offers in Compromise (OIC) became effective on January 1, 1994. An OIC allows the Employment Development Department (EDD) to enter into an agreement with qualified taxpayers to accept partial payment in satisfaction of the full liability for unpaid amounts due when it is determined to be in the best interest of the state. A determination not to accept an OIC is not subject to administrative appeal or judicial review. No claim for refund of amounts paid pursuant to an OIC may be filed.

Submission of an offer does not suspend collection action on a liability. If there is any indication that filing an offer is solely for the purpose of delaying collection or will negatively impact the EDD's ability to collect tax, collection efforts will continue. If the EDD has previously agreed to an installment agreement, those payments must continue. Notices of State Tax Lien, offsets, and Earnings Withholding Orders for Taxes (EWOTs) will remain in place until all terms of the offer are met, up to the payment in full of the offered amount.

The OIC process is centralized in the Offers in Compromise Unit (OICU) in the Special Procedures Section, Special Procedures Group.

**CONDITIONS
REQUIRED FOR
CONSIDERATION**

The Section 1870(a) of the CUIC states that an employer or any individual assessed under Section 1735 of the CUIC who owes delinquent contributions, withholdings, penalty, or interest to the EDD may enter into an OIC agreement under the following conditions:

- Applicant's business must be inactive and no longer operating. If the business is still operating and active, the owner, partner, or an individual assessed under Section 1735 of the CUIC may apply only if s/he no longer has a controlling interest or any association with the business that incurred the liability.
- Applicant does not have access to current income sufficient to pay more than the accumulating interest and 6.7 percent of the outstanding liability annually.
- Applicant does not have prospects of acquiring increased income or assets which would enable the liability to be paid within a reasonable period.
- Applicant does not have assets, whether or not subjected to a *Notice of State Tax Lien* (DE 2181) by the EDD, which if sold, would satisfy the liability.
- The amount offered is more than the EDD could expect to collect through involuntary means within four years after the offer is made.
- The compromise offer must be submitted in writing by completion of an *Offer in Compromise Application* (DE 999A) or a *Multi-Agency Form for Offer in Compromise* (DE 999CA).
- Only non-petitioned, final tax liabilities will be considered.
- Liabilities that arose as a result of fraud or actions that resulted in a criminal conviction under the CUIC shall not be compromised.

Section 1870(b) of the CUIC allows the EDD to permit the approved offer amount be paid in installments, not to exceed a five-year period, if the applicant does not have the ability to pay in full.

**FORGIVING
AMOUNTS OF
\$10,000 OR
MORE**

Per Section 1871 of the CUIIC, any agreement that reduces the liability by \$10,000 or more shall not be effective until it is reviewed and approved by the California Unemployment Insurance Appeals Board (CUIAB). Based on the file submitted by the EDD, the CUIAB will review and determine if all OIC conditions are satisfied.

**CASE
ASSIGNMENTS**

The purpose of an OIC assignment is to investigate the validity of the request and make a recommendation for approval or denial of the request.

When an OIC application is received, an OIC case is opened. If there is an open delinquency collection case assignment, that collection case remains active. The OICU investigates only the application for the OIC and does not take any collection action. New collection actions on an account are generally not initiated while the account is being reviewed for an OIC. However, any collection actions that were previously processed remain in effect, pending notification to the assignee of any determinations made by OICU staff. This includes EWOTs, Notices of Levy, warrants, offsets, and installment agreements. Funds received from actions initiated prior to the final approval of an offer do not apply toward the offered amount.

All form delinquencies and non-monetary problems must be resolved on the account prior to processing the OIC application. It is the taxpayer's responsibility to resolve these issues with the EDD.

An agreement to accept partial payment in satisfaction of a liability does not relieve any other responsible taxpayers of the obligation to pay the remaining unpaid balance due. If one partner or Section 1735 of the CUIIC responsible person is under an OIC agreement and the remaining party is not, the EDD will continue with collection activity for that unaffected partner(s), corporate officer(s), or responsible person(s) under Section 1735 of the CUIIC.

**APPROVED
APPLICATIONS**

The OICU will monitor the OIC payments until the compromise is satisfied in full and cancel any remaining liability. Collection action will continue on any party in a business that is not under a current OIC agreement.

DENIED APPLICATIONS

The OICU shall notify the applicant, in writing, of a denied application. The denial letter will contain a statement requesting that the taxpayer contact the Taxpayer Assistance Center or the closest area office as soon as possible to arrange payment of the liability.

RESCISSION

An OIC may be rescinded after it has been accepted. The OICU will rescind the agreement if it is determined that any person willfully did any of the following:

- Concealed from any officer or employee of the state any assets or property belonging to the estate of the applicant or other person liable with respect to the tax liability.
- Received, withheld, destroyed, mutilated, or falsified any book, document, or record.
- Made any false statement relating to the estate or financial conditions of the applicant or other person liable in respect to the tax liability.
- Failed to pay any tax liability owed to the EDD for any subsequent, active business in which the applicant or individual who previously submitted the OIC has a controlling interest or association.
- Failed to pay the compromised amount as agreed.

If an OIC has not been satisfied and the *Notice of State Tax Lien* (DE 2181) has not been released, the full liability is due.

If the OIC had been satisfied and the lien released, rescinding the OIC under Section 1875 of the CUIIC provides that the previously compromised liability should be re-established and may be re-liened regardless of the statute of limitations.

PROCESSING A RESCISSION

An applicant who has an offer rescinded may not request or apply for a subsequent OIC.

INSTALLMENT AGREEMENTS

Taxpayers have a legal obligation to report and pay contributions and withholdings when due. If a taxpayer becomes delinquent in the payment of amounts due, the Employment Development Department (EDD) will take appropriate action to collect the full amount immediately. The EDD recognizes that there are situations where it is in the best interest of the state and the taxpayers of California that an installment agreement to pay amounts due over a period of time is allowed.

An installment agreement may be requested by phone, by letter, on e-Services for Business, or by completing an *Installment Agreement Request* (DE 927B). Taxpayers are to be informed that requesting an installment agreement will not prevent a *Notice of State Tax Lien* (DE 2181) from being filed and that the EDD will continue to offset any state agency and federal tax refunds during the payment period. Any payment received from these sources will be in addition to the payment terms of the agreement. The taxpayer's liability must be paid off as quickly as possible.

TYPES OF AGREEMENTS

There are four types of installment agreements authorized by the EDD: short-term, long-term, non-standard, and e-Services for Business. All types require the taxpayer to file all delinquent reports and to file and pay current and future deposits and reports before the filing delinquent date. If an audit assessment is issued after an agreement has been reached, the terms of any type of agreement may be renegotiated allowing additional time to pay the assessment.

Short-term Agreement

An EDD representative will review the account to ensure forms, filings, and applicable deposits are current and search for an installment agreement default history. If the tax liability is less than \$25,000 for an active business or less than \$10,000 for an inactive business, a short-term installment agreement may be established during the initial contact. The taxpayer must indicate verbally or in writing that the liability will be paid within one year (or 18 months for an audit assessment).

Approval of a short-term agreement is based on the judgment of the staff or their manager and may not be approved for taxpayers with a history of multiple delinquencies. A short-term agreement will not be granted in cases involving fraud.

TYPES OF AGREEMENTS

(cont'd.)

Long-term Agreement

When a taxpayer is unable to pay the balance due within the time and monetary limits specified for a short-term agreement, additional information is required for consideration of a long-term agreement. Appropriate staff will review all necessary documents and information.

The taxpayer must include a good faith payment and submit a written request that includes:

- An explanation of how the liability was established.
- The action taken to resolve the liability.
- The taxpayer's plan to keep current on future financial obligations to the EDD for active accounts.
- The proposed repayment terms.
- Financial information regarding the business and personal assets for assessed corporate officers with supporting documentation.
- A *Financial Statement* (DE 926B) for individuals and a *Financial Statement for Businesses* (DE 926C) are available. Any recent financial statement which has the same data is acceptable.

Non-Standard Agreement

When a taxpayer is unable to pay the balance due within the time and monetary limits for a short or long-term agreement or the taxpayer wishes to make payments with a paper coupon in lieu of using Automated Clearing House (ACH) debit, a non-standard installment agreement will be negotiated. Non-standard refers to the fact that the agreement does not fall into either the short-term or long-term agreement criteria. If the non-standard agreement is due to the employer's request to submit payment coupons in lieu of using ACH debit on a short-term agreement, no further documentation is required. The same documentation required for a long-term agreement for an inactive account is necessary if the non-standard agreement is due to either of the following:

- The balance of liability is greater than the short-term agreement threshold.
- The timeframe for repayment exceeds the long-term agreement threshold.

TYPES OF AGREEMENTS

(cont'd.)

e-Services for Business Agreement

If an employer payroll tax account has an active collection case without a case assignee, the employer may establish their own installment agreement on e-Services for Business. These agreements are all short-term.

e-Services for Business installment agreement requirements:

- ACH debit
- 12 months maximum
- \$20,000 maximum for active employers
- \$10,000 maximum for inactive employers

Audit Assessment

When the liability is the result of an audit assessment, and the taxpayer is unable to pay in full, the EDD may allow up to 18 months to pay in full with a short-term installment agreement. If the taxpayer is currently in an agreement, the terms may be renegotiated. The audit assessment and the account balance must be considered separately when determining the type of installment agreement the taxpayer qualifies for. The audit portion of the liability may be paid in installments, not to exceed 18 months. Any other amounts must follow the guidelines for short-term or long-term agreements.

Short-term agreements may be negotiated by the auditor as part of his/her audit. Because of their complexity, it may be necessary to set up some agreements as non-standard agreements. When other liabilities exist or the taxpayer requests a long-term agreement, the auditor will refer the taxpayer to the tax compliance representative.

The Section 1135 of the California Unemployment Insurance Code (CUIC) penalty must be included when determining if an assessment balance qualifies for short-term installment agreement limitations.

REQUIRED
DOCUMENTATION
AND APPROVAL

ACTIVE ACCOUNTS	
AGREEMENT TIME PERIOD	MINIMUM REQUIREMENTS
<p>Short-term:</p> <p>Less than one year and Less than \$25,000</p> <p>Short-term agreements for audit assessments may be allowed an additional six months to pay with manager approval.</p>	<p>The following items are required:</p> <ul style="list-style-type: none"> • Signed <i>Installment Agreement</i> (DE 927) or a letter detailing the payment plan. • Good faith payment. • Start date of the agreement will be no more than 10 working days after verbal agreement has been established. • All delinquent forms. • Approval may be made by the case assignee.

**REQUIRED
DOCUMENTATION
AND APPROVAL**
(cont'd.)

ACTIVE ACCOUNTS	
AGREEMENT TIME PERIOD	MINIMUM REQUIREMENTS
<p>Long-term:</p> <p style="text-align: center;">More than one year</p> <p style="text-align: center;">or</p> <p style="text-align: center;">Over \$25,000</p>	<p>The following items are required in addition to those outlined for short-term agreements:</p> <ul style="list-style-type: none"> • Written explanation of the financial difficulties being experienced, a plan to stay current, and a plan to liquidate outstanding liability. • <i>Corporate Information Questionnaire</i> (DE 204) completed by each responsible person if the entity is a corporation and the balance is more than \$50,000 of assessable liability. • Financial statement(s), personal and/or business, with documentation of financial status (i.e., loan denials, tax returns, bank statements, accountant's financial reports, etc.). • Full listing of all accounts receivable showing name, address, and the amount owing to the taxpayer. • Supporting documentation of financial statement entries, if additional information is needed. • Approval by a Tax Administrator (TA) I or TA II.

REQUIRED DOCUMENTATION AND APPROVAL
(cont'd.)

INACTIVE ACCOUNTS	
AGREEMENT TIME PERIOD	MINIMUM DOCUMENTATION
<p>Short-term:</p> <p style="text-align: center;">Less than one year and Less than \$10,000</p> <p>Short-term agreements for audit assessments may be allowed an additional six months to pay with manager approval.</p>	<ul style="list-style-type: none"> • Signed DE 927 or letter outlining the installment agreement. • Good faith payment. • Start date of the agreement will be no more than 10 working days after verbal agreement has been established. • Approval by the case assignee.
<p>Long-term:</p> <p style="text-align: center;">More than one year and More than \$10,000</p>	<p>The following items are required in addition to those outlined for short-term agreements:</p> <ul style="list-style-type: none"> • If the entity is a corporation and the balance is more than \$10,000 of assessable liability, a DE 204 establishing the liability of corporate responsible persons. • Written explanation of how the liability was created. • Financial statement(s), personal and/or business, with documentation of financial status (i.e., loan denials, tax returns, bank statements, accountant's financial reports, etc.). • Supporting documentation of financial statement entries, if additional information is needed. • Approval by a Senior Tax Compliance Representative or TAI.

ACCEPTANCE

When an installment agreement is accepted, notify the taxpayer that the agreement has been approved and the following conditions apply:

- All future deposits and reports are to be filed and paid timely to the EDD.
- A *Notice of State Tax Lien* (DE 2181) will be filed on all unpaid liabilities.
- The EDD will take immediate involuntary collection action if the agreement is not kept, or an unreported improvement in financial condition is discovered.
- The EDD will continue to offset any state agency and federal tax refunds.
- A new financial statement must be provided after 12 months.
- The taxpayer must immediately notify the EDD representative when a significant improvement or deterioration in their financial circumstances occurs.

If an audit assessment is issued after an installment agreement is in effect, the agreement may be renegotiated, unless a penalty was applied under Section 1128.1 of the CUIC.

DENIAL

Contact the taxpayer with an explanation of the denial.

MONITORING

Installment agreement accounts may be reviewed every 12 months for a possible change in financial condition of the taxpayer. If a review of the taxpayer's financial condition establishes an increased ability to pay, a written notice will be sent to the address of record requesting the taxpayer to contact the office. If the taxpayer responds within 15 days, the terms of the agreement will be renegotiated. If the taxpayer does not respond, the installment agreement is in default.

The installment agreement will remain in effect for the time period negotiated unless the taxpayer fails to meet the agreed upon terms.

DEFAULT

Involuntary collection action will be taken immediately if the taxpayer defaults on the agreement.

A default will occur under the following conditions:

- The taxpayer fails to send the payment.
 - The payment is not timely.
 - The payment is less than the amount agreed upon.
 - A check is returned by the bank for non-payment.
 - An active taxpayer fails to file required tax forms on a timely basis without just cause.
 - An active taxpayer fails to submit a timely electronic *Payroll Tax Deposit* (DE 88).
 - An active taxpayer fails to submit an *Interim Contribution Return* (DE 2858) when specifically required as a condition of the agreement.
 - The taxpayer provided false, inaccurate, or incomplete information.
 - Taxpayer fails to inform the EDD that their financial position has improved.
 - If the taxpayer voluntarily provides updated financial information, the terms of the agreement may be renegotiated.
 - A taxpayer fails to pay current taxes by the due date, incurring additional liability after the agreement is negotiated.
-

**ASSIGNMENT
FOR BENEFIT OF
CREDITORS**

The assignment for the benefit of creditors is an alternative to bankruptcy. An assignment is the transfer of a claim, right, interest, or property. A general assignment for the benefit of creditors is the transfer of all, or substantially all, of the taxpayer's (assignor's) property to another person in trust (assignee). Some of the transactions that may take place are:

- Collection of any money owing to the taxpayer.
- Sale of the property.
- Distribution of the proceeds to the creditors.
- Return of the surplus proceeds, if any, to the taxpayer.

A transfer of property to secure a debt, which is not intended as an absolute disposition of the property, is not an assignment for benefit of creditors.

A voluntary assignment may be made by an employer to:

- Secure assets from attachment by creditors.
- Assist the employer to remain solvent.
- Avoid the filing of bankruptcy.

Section 1701(b) of the California Unemployment Insurance Code (CUIC) provides that the employer and employee contributions, that are required to be paid by an employer, together with interest and penalties, shall be satisfied first whenever the employer makes a voluntary assignment of assets.

RECEIVERSHIP

A receivership is a legal proceeding in which a receiver is appointed for an insolvent corporation, partnership, or individual. A receiver is a person appointed by a court to take into custody the property or funds of others and manages the property in litigation.

NOTIFICATION

If the notification that a taxpayer is in an assignment for the benefit of creditors or a receivership, the account should be assigned to the Special Procedures Section, Bankruptcy Group (SPS, BG). The SPS, BG, will file claims in order to protect the Employment Development Department's (EDD) interests and will handle all follow-up actions until the case is closed.

DUTIES AND RESPONSIBILITIES

Section 1090(a) of the CUIIC requires that every receiver, assignee, or other representative of an insolvent employer shall send a written notice of the following to the EDD within 30 days of assuming office:

- Name and address of the taxpayer.
- Name and address of the receiver, assignee, or other representative.
- Other information as may be required by the Director of the EDD.

Section 1736 of the CUIIC provides that in addition to other penalties, failure to file the notice required by Section 1090 of the CUIIC shall cause the assignee, receiver, or other representative of an insolvent employer to be personally responsible for all losses in contributions, penalties, and interest attributable to such failure. This liability may be enforced by a civil action in the name of the State of California against the assignee, the receiver, or any other representative.

**EDD CLAIMS FOR
ASSIGNMENTS
AND
RECEIVERSHIPS**

The EDD's claim **must be** filed within four months from the mailing of the notice from the receiver or assignee.

Prior to the filing of the claim, SPS, BG, should attempt to secure all missing returns and post them to the account to ensure the claim is correct.

An assignee or receiver may or may not accept claims for his or her cases. Claims that are accepted will have all current liabilities submitted with interest computed through the end of the current month of the date of the claim.

The claim will include a breakdown of taxes claimed, the period covered, and the amounts of taxes, penalties, and interest.

The claim must be filed before the last timely date and must include all account numbers and related account numbers.

PROBATE

Probate is a court procedure that includes all matters pertaining to the administration of estates, guardianships, and the validity of wills. A will is an instrument by which a person makes a disposition of their property to take effect after their death.

If a title to, or an interest in, real or personal property is affected by the death of a person, another person who claims an interest in the property may commence a probate proceeding. Any person who has interest in the property of the deceased may file a petition in a superior court showing his or her claim or right to the money and any other property of the estate.

The probate proceedings shall be filed in the superior court of the county in which the decedent was a resident at the time of death or in the county in which the property is located.

The death of a sole proprietor or partner does not result in a new employing unit where the fiduciary or the fiduciary together with a surviving partner(s) continues the operation of the decedent's business. A fiduciary is a person or institution that manages money or any other property for another and must exercise a standard of care in such management activity imposed by law or contract. A fiduciary may be an executor of the estate, a trustee, or a receiver.

Section 1701(c) of the California Unemployment Insurance Code (CUIC) provides that the required employer and employee contributions, penalty, and interest shall be satisfied first whenever the executors, administrators, or heirs are handling the estate of an employer with insufficient assets to pay all the debts due from the deceased.

TYPES OF ESTATE

Estates of a deceased may be:

- Testate
 - A decedent has left a will.
 - An executor is named in the will to administer the estate of the deceased.
 - The superior court grants letters of testamentary appointing the executor.
- Intestate
 - The decedent did not leave a will regarding the disposal of his or her property.

The superior court may appoint a personal representative to administer the estate (usually a county administrator or a public guardian office).

AUTHORITY OF PERSONAL REPRESENTATIVE

The superior court authorizes the personal representative (e.g., an executor, an administrator, or a conservator) to administer the estate under the Independent Administration of Estates Act with full authority, limited authority, or no authority without court supervision to perform any of the following:

- Sell or exchange real property.
 - Grant an option to purchase real property.
 - Borrow money with the loan secured by an encumbrance upon the real property.
-

RESPONSIBILITIES OF ADMINISTRATOR OR EXECUTOR

Every administrator or executor of the estate of a deceased employer shall send a written notice of the following to the Employment Development Department (EDD) within 30 days after assuming office as required by Section 1090(a) of the CUIIC:

- Name and address of the employer.
 - Name and address of the administrator or executor.
 - Other information as may be required by the Director.
 - The administrator or executor of the estate of a deceased employer shall succeed to or shall acquire all the rights and obligations of the deceased employer as set forth in Section 1090(b) of the CUIIC.
-

SOURCES OF INFORMATION

The EDD obtains information regarding notices of death of individuals from the following:

- Published obituaries.
- Radio.
- Television.
- Newspaper.
- Phone calls from relatives, friends, attorneys, and others.
- Notices from executors, administrators, and conservators.
- Correspondences and notes on contribution returns and statements.
- Dishonored checks.
- Returned mail.
- Contacts made by the EDD field offices in performing audit and collection activities.
- Notices of administration to creditors or letters of conservatorship, testamentary, or administration sent by the superior court where the probate was filed.

WHEN TO FILE THE CLAIM

The EDD shall file or present its claim for contributions, penalties, and interest based upon wages paid by the employer during his or her lifetime. Section 9100(a) of the Probate Code (PC) requires a creditor to file a claim before expiration of the later of the following times:

- Four months after the date the letters were first issued to a general personal representative.
- Sixty days after the date the notice of administration was given to the creditor, if notice was given as provided in Section 366.2 of the Code of Civil Procedure.

The Special Procedures Section, Bankruptcy Group (SPS, BG), is responsible for the filing of claims with the superior court clerk in the judicial district where the probate was filed. A copy of the claim must be delivered or mailed to a personal representative.

The court may allow a claim to be filed late upon petition by a creditor as outlined in Section 9103 of the PC.

**COLLECTION
STAFF
PROCESSING**

Collection staff may receive probate notices and other correspondence from the superior court or the deceased employer's agents or relatives.

Upon receipt of a notification:

- Determine whether the deceased is an employer or a responsible person (RP) assessed under Section 1735 of the CUIC.
 - If a case exists, the assigned individual shall:
 - Resolve all outstanding collection actions.
 - Determine if the business is being continued.
 - Determine the current management and ownership of the business.
 - Resolve all outstanding collection actions. Forward a completed *Probate Information* (DE 1959) to the SPS, BG.
 - Transfer the case to the SPS, BG.
-

**DISCHARGE
FROM
ACCOUNTABILITY**

An *Application for Discharge from Accountability* (STD. 27) of an account is submitted to the State Controller's Office (SCO) when it is no longer cost effective to pursue collection and all reasonable means of collection have been exhausted. However, Section 12437 of the Government Code (GC) discharge does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the Notices of State Tax Lien and remain enforceable until they expire. The Employment Development Department (EDD) continues to submit names of individuals and responsible persons for offsets.

The EDD cannot discharge amounts due from public entities, special districts, financial institutions or entities that receive public funds.

**APPLICATION
FOR DISCHARGE
FROM
ACCOUNTABILITY**

The Division Support Section, Organizational Effectiveness Group, (DSS, OEG) prepares the STD. 27 and certifies that the EDD has completed all of the collection actions as prescribed in Section 8776.6 of the State Administrative Manual (SAM). Separate applications must be completed for amounts less than \$10,000 and amounts of \$10,000 or more. DSS, OEG submits the STD. 27 to the Financial Reporting Group (FRG) who will send the application to the SCO. Discharges for over \$10,000 require additional review. Approved applications for debts exceeding \$10,000 are forwarded to the Attorney General's (AG) Office for a second review. If approved by the AG's Office, these applications are forwarded to the California Victim Compensation and Government Claims Board (VCGCB) for final approval.

Section 12435 of the GC mandates that SCO shall audit the applications and shall recommend the VCGCB to approve an order discharging the applicant (EDD) from further accountability for collection.

**AUTHORIZATION
TO FOREGO
COLLECTION OF
STATE DEBT**

SECTION	DESCRIPTION
12433 of the GC	<p>Any state agency or employee required to collect any state taxes, licenses, fees, or money owing to the state for any reason that is due and payable may be discharged by the Controller from accountability for the collection of the taxes, licenses, fees, or money if the debt is uncollectible or the amount of the debt does not justify the cost of its collection.</p> <p>See Section 8776.6 of the SAM.</p>
12434 of the GC	<p>The application for a discharge shall be filed with SCO.</p>
12435 of the GC	<p>The SCO shall audit the applications. The SCO shall discharge the applicant from further accountability for collection and authorize the applicant to close its book on that item.</p>
12436 of the GC	<p>The Controller may discharge from accountability a state agency for accounts that do not exceed the amount specified in subdivision (e) of Section 12435 and thereby authorize the closing of the agency's books in regard to that item.</p>
12437 of the GC	<p>A discharge generally does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.</p>

**AUTHORIZATION
TO FOREGO
COLLECTION OF
STATE DEBT**
(cont'd.)

SECTION	DESCRIPTION
12438 of the GC	A state agency is not required to collect taxes, licenses, fees, or money owing to the state for any reason if the amount to be collected is five hundred dollars (\$500) or less. Nothing contained in this section shall be construed as releasing any person from the payment of any money due the state.
116.221 of the Code of Civil Procedures	The small claims court, in general, shall have jurisdiction if the amount of the demand does not exceed \$10,000.
8776.6 of the SAM	<p>If all reasonable collection procedures do not result in payment, departments may request discharge from accountability on uncollectable amounts from private entities.</p> <p>Departments will file a STD. 27 with SCO.</p> <p>Applications for relief of accountability of uncollectable amounts of more than \$10,000 will be filed separately from applications for amounts of less than \$10,000.</p> <p>The STD. 27 requires, in detail, the collection efforts made and circumstances warranting discharge.</p>