

NOTE: The following penalties have changed effective with the 3rd quarter 2014 -

- Late Filing - A penalty of 15% (10% for periods prior to the 3<sup>rd</sup> quarter 2014) plus interest will be charged.
- Late Deposit - A penalty of 15% (10% for periods prior to the 3<sup>rd</sup> quarter 2014) plus interest will be charged.
- Wage Item Penalty - A wage item penalty of \$20 (\$10 for periods prior to the 3<sup>rd</sup> quarter 2014) per employee will be charged for late reporting or unreported employee wages.

# TAX COMPLIANCE GUIDELINES

**As of January 2011, these Compliance Guidelines are under revision due to the implementation of a new automated accounting and compliance system.**

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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. EDD's Tax Branch collects the funds for UI, DI, and the Employment Training Tax (ETT) to fund California's security system of 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 work force
- Are too ill or injured to work due to non-work related causes

The Tax Branch also collects the California Personal Income Tax (PIT) that employers withhold from their employees' wages. When these funds are remitted to EDD, they are transferred to the Franchise Tax Board (FTB).

Collection Division (CD), a division within Tax Branch, is responsible for administering the employment tax and benefit overpayment collection programs. These programs are designed to encourage voluntary compliance by employers, claimants, and their representatives. Involuntary collection actions 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. The CD strives to keep employers in business while allowing them to liquidate amounts owed. When necessary, involuntary collection action is taken in order to collect money that otherwise would not be paid. The CD secures delinquent tax returns to ensure timely and prompt resolution of claims for benefits and collects liabilities that are owed to EDD.

The CD must serve the needs of the people of California and has a responsibility to serve those needs in an efficient and effective manner. The CD strives to incorporate a balanced approach by providing quality customer service while performing assigned duties.

The CD is comprised of two major operations:

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

**COLLECTION  
PROGRAM  
FUNCTIONS**

The CO and FO staff conduct tax collection activities on assigned delinquent accounts that include:

- Working with employers, internal customers, and other governmental agencies to resolve payment and report delinquencies
- Ensuring long term compliance with the Unemployment Insurance Code (UIC)

These activities include:

- Initiating appropriate action for the timely and efficient resolution of delinquent returns and taxes
  - Monitoring installment agreements
- 

**CENTRAL  
OPERATIONS  
FUNCTIONS**

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

- Identifying delinquent accounts requiring collection action
  - Processing bankruptcy and probate claims
  - Processing Notices of State Tax Lien, including subordination and partial releases
  - Processing liquor and contractor's license holds
  - Assisting with complex legal problems and referrals to the Office of the Attorney General
  - Offers in Compromise (OIC)
  - Interagency Offsets
  - Out-of-State Tax Accounts Referral (OSTAR)
-

**FIELD  
OPERATIONS  
FUNCTIONS**

The FO conducts collection activities on the assigned delinquent tax accounts that may require collection action and contacts for resolution.

A field investigation may be necessary in order to resolve some accounts. Field staff may conduct on-site meetings with employers at their place of business. Field staff may also conduct an inspection and evaluation of the business and/or real property.

The FO also provides the following functions:

- Attending tax hearings on behalf of EDD
- Placing holds on liquor and contractors' licenses
- Initiating compliance complaints and citations
- Initiating the issuance of warrants for the seizure and sale of personal property
- Meeting with delinquent taxpayers to secure payment of amounts due
- Monitoring installment agreements and Earnings Withholding Orders for Taxes (EWOTs)
- Receiving and responding to initial contacts requesting subordination of liens
- Initiating collection action on public works contracts

**PROMOTE  
VOLUNTARY  
COMPLIANCE**

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

- California Employer Newsletter
  - California Employer's Guide
  - California Household Employer's Guide
  - Internet access
  - Outreach seminars
  - Small Business Employer Advisory Committee
  - Tax Talk
- 

**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
  - Unemployment Insurance Code
  - United States Bankruptcy Code
-

**COLLECTION TOOLS**

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

- Citation hearing
- Compliance complaint
- EWOT
- Lien on Cause
- Notice of Levy (NOL)
- Notice of State Tax Lien
- Offset
- Personal responsibility assessment
- Successor liability assessment
- Warrant

**COLLECTION POLICIES**

The EDD follows the collection practices contained in the Rosenthal Fair Debt Collection Practices Act cited in Civil Code Section (§) 1788 through §1788.33 (Act). The EDD endorses the principles listed in the Act in an effort to ensure that collectors 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 businesslike
- 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 Act, and Tax Branch staff **are not** to utilize these collection activities:

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

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

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

TYPE OF ACTIVITY	EXAMPLES OF IMPROPER ACTIVITY
Unfair collection activity/practices	<ul style="list-style-type: none"> <li>• Communicate with a taxpayer's employer unless necessary to collect the debt</li> <li>• Communicate with a taxpayer's family except to locate the taxpayer and/or assets</li> <li>• Refer the taxpayer's name to a list commonly called "Deadbeat List"</li> <li>• Print anything on an envelope other than the name, address, and telephone number of the tax collector or taxpayer</li> <li>• 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</li> <li>• Initiate judicial proceedings against a taxpayer when there is no legal right to do so</li> <li>• 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)</li> <li>• Collect amounts greater than the debt due</li> </ul>

**REPORT  
DELINQUENCIES**

A tax report delinquency occurs when an employer fails to file the required reports within the time limits established by the Unemployment Insurance Code (UIC).

The reports required of most employers are:

FORM	DESCRIPTION	UIC SECTION (§)
DE 88/ DE 88E	Payroll Tax Deposit (DE 88)/ Payroll Tax Deposit Return Envelope (DE 88E)	1088(b)
DE 6	Quarterly Wage and Withholding Report	1088(a)
DE 7	Annual Reconciliation Statement	1088(e)
DE 3D	Quarterly Contribution Return (Voluntary Plan)	1088(c)
DE 3BHW	Quarterly Report of Wages and Withholdings for Employers of Household Workers	Title 22, CCR §1088.1(g)
DE 3HW	Annual Payroll Tax Return for Employers of Household Workers	Title 22, CCR §1088.1(g)

**PAYROLL TAX  
DEPOSITS**

The UIC §1088 requires that a subject employer file Payroll Tax Deposit coupons (DE 88/DE 88E) 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. A DE 88E indicates that a payment has been remitted electronically.

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

Employers are 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 DE 6 is due on April 1, July 1, October 1, and January 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 6 is delinquent if not postmarked on or before April 30, July 31, October 31, and January 31 respectively.

The information from the DE 6 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, DE 6s must be filed quarterly if it is anticipated that there will be employees in future quarters.

Demands for delinquent DE 6s on unassigned accounts will have the Field Audit and Compliance Division's (FACD) Taxpayer Assistance Center address and telephone number.

Demands for delinquent DE 6s on case assigned accounts will have the appropriate Area Collection Office (ACO) or Tax Collection Section (TCS) address and telephone number for contact. Program support groups in the ACOs will immediately transfer the customer's inquiries generated by the tax report delinquency statements to the case assignee. The case assignee is responsible for obtaining the information to clear these delinquencies and contacting the employer if the DE 6 has not been received.

**QUARTERLY  
WAGE AND  
WITHHOLDING  
REPORT (DE 6)**  
(cont'd.)

Statements are issued for a UIC §1114 wage item penalty of \$10 per item when a DE 6 is not received after a demand has been mailed or is filed late.

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

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**ANNUAL  
RECONCILIATION  
STATEMENT  
(DE 7)**

Employers are 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, and employer payments of UI and ETT, and to reconcile the total subject wages reported during the year on the DE 6s. The DE 7 is due on the first business day of the subsequent year and is delinquent if not postmarked on or before January 31 of that year. If January 31 falls on a Saturday or Sunday, the employer has until the next business day to file the DE 7 timely.

A DE 7 must be filed within 10 working days after an employing entity closes a business.

Employer Account Statements (DE 2176) for accounts having a delinquent DE 7 are generated after all timely DE 7s are posted. Demands for delinquent DE 7s on case assigned accounts will have the appropriate ACO address and telephone number for contact. Demands for unassigned accounts will have FACD's Taxpayer Assistance Center address and telephone number.

If an employer fails to send a completed DE 7, an estimated assessment is issued for each active quarter on the employer's account. In addition, and in accordance with UIC §1117, if an employer fails to file the DE 7 on or before 30 days after the DE 2176 demand notice has been given, a penalty of \$1,000, or five percent of the total annual taxes, whichever is less, will be charged.

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**QUARTERLY  
CONTRIBUTION  
RETURN (DE 3)**

Prior to January 1, 1995, employers were required to file a Quarterly Contribution Return (DE 3DP) and a Report of Wages (DE 3B). The DE 3DP 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 3DP. The DE 3B was used to report each employee's name, social security number, and quarterly wages.

Some accounts remain subject to the requirements of filing applicable DE 3 reports. Some employers are subject only to certain provisions of annual reconciliation. Employers who are exempt from annual reporting are:

- Voluntary Plan Accounts  
California law allows employers to develop and apply to the Employment Development Department (EDD) for approval to administer a Voluntary DI Plan for short term disability insurance
- Domestic or Household  
UIC §1118
- Reimbursable UI Employers  
UIC §803

The DE 3 has the same due and delinquency dates as the DE 6 and the end of quarter DE 88. Payment must accompany the DE 3, including all funds that are payable by the employer as well as trust fund withholdings.

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**CASE  
MANAGEMENT**

Case management is defined as a series of actions taken to ensure that the interests of the people of California are fully protected. These actions include, but are not limited to, the timely working of each assignment that is a part of a caseload.

Case management incorporates the concept of staff and management working together. To protect the interests of the State, criteria have been established for assigning caseloads to staff. It is the responsibility of staff to take a pro-active role in completing assigned work. The supervisor will balance inventories among staff, with consideration of availability; i.e., special assignments, long term leave, etc. The supervisor will either reassign the workload to other available resources, or work with staff to establish a systematic approach to make sure that all cases are worked in a timely fashion. It is also important that the system ensures that follow-up actions are being taken as appropriate.

Adjustments may be made to:

- Equalize workloads
- Allow for improvements in customer service to employers, taxpayers, claimants, other members of the public, and business communities whom we serve

Management of case workloads is the responsibility of every Collection Division (CD) employee. This encompasses the following:

- Taking appropriate actions as shown in the time frames chart
- Providing accurate information and support to our customers
- Evaluating and acting upon customer concerns or requests in an objective, impartial, and timely manner
- Conducting Unemployment Insurance Code (UIC) Section (§) 1735 investigations while pursuing collection of corporate liability

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

- Utilizing staff and technological resources
- Resolving all accounts in an expedient manner
- Transferring accounts when appropriate

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

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**TIME FRAMES**

Each individual assigned a workload will be required to work assignments within the Employment Development Department's (EDD) time frames.

Every employee has the responsibility to comply with guidelines and case management. To ensure timely case resolution, specific tasks have been identified for effective case management:

- Examine entire assigned workload at least once a month
- Apprise the supervisor of the results of those examinations
- Discuss any specific challenges and opportunities for enhancement in the workload resolution process
- Identify accounts that have not been contacted within the last 30 days and/or accounts over six months old, or accounts over one year old

In reviewing assignments, staff and supervisors 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 supervisors will then ensure that these assignments are fully worked in the most efficient and effective manner possible.

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**OFFERS IN  
COMPROMISE**

The Offers in Compromise (OIC) Unit is responsible for processing any OIC requests from taxpayers. All applications received will be sent to the OIC unit.

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**REIMBURSABLE  
ACCOUNTS**

In lieu of the contributions required of employers, an entity, as defined in UIC §803(a), may elect to reimburse the Unemployment Insurance Fund the cost of benefits paid to claimants. Reimbursable accounts generally are public entities and religious, charitable, educational, and nonprofit organizations. An application is filed by the entity and is authorized by EDD. The UIC §803(g) authorizes 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 may not be filed on governmental agencies. If an entity is delinquent, the entity may be contacted. And, if payment in full is not made, a meeting with the entity must be requested. Also, an investigation to determine the responsible person for the entity should commence. The area program manager must pre-approve **ALL** compliance actions.

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**CONTACT  
EMPLOYER**

Professional conduct and demeanor are important when communicating with our 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 is reinforced with EDD's Vision Statement. This 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 California employing 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

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

Develop a mental approach in your plan of action for each of the four types of employers that you may encounter in collection activities. Knowing when and how to respond or initiate any necessary action is a prerequisite to becoming an effective compliance person.

Contact with employers is made by letter, telephone, 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.

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**ENTITY  
VERIFICATION**

Businesses may be required to obtain a license in the city or county where the business is located in order to operate. The county clerk's office keeps records that are indexed under the name of the business. These records provide the name and address of the owner.

Entity types and their descriptions are outlined below:

**SOLE PROPRIETORSHIP**

A sole proprietorship is one individual who owns and operates one or more businesses.

**GENERAL PARTNERSHIP****Corporations Code, Section (§) 16100, et seq.**

Corporations Code §16100 through §16962 is known as the Uniform Partnership Act of 1994. As provided in Corporations Code §16101(7), 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. Corporations Code §16306 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.

**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.

The death of a partner automatically dissolves the partnership.

**ENTITY  
VERIFICATION**  
(cont'd.)**LIMITED PARTNERSHIP**  
**Corporations Code §15501, et seq.**

A limited partnership is a partnership formed by two or more persons, having as members 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. 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**  
**Corporations Code §17000, et seq.**

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 Unemployment Insurance Code (UIC) §1735 when individual responsibility is identified.

**LIMITED LIABILITY PARTNERSHIP**  
**Corporations Code §16951, et seq.**

A limited liability partnership (LLP) is a form of business organization combining elements of partnerships and corporations. An LLP is a partnership that provides its partners a limitation on personal liability similar to limited partnerships. However, LLPs are distinct from limited partnerships in that limited liability is granted to all partners, not to a subset of non-managing “limited partners.”

To qualify as an LLP, all of the partners of a general partnership must be licensed under the provisions of the Business and Professions Code to practice public accounting, law, or architecture. A general partnership can also qualify if it is related to an LLP and provides services or facilities for that LLP or provides services that are related or complementary to that LLP.

A partnership is considered related to an LLP if:

- A majority of the partners in the LLP are also partners in the related partnership; or
- A majority of the partners in the related partnership are also partners in the LLP; or
- A majority of the partners, of both the related partnership and the LLP, hold interest in or are members of another entity and both perform services for that entity; or
- The LLP partnership or related partnership controls, is controlled by, or is under common control with the other through one or more intermediaries.

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

The two types of LLPs are registered (domestic) LLPs and foreign LLPs.

A registered limited liability partnership (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 another jurisdiction and is qualified as an LLP or RLLP under the laws of that jurisdiction.

The name of the RLLP or foreign LLP 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."

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

The rules governing the withholding of payroll taxes for the partners in an LLP will remain the same as a general partnership. The LLP members must be assessed under UIC §1735 to be held individually responsible for LLP tax liabilities.

**CORPORATIONS****Corporations Code §100-2319, et seq.**

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. Corporations Code §200 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. Corporations Code §2105 sets forth the filing requirements for foreign corporations. The SOS will issue a certificate of qualification for a foreign corporation.

Copies or certified copies of articles of incorporation, statement of officers, or articles of organization may be obtained by submitting a request to the Special Procedures Section, Offset Group.

**ENTITY  
VERIFICATION**  
(cont'd.)**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) §501(c)(3) must be obtained. Examples include: religious, charitable, and education institutions.

**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 exists when there is insufficient compliance to constitute a de jure corporation.

**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 §233011 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 UIC by reason of any employment of persons and payment of wages during the suspension period.

**ENTITY  
VERIFICATION**  
(cont'd.)**OTHER ENTITY TYPES****Association**

Corporations Code §21300 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.

**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 account number is not required unless employees are hired.

**Joint Venture**

A joint venture is the undertaking of two or more persons or entities jointly 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.

**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.

**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.

**FIRST  
PERSONAL  
CONTACT**

The EDD's policy is to make timely contact with the taxpayer after case assignment. In general, 15 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 this time frame and to gain full compliance with an early resolution. Use of the telephone is generally the most cost-effective way of speaking with the taxpayer.

Prior to contact, the following preparation is crucial:

- 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, Civil Code §1788 through §1788.33
  - Confidentiality
  - Taxpayers' Bill of Rights
  - The UIC and other California laws
- Know the laws related to installment agreements and collection remedies
- Determine owner to be contacted

Making the contact:

- Explain the purpose of your call. Make a demand for immediate payment.

**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(s), 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 payment history will provide data about the taxpayer's past payment history and will assist in locating unapplied payments or payments that have resulted in a refund.

**PHONE CONTACTS**

Good communication requires the following skills:

<b>SKILLS</b>	<b>DESCRIPTION</b>
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.
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.

**PHONE  
CONTACTS**  
(cont'd.)

SKILLS	DESCRIPTION
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 to the maximum and consider all options available.

Practice and develop a mental approach and plan of action for collection work. Knowing when and how to respond or initiate any necessary action is a prerequisite to becoming an effective collector.

**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
- A current map
- Signed Notice of Levy (DE 8500) without garnishee information

Carry your items in an appropriate folder or carrying case.

Things to do prior to leaving for the field call:

- Prepare a Field Personnel Daily Travel Report (DE 124) listing the scheduled field call and leave a copy at the office
- Sign out
- Conduct a safety check of the vehicle to be used. If using a State vehicle, make sure the gas credit card, travel log, and accident report forms are in the glove compartment
- Comply with additional office procedures and seek advice related to the business location
- If available, check out a laptop

**RETURNING TO  
THE OFFICE**

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

**COLLECTION  
LETTERS**

Some taxpayers will respond to:

- Telephone 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.

Individually composed letters may be used in unusual circumstances when special handling is necessary. This type of letter should be professional, factual, and concise. Pre-approval by a supervisor is required.

Collection letters should be mailed as follows:

- Ordinary mail: Used in most cases
- Certified mail: Used if proof of delivery is necessary
- Certified mail with return receipt: Used if it is suspected that the taxpayer has moved, and a receipt is needed to show the address of delivery
- Overnight express: Restricted to sending warrant instructions to the California Highway Patrol or a service of a pending subpoena duces tecum

**ESCROW**

An escrow is the process used to transfer funds from a buyer to a seller when a sale or transfer of real or personal property takes place. The escrow process guarantees that the property being purchased is free and clear of encumbrances.

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

A sale or transfer, for EDD purposes, may be:

- Business, with or without a liquor license
- Excess funds
- Home equity loans
- Internal Revenue Service (IRS) surplus
- Liquor license
- Mortgage refinance
- Personal property
- Real property

A Notice of State Tax Lien 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
- 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	Special Procedures Section (SPS), Offset Group (OG) will handle the liquor license demand.  The Audit program will handle the business demand.
Business without a liquor license	The Audit program's Audit Area Offices handle these assignments for employers within their jurisdiction.
Excess funds	SPS, OG
Home equity loans	SPS, Lien Group (LG)
IRS surplus	SPS, OG
Liquor license	SPS, OG
Mortgage refinance	SPS, LG
Personal property	SPS, LG
Real property	SPS, LG

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

**SALE OF A BUSINESS**

Unemployment Insurance Code (UIC), Section (§) 1731 provides that any person or entity that acquires an employer's business or 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 EDD stating that no amounts are due.

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

If EDD issues a certificate stating that no amounts are due or fails to issue an amounts 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.

The UIC §1733 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 utilizes a Certificate of Release of Buyer (CRB) (DE 2220) to notify the buyer that they are released from responsibility.

**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.

**SALE OF A  
BUSINESS**

(cont'd.)

DEMAND AND CLEARANCE

The Audit program is responsible for issuing escrow clearances on the sale of businesses. Specific steps are located in the Program Support Handbook, Section 11-000.

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.

Audit 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 Audit.

STATEMENT OF AMOUNTS DUE

Audit shall issue a Requirements for Certificate of Release of Buyer – Statement of Amounts Due Under Section 1732, UIC (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, with a copy to the seller.

**SALE OF A  
BUSINESS**

(cont'd.)

PAYMENTS

The payment of any amounts demanded in the DE 4874 shall be submitted to Audit 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. Audit 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
  - No open delinquency case
  - No liabilities are due
  - No outstanding form delinquencies
- The seller is not registered
  - 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
  - A Notice of State Tax Lien secures the full amount of the EDD liability
  - The remaining portion of property is sufficient to secure the EDD liability

**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 (DE 88)
  - Quarterly Wage and Withholding Report (DE 6)
  - Annual Reconciliation Statement (DE 7)
- 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 ten 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 Audit for one year.

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**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 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 OG.

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**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 and demand is processed as outlined in the Real Property section of this chapter.

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

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

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**LIQUOR LICENSE** When a business being sold has a liquor license, the following actions will be performed:

- The OG will handle the sale of the liquor license only
    - The OG will contact the assigned staff to verify any outstanding delinquencies and to confirm the amount to be included in the demand
  - Audit will complete the escrow clearance process and issue a DE 4874 for any outstanding delinquencies
    - When Audit learns of a sale that involves both a business and its liquor license, they will notify OG by e-mail
-

**MORTGAGE  
REFINANCE**

Taxpayers refinancing a mortgage on real property will need 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 are made aware of a taxpayer's refinance action, advise the escrow holder to fax a demand request to LG.

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**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 will be clear.

When the escrow holder or lender is processing an escrow with respect to the encumbered property, they will send EDD a demand for a payoff amount or the release of the recorded liens. In response to the request, 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 UIC §1732 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 (916) 464-2711

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

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**INVOLUNTARY  
COLLECTION  
DETERMINATION**

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

- A taxpayer fails to:
  - Respond to notices or correspondence after contact has been established
  - Respond to telephone calls
  - Provide requested information
  - Remain current on an installment agreement or the payments made are returned as “non-sufficient funds or stop payment”
  - Negotiate an acceptable method of payment
  - Appear for an interview
- If:
  - A jeopardy assessment has been issued
  - It is necessary to protect the Employment Development Department’s (EDD) interest
  - The taxpayer has a history of non-compliance
  - Statute of limitations is nearing expiration

Care must be taken when referring to the appropriate involuntary action. Staff should be aware of the legal requirements as to whether a liability is due or delinquent.

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**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)
- Special Procedures Referrals
- 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: 1. Surety 2. United States (U.S.) Savings 3. Security deposits by other agencies	1. Claims filed by Special Procedures Group 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"> <li>• Sale of Equipment                             <ol style="list-style-type: none"> <li>1. No escrow</li> <li>2. With escrow</li> </ol> </li> </ul>	Warrant <ol style="list-style-type: none"> <li>1. Warrant or NOL</li> <li>2. Issue a demand to clear the Notice of State Tax Lien</li> </ol>
Escrow funds: <ol style="list-style-type: none"> <li>1. Amounts covered by a Notice of State Tax lien</li> <li>2. Amounts not covered by a Notice of State Tax Lien</li> </ol>	<ol style="list-style-type: none"> <li>1. Issue a demand to clear the Notice of State Tax lien</li> <li>2. NOL</li> </ol>
Financial institution accounts: <ul style="list-style-type: none"> <li>• Banks</li> <li>• Credit Unions</li> <li>• Savings and Loans</li> </ul>	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"> <li>• Errors and Omissions</li> <li>• Malpractice Insurance</li> <li>• Fire Insurance</li> <li>• Interruption of Business</li> <li>• Personal Injury</li> </ul>	Warrant if proceeds are for personal property damage
Interest	NOL
Lien on cause	Refer to Special Procedures Group
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, or board, care and maintenance, or immediate sale
Personal property in warehouse	Warrant
Personal property being sold	<ul style="list-style-type: none"> <li>• Warrant prior to the sale</li> <li>• NOL to the buyer</li> </ul>
Progress payments (continuing periodic payments to taxpayer)	<ul style="list-style-type: none"> <li>• Warrant – effective for two years</li> <li>• NOL – effective for one year</li> </ul>
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"> <li>• Land</li> <li>• Taxpayer's personal residence, including a mobile home</li> <li>• Rental</li> </ul>	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"> <li>• Camping</li> <li>• Freight</li> <li>• Motor home</li> <li>• Utility</li> <li>• Vehicle transport</li> </ul>	Warrant
Trusts – family	NOL or Warrant
Trusts – held for a third party	Not attachable: <ul style="list-style-type: none"> <li>• Federal regulations prohibit the attachment of payroll withholding</li> <li>• Special bond deposits for other taxing agencies</li> </ul> Warrant: <ul style="list-style-type: none"> <li>• Undisclosed beneficiary of a trust account</li> </ul>
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"> <li>• Private businesses</li> <li>• Private businesses operating on military bases</li> <li>• Military businesses with either private or federal employees</li> <li>• Federal employees</li> <li>• Post Office employees</li> </ul>	<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**

As provided in Unemployment Insurance Code (UIC) Section (§) 1703, a state tax lien is created on the date of the first system generated billing to the taxpayer of the amount due, the finality date of an assessment, or the date of the written notice of rescission provided under UIC §1875 for an Offers in Compromise (OIC). Each of these dates is known as the lien arose date.

In order for the lien to be effective against real property, Government Code (GC) §7171(a) allows the Employment Development Department (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. The GC §7171(b) and §7220 allows 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 ten 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"> <li>• Date of discovery statement for an amount due</li> <li>• Finality date of an assessment</li> <li>• Date of an OIC rescission</li> </ul>
Filed	Notice of State Tax Lien is filed with the SOS
Lien	An encumbrance upon an asset placed by creditors

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

TERM	DESCRIPTION
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 county recorder
State tax lien	Statutory lien authorized by UIC §1703
Silent lien	Statutory lien for which no paper has been issued
Statutory lien	Authorized by UIC §1703, a perfected and enforceable state tax lien. Also known as a silent lien

**EMPLOYER NOTIFICATION**

The employer is notified on the Employer Account Statement (DE 2176) cycle statements of the consequences if the liability is not paid.

The notification may read as follows:

“Failure to pay the delinquent liabilities reflected on this statement **may** cause a Notice of State Tax Lien to be recorded against you pursuant to GC §7171. A Notice of State Tax Lien constitutes public notice to your creditors and will encumber your real and/or personal property.”

“Failure to **immediately** pay the delinquent liabilities reflected on this statement **will** cause a Notice of State Tax Lien to be recorded against you pursuant to GC §7171. A Notice of State Tax Lien constitutes public notice to your creditors and will encumber your real and/or personal property.”

“A Notice of State Tax Lien **has been** filed against you as a result of your continued failure to pay your tax liability. If the amount due is not paid immediately, additional involuntary collection action may be initiated, which includes seizure and sale of your business and/or personal property.”

**REQUIRED INFORMATION**

Pursuant to GC §7171(c), 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.

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**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 Civil Code §3193.

The Notice of State Tax Lien recording date establishes priority when a general creditor's lien is against the same person or entity as 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 GC §7170.5.

---

**PURPOSE OF A STATE TAX LIEN**

A recorded or filed Notice of State Tax Lien:

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

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**COUNTY LIEN FEES**

The GC §7174(d) authorizes a lien release fee to be added to the taxpayer’s account. The lien release fee amounts vary by county. An additional fee may be charged for each Notice of State Lien for the county’s retention and retrieval systems.

The GC §7171(d) allows an additional fee for Notices of State Tax Lien with an out-of-state address.

Each county bills EDD monthly for the recordation fees. The Lien Group is responsible for authorizing and approving payment.

There is no lien fee if EDD is recording a release for an erroneous lien.

---

**SECRETARY OF STATE FILING FEES**

The GC §7227 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 be submitted with the releases that need to be filed.

---

**EXTENSIONS**

Under the provisions of GC §7172(c), 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 ten years from the recording or filing date. The ten-year period may be crucial; e.g., a Notice of State Tax Lien recorded on 2/3/99 at 1:55 PM is valid until 2/3/09 at 1:55 PM. It has expired at 1:56 PM. Any extension must be recorded no later than 1:55 PM on 2/3/09.

California Constitution Article 13, §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 EDD's liens:

LETTER	IDENTIFIES
W	Automated Notices of State Tax Lien began June 3, 1988.
M	Manual Notices of State Tax Lien began on April 3, 1972. The GC §7174(c) and (d) allows agencies to charge the taxpayer release of lien fees; and mandating that the agencies 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 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** The GC §7174(c)(1) directs 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.

The GC §7174(e) mandates that Notices of State Tax Lien that are filed with the SOS must have one of the following actions taken no more than 40 days from the date of full satisfaction:

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

Release fees:

- Individual counties bill EDD for release fees after recordation of the releases
- The SOS requires full payment of the release fee prior to filing a release. Special Procedures Section will send the fees with the releases

The GC §7174(d) 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 the fees in the penalty column of the Notice of State Tax Lien.

In accordance with GC §7174(f), 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.

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**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
- 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
- Petitioned assessments
- Recorded after a taxpayer is deceased

CAUTION: A Notice of State Tax Lien may be recorded against a decedent's estate. Refer to Chapter 17, Probate, within this Manual.

- 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
- 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 that 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

**FEE FOR ERRONEOUS LIEN RELEASE**

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

**LICENSING**

The Business and Professions Code (B&PC), Section (§) 7145.5 authorizes the Contractors State License Board (CSLB) to:

- Suspend a current license
- Deny a license renewal
- Deny an application for a new 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 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 Unemployment Insurance Code (UIC), EDD may apply to the CSLB for 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 may be found in B&PC §7028 and §7048.

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**ISSUED TO CORRECT ENTITY**

B&PC §7065 states that a license may be issued to an individual, a partnership, a corporation, or a joint venture. The license then 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 party to the joint venture. B&PC §7075.1(a) 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; e.g., 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 B&PC §7076 regarding additional information on the cancellation of licenses.

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**VALID TIME PERIOD**

A contractor's license is initially issued for a two-year period. It will expire two years from the last day of the month in which it was issued. Licenses may be renewed for an additional two-year period if active; or for a four-year period if inactive. An inactive license is considered on "hold". While a contractor's license is inactive, they may not practice as a contractor.

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**REQUESTING A CSLB HOLD**

The following conditions must exist prior to requesting a CSLB license hold from Special Procedures Section (SPS), Offset Group:

- The contractor must have a Contractor's License. A hold may be requested on a CSLB license that has been suspended by another agency or private individual
- Assessments must be final and an Employer Account Statement (DE 2176) has been sent
- For rescinded Offers in Compromise (OIC), a written notice of rescission and a notice of the amount of reestablished liability that is due and payable, as provided under UIC §1875(c), has been sent in the same name as the CSLB licensee
- A demand letter notifying the contractor of EDD's intention to request CSLB to suspend or delay license renewal shall be sent to the employer. See the sample on page 3 of this chapter

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 EDD to request action and release on the same contractor's license as many times as EDD deems it necessary. 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.

If staff discover an employer conducting business without a license, staff should send written notification to CSLB Headquarters, ATTN: Investigations.

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SAMPLE OF DEMAND LETTER TO CONTRACTOR

California Labor and Workforce Development Agency

Employment Development Department
State of California
Patrick W. Henning, Director



Arnold Schwarzenegger
Governor

Date

Name of Company
Address
City, CA Zip

Re: Acct # xxx-xxxx-x

You have failed to pay your EDD tax liability in the amount of \$ \_\_\_\_\_. This amount includes accrued interest through mm/dd/year.

Business and Professions Code, Section 7145.5 provides that a contractor's license may be suspended for failure to pay all outstanding liabilities. The Contractors State License Board will soon be advised of contractors who have outstanding liabilities with EDD. It is requested that you remit the above amount immediately in order to avoid suspension of your license.

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

Name
Title
Telephone: (xxx) xxx-xxxx

Office Handling This:
Employment Development Department
P.O. Box 826203
Sacramento, CA 94230-6203

Employment Development Department

**FARM LABOR CONTRACTORS' LICENSES**

A Farm Labor Contractor (FLC) as defined in Labor Code (LC) Section (§) 1682 (b) must be licensed by the Department of Industrial Relations' Labor Commissioner as set forth in LC § 1683.

The Employment Development Department (EDD) is authorized by Unemployment Insurance Code (UIC) §1141 to notify the Labor Commissioner that an FLC is delinquent in payment of worker contributions, State Disability Insurance or Personal Income Tax, either by self-assessment or by a final EDD assessment. The LC §1690.1 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.

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**EXPIRATION DATES**

The LC §1688 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 preceding the licensee's birthday and shall run from birthday to birthday.

In the case of partnerships, the oldest partner's birthday is used; and the anniversary date of incorporation is used for corporations.

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**15-DAY DEMAND NOTICE**

A demand for payment in full may be sent to an FLC prior to requesting a stop order. A sample demand is on page 2 and a sample stop order request is on page 3 of this chapter.

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SAMPLE OF DEMAND LETTER TO FLC

California Labor and Workforce Development Agency

**EDD** Employment  
Development  
Department  
State of California  
Patrick W. Henning, Director



Arnold Schwarzenegger  
Governor

Date

FLC Name  
DBA  
Street Address  
City, State Zip

EDD Account Number:  
Farm Labor Contractor's License Number:  
Amount Due and Delinquent:  
Period Covered:

**Demand is hereby made for payment in full within fifteen (15) days from the date of this notice.**

Failure to pay or contact this office within fifteen days may result in the Employment Development Department requesting that a hold be placed on your Farm Labor Contractor's license, pursuant to provisions of Section 1690.1 of the Labor Code. This hold would stay in effect until satisfactory arrangements have been made for the payment of this liability.

Please contact this office at ( ) -

\_\_\_\_\_  
Department Representative  
Title

## SAMPLE OF STOP ORDER



## M E M O R A N D U M

**To:** Department of Industrial Relations  
 Division of Labor Standards Enforcement  
 Licensing & Registration  
 P.O. Box 420603  
 San Francisco, CA 94102

**Date:**  
**File No.:** (EDD account number)

**From:** Employment Development Department

**Subject:** Name of Licensee  
 License Number  
 Expiration Date of Licensee  
 DBA (name as registered with EDD)

This employer has failed to pay worker contributions to this Department in the amount of \$\_\_\_\_\_. This employer has a total liability of \$\_\_\_\_\_, with interest through \_\_\_\_\_.

Pursuant to the provisions of Section 1690.1 of the Labor Code, the Employment Development Department requests a stop be placed against the renewal of the employer's Farm Labor Contractor License until the liability is either paid in full or an agreement has been reached between the employer and the Department for payment.

Please refer any questions about the liability to \_\_\_\_\_, who may be reached at telephone number (\_\_\_\_) \_\_\_\_-\_\_\_\_.

\_\_\_\_\_  
 Department Representative  
 Title

CU

**INTERAGENCY  
OFFSETS**

An interagency offset is the result of one agency collecting a liability owed by a person or entity from any money due that person or entity by another agency. The agency source falls into two categories:

1. State
  - An agency within the State of California
2. Federal
  - Department of Treasury

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

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

**STATE  
OFFSETS**

Government Code (GC) Section (§) 12419.5 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 State Administrative Manual (SAM) §8790.1 through §8790.5.

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 is not required to be recorded with a county or filed with the Secretary of State (SOS) when requesting an offset. The GC §12419.4 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 SAM §8790.3 and §8790.4, tax liability offsets may be made without a prior notice to the taxpayer.

There are four methods of offset:

1. Franchise Tax Board (FTB)
  - Personal Income Tax (PIT) refunds
  - Lottery winnings
2. FTB Bank and Corporation tax refunds
3. Board of Equalization (BOE)
  - Regular sales tax
  - Use fuel tax
4. Other State agencies

An offset overpayment **CANNOT** be held for future liabilities; i.e., the filing of delinquent reports in the future.

**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**

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

- a) The non-payment of child or family support accounts enforced by a local child support agency
- b) The non-payment of child or family support accounts enforced by someone other than a local child support agency
- c) The non-payment of spousal support accounts enforced by a local child support agency
- d) The non-payment of spousal support accounts enforced by someone other than a local child support agency
- e) 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
- f) 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 GC §12419.4, EDD is authorized to offset against:

- Security deposits held by various State agencies' treasury trust bank accounts
- 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.

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**FEDERAL LEVY**

The GC §926.8 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, any amounts due the State by the debtor are first offset before payment is made to the federal government. Subject to the provisions in GC §12419.4 and §12419.5, the SCO shall issue the warrants payable to the United States Treasury. Refer to SAM §8790.6 for SCO procedures.

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**FEDERAL OFFSETS**

The TOP is a result of the Internal Revenue Service Restructuring and Reform Act of 1998 as set forth in Title 26, United States (U.S.) Code §6402(e) and Title 31, Code of Federal Regulations, Part 285.8. 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 Internal Revenue Service (IRS) tax refund offset program was merged into TOP, operated by the Financial Management Service (FMS), a bureau of the U.S. Department of Treasury.

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**PRIORITIES  
FOR FEDERAL  
OFFSET**

Federal law indicates how a tax refund payment will be applied when a personal owner has debts with multiple agencies. The payment priorities are mandated by Title 26, U.S. Code §6402(e). Before authorizing FMS to disburse a tax refund payment, the IRS will apply any amount of refund to federal tax liabilities of the taxpayer. 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 Unemployment Insurance Code (UIC) Section (§) 1115.

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 and pay interim returns at the designated field office.

Employers that have been placed on interim reporting by the Employment Development Department (EDD) pursuant to UIC §1115 are not relieved of the deposit requirements under UIC §13021(c) and (d) 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 EDD's Director to senior tax compliance representatives and above.

The UIC §1115 requires any of the following findings:

- The employing unit is insolvent
- The employing unit is delinquent in 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
- The collection of contributions will be jeopardized by delay

**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 ten days advance notice. The initial interim report and payment will start at the beginning of the 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 paid within ten 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 ten percent 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.

The following actions must be accomplished by the case assignee:

- Prepare an interim reporting notice
- Submit the notice to the supervisor for approval and signature
- Deliver the original notice to the employer
  - Include sufficient blank copies of the DE 2858
  - Hand delivery is recommended. Otherwise certified mail is advised, but is not mandatory

Note the following information:

- Interim reporting notice was issued
- Date the notice was hand delivered or mailed
- Date the first return must be received
- Effective date of interim reporting

**CONTROL**

A Schedule of Interim Returns (DE 2857) listing each DE 2858 and Payroll Tax Deposit (DE 88) within that quarter will be maintained in the designated field office.

If the DE 2858 is filed after the delinquency date, UIC §1112 penalty on the contributions and the appropriate amount of interest will be added to the account.

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**TERMINATION  
OF  
REQUIREMENT**

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

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**LIQUOR  
LICENSE HOLDS**

The Business and Professions Code (B&PC), Section (§) 24049 authorizes the Employment Development Department (EDD) to request from the Department of Alcoholic Beverage Control (ABC) that a hold be placed 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 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 ABC. The hold is in effect until released or the liquor license is revoked by ABC.

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

---

**TYPE OF  
LICENSE**

The types of liquor licenses that EDD may request a hold on are:

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

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

**REQUESTING  
A HOLD**

Requests for ABC to place a hold on a liquor license are processed by OG.

**LIQUOR  
LICENSE  
DEMANDS**

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

<b>IF</b>	<b>THEN</b>
The employer is operating a diversified business on the same premises; i.e., 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 an Unemployment Insurance Code (UIC) §1126 estimated assessment. When the assessment has been mailed, include the amount due in the demand plus the UIC §1135 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

**INSUFFICIENT FUNDS IN ESCROW PRO RATA**

If the demand for payment from EDD, the Board of Equalization (BOE), Franchise Tax Board (FTB), 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 agencies come to an agreement, a demand will be made to the escrow agent. The OG will prepare an amended demand with EDD's prorated liability amount.

Since the entire liability was not collected from the seller due to the prorate 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 UIC §1733. However, the buyer may still be liable pursuant to UIC §1733 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 funds are distributed in the following order as directed by B&PC §24074:

1. IRS 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 order judgments
8. Payment of other claims

Should EDD fail to file a DE 271 within the specified time limits, EDD would receive funds under priority number 8.

**PAYMENT RECEIVED**

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

**TEMPORARY PERMIT**

The ABC may issue a temporary permit to allow a prospective buyer to operate pending the transfer of a liquor license. This permit is good for 60 days and may be extended at the discretion of ABC for an additional 60 days. The prospective buyer will be responsible for filing returns and paying contributions with EDD, if the buyer qualifies as an employer.

---

**SEIZURE AND SALE**

A liquor license is not subject to sale by execution as set forth in the Code of Civil Procedures §699.720(a)(1).

The BOE or FTB may seize and sell the liquor license of a terminated business when the business is delinquent in the payment of taxes as specified in B&PC §24049.5.

The IRS may seize and sell a liquor license subject to the payment of taxes specified in B&PC §24049. The revenue officer may act in the capacity of the licensee when seizing and selling the license. The officer can sign off the license for the licensee and also submit an application for the transfer of the license. After finding a buyer, the provisions of the B&PC direct the revenue officer to open an escrow.

---

**NOTICE OF LEVY** A Notice of Levy (NOL) is issued to attach the credits or personal property of any delinquent account. This includes active, inactive, and Responsible Person accounts. The issuance of an NOL is authorized by Unemployment Insurance Code (UIC) Section (§) 1755 and attaches funds as outlined in California Commercial Code §9102(a)(29).

The NOL may be made upon:

- Financial Institutions, including:

- Banks
- Savings and loan institutions
- Credit unions
- Trust companies

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

- Third Party Accounts Receivable

A third party who has been served an NOL must surrender assets within five days after the assets are payable to the taxpayer.

- Credit Card Processors

NOLs remain in force for one year, and may be renewed.

UIC §1755 directs that the NOL be served in person or by certified mail:

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

or

- Within ten 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 an NOL as outlined in California Civil Code §3193.

**DETERMINE  
LIABILITIES**

The amount shown may include non-final amounts.

Pre-approval of all NOLs is required by a Tax Compliance Supervisor or lead.

**ISSUANCE**

The Notice of Levy (DE 8005) is a four-part form. Two copies and the ANSWER copy are mailed or served. The fourth copy is retained for processing.

**MAILING**

To mail the NOL:

- Remove the file copy and retain
- Place the NOL in the certified mail basket
- Send green return receipt if other than a bank or financial institution
- Enter information in certified log book, if applicable

**HAND  
DELIVERY**

Have the recipient sign and date the office file copy. If the garnishee will not sign, note that fact and sign and date the file copy.

**RESULTS**

When a response to the NOL 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 NOL	Issue an Amendment to Notice of Levy (DE 8016). On accounts receivable NOLs, issue a DE 8016 to each account receivable. Refer to Release or Modification on page 5 of this chapter.
Failure to remit	UIC §1757 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 NOL.

**RESULTS**  
(cont'd)

<b>IF</b>	<b>THEN</b>
Failure to respond	Contact the recipient of the levy to verify receipt and emphasize the instructions on the front of the NOL.
Negative response <ul style="list-style-type: none"> <li>• Taxpayer not identified</li> <li>• Unable to locate</li> <li>• No funds at this time</li> </ul>	<ul style="list-style-type: none"> <li>• Communicate with the payee</li> <li>• Supply specific personal information</li> <li>• Issue another NOL</li> </ul>
Taxpayer has filed bankruptcy	Verify the exact date and time of the bankruptcy filing. EDD will not automatically release an NOL when the taxpayer files bankruptcy after the NOL is served.

**PROCESS PAYMENTS**

When payments are received in response to an NOL:

- Prepare a Remittance Advice (DE 350) unless either:
  - Cash is received
  - The payer of the NOL requests an official contribution receipt

In the above two cases, prepare a Contribution Receipt (DE 10).

- Specify where the payment is to be applied
- Post payment to a Collection Card (DE 735) if payment is received for a UIC §1733 or UIC §1735 assessment
- Prepare a DE 8016 to release all accounts receivable NOLs when account is paid in full

**RELEASE OR MODIFICATION**

The DE 8016 is a three-part form used to modify or release an NOL. An NOL may be released in whole or in part. Upon modification or partial release, the party levied upon shall be instructed by mail that the sum is released and that the balance of the account must be paid in accordance with the original NOL. Type a DE 8016 with the following information:

FIELD	INFORMATION
Refer to:	Contact person's name
Name and address area Re: Notice of Levy dated Tax Debtor EDD Account No Amount	The same as on the original NOL
Check boxes	<p>Check the appropriate box and fill in the blank line:</p> <ul style="list-style-type: none"> <li>• Remit amount held</li> <li>• Amount is reduced to</li> <li>• Unconditionally released</li> <li>• Conditionally released</li> </ul> <p>In the Comment field, enter the modification information:</p> <ul style="list-style-type: none"> <li>• Type in the specific check number, payee, and amount in the comments section</li> <li>• Releasing one account of several that were attached</li> </ul>

**OFFERS IN  
COMPROMISE**

Unemployment Insurance Code (UIC), Section (§) 1870 through §1875 on Offers in Compromise (OIC) became effective 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.

This program allows a qualified applicant to satisfy a payroll tax liability with EDD at less than full value.

Submission of an offer does not suspend collection action on a liability. If 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, including payment in full of the offered amount.

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

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**CONDITIONS  
REQUIRED FOR  
CONSIDERATION**

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

- Only liabilities of:
  - Out-of-business accounts
  - Individuals assessed under UIC §1735 or partners, only if the assessed individual or the partner no longer has a controlling interest or 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 by EDD, which if sold, would satisfy the liability
- The amount offered is more than 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) and accompanied by cash, a cashier's check, or money order equal to the amount offered in a compromise return
- 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 UIC shall not be compromised

The UIC §1870(b) allows 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**

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 EDD, the CUIAB will review and determine if all OIC conditions are satisfied.

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**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 assigned to the office of record. The OICU investigates only the application for the OIC and does not take any collection action. 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. The delinquency case assignee is responsible for securing and resolving all form delinquencies and non-monetary problems prior to the OIC application being processed.

An agreement to accept partial payment in satisfaction of a liability does not relieve any other taxpayers of the obligation to liquidate the remaining unpaid balance due. If one partner or UIC §1735 responsible person is under an OIC agreement and the remaining party isn't, the case assignee continues with collection activity for that partner or UIC §1735 responsible person. Collection action or potential collection action against any other partners, corporate officers, or responsible persons may be pursued.

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**APPROVED  
APPLICATIONS**

The OICU is responsible for opening an OIC case when the application is received.

When the OIC is granted final approval, OICU will transfer the case. The OICU will monitor the OIC payments until the compromise is satisfied in full.

Collection action may continue on any party in a business who is not under a current OIC agreement.

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**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 assigned field office as soon as possible to arrange payment of the liability.

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**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 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 has not been released, the statute of limitations has not changed with respect to the liability.

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**PROCESSING A RESCISSION**

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

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**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 liquidate amounts due over a period of time is allowed.

An installment agreement may be requested by phone, by letter, 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 from being filed and that 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 liquidated as quickly as possible.

**TYPES OF AGREEMENTS**

There are two types of installment agreements authorized by EDD; short-term and long-term. Both types require the taxpayer to file all delinquent reports, and to file and pay future deposits and reports before the date they become delinquent. If an audit assessment is issued after an agreement has been reached, the terms of either type of agreement may be renegotiated, allowing additional time to pay the assessment.

**Short-term Agreement**

An EDD representative will review the account history and any information received. If the tax liability is less than \$25,000 for an active business or \$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 supervisor, 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 submit a written request that includes:

- An explanation of how the liability was established
- What action has been taken to resolve the liability
- How the taxpayer plans to keep current on future financial obligations to EDD (applies only to active accounts)
- Financial information on business as well as personal assets
  - A Financial Statement (DE 926B), used for individuals, and a Financial Statement for Businesses (DE 926C) are available but any recent financial statement which has the same data is acceptable

In addition, the taxpayer must include a good faith payment.

**Audit Assessment**

When the liability is the result of an audit assessment, and the taxpayer is unable to pay in full, 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 their audit. When other liabilities exist or the taxpayer requests a long-term agreement, the auditor will refer the taxpayer to the compliance representative assigned to the collection case.

**REFERRALS FROM FIELD AUDIT AND COMPLIANCE DIVISION**

Requests for installment agreements may be received in Field Audit and Compliance Division (FACD). The first payment will be accepted, a DE 927 will be signed, and the phone number and address of the office where the agreement will be referred will be given to the taxpayer.

Installment agreements may be accepted from a telephone communication. The agreement will be finalized and a DE 927 sent to the taxpayer for signature. The agreement will reflect the appropriate payment address.

The Unemployment Insurance Code (UIC), Section (§) 1135 penalty must be included when determining if an assessment balance qualifies for short-term installment agreement limitations.

**REQUIRED DOCUMENTATION AND APPROVAL**

<b>ACTIVE ACCOUNTS</b>	
<b>AGREEMENT TIME PERIOD</b>	<b>MINIMUM REQUIREMENTS</b>
<p><b>Short-term</b></p> <p style="text-align: center;">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 supervisor approval.</p>	<ul style="list-style-type: none"> <li>• Signed DE 927 or letter detailing the payment plan</li> <li>• Good faith payment</li> <li>• Start date of the agreement will be no more than ten working days after verbal agreement has been established</li> <li>• If the entity is a corporation and the balance is more than \$10,000 of assessable liability, a Corporate Information Questionnaire (DE 204) establishing the liability of corporate responsible persons</li> <li>• All delinquent forms</li> <li>• Approval may be made by the case assignee</li> </ul>

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

<b>ACTIVE ACCOUNTS</b>	
<b>AGREEMENT TIME PERIOD</b>	<b>MINIMUM REQUIREMENTS</b>
<p><b>Long-term</b></p> <p>More than one year</p> <p style="text-align: center;">or</p> <p>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"> <li>• Written explanation of the financial difficulties being experienced, a plan to stay current, and a plan to liquidate outstanding liability</li> <li>• 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.</li> <li>• Full listing of all accounts receivable showing name, address, and the amount owing to the taxpayer</li> <li>• Supporting documentation of financial statement entries, if additional information is needed</li> <li>• Approval by a tax compliance supervisor or tax administrator II</li> </ul>

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

<b>INACTIVE ACCOUNTS</b>	
<b>AGREEMENT TIME PERIOD</b>	<b>MINIMUM DOCUMENTATION</b>
<p><b>Short-term</b></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 supervisor approval.</p>	<ul style="list-style-type: none"> <li>• Signed DE 927 or letter outlining the installment agreement</li> <li>• Good faith payment</li> <li>• Start date of the agreement will be no more than ten working days after verbal agreement has been established</li> <li>• Approval by the case assignee</li> </ul>
<p><b>Long-term</b></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"> <li>• 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</li> <li>• Written explanation of how the liability was created</li> <li>• 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.</li> <li>• Supporting documentation of financial statement entries, if additional information is needed</li> <li>• Approval by a lead senior tax compliance representative or tax compliance supervisor</li> </ul>

**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 EDD
- A Notice of State Tax Lien will be filed on all unpaid liabilities
- EDD will take immediate involuntary collection action if the agreement is not kept, or an unreported improvement in financial condition is discovered
- 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 UIC §1128.

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**DENIAL** Contact the taxpayer with an explanation of the denial.

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**MONITORING** The office accepting the agreement will record the payment terms. The installment agreement will remain in effect for the time period negotiated unless the taxpayer fails to meet the agreed upon terms.

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**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 Payroll Tax Deposit DE 88 (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 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**

Assignment is the transfer of a claim, right, interest, or property. A general assignment for benefit of creditors is the transfer of all, or substantially all, of the taxpayer's (assignor's) property to another person in trust (assignee) to:

- Collect any money owing to the taxpayer
- Sell the property
- Distribute the proceeds to the creditors
- Return the surplus proceeds, if any, to the taxpayer

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

The assignment may be made voluntarily by an employer to:

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

Unemployment Insurance Code (UIC) §1701(b) 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.

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**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.

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**NOTIFICATION**

Notification of receivership or assignment for benefit of creditors may be received in Collection Division (CD). This information may be supplied by any of the following:

- Wholesalers
- Credit associations
- Board of trade
- Credit managers association
- Employers

Bankruptcy Group should process all accounts involving receiverships or assignments for benefit of creditors. Bankruptcy Group will file all claims in order to protect the Employment Development Department's (EDD's) interests and will handle all necessary follow-up actions.

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**DUTIES AND RESPONSIBILITIES**

The UIC §1090(a) requires that every receiver, assignee, or other representative of an insolvent employer shall send a written notice of the following to 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

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

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**EDD FILING  
TIME FRAMES**

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

Prior to the filing of the claim, Bankruptcy Group must ensure that all missing returns are resolved.

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**INITIAL  
PROCESSING  
AND TRANSFER  
OF CASES TO  
BANKRUPTCY  
GROUP**

Upon receipt of a notification of receivership or assignment for benefit of creditors, the following actions must be taken:

- Determine if the named entity is an employer or a responsible person (RP) assessed under UIC §1735
  - If the entity is not an employer or RP
    - Reply if requested
    - Discard document
  - If the entity is an employer or RP
    - Write the employer account number in the upper right-hand corner of the documents
    - Include any related account numbers
    - Forward the notice to Bankruptcy Group
- Determine if previous assignment or receivership action was taken
  - If yes
    - Send notice or correspondence to Bankruptcy Group
  - If no
    - Enter the following information:
      - ❖ Name and address of receiver or assignee
      - ❖ Date receivership or assignment was filed
      - ❖ Receivership or assignment number
      - ❖ Superior court (for receivership)
      - ❖ Name of plaintiff (for receivership)

**INITIAL  
PROCESSING  
AND TRANSFER  
OF CASES TO  
BANKRUPTCY  
GROUP**  
(cont'd.)

If a case exists, the assigned individual shall resolve all outstanding collection actions and transfer the case to Bankruptcy Group.

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

The claim will include a breakdown of tax claimed, showing the period covered and the amount of tax, penalty, and interest.

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

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**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 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 to set aside the assets of the estate, if the net value of the decedent's estate is \$20,000 or less over and above all liens and encumbrances at the date of death, and the value of any probate homestead interest.

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 any 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 and surviving partner(s), continue operation of the decedent's business. A fiduciary is a person or institution that manages money or 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 in bankruptcy.

Unemployment Insurance Code (UIC) §1701(c) provides that the employer and employee contributions required to be paid by an employer, together with interest and penalties, shall be satisfied first whenever the estate of an employer, in the hands of executors, administrators, or heirs, is insufficient to pay all the debts due from the decedent.

**TYPES OF ESTATE**

Estates of a deceased may be:

- Testate
    - Decedent made a will
    - Executor is named in the will to administer the property
    - The superior court grants letters testamentary appointing the executor
  - Intestate
    - Decedent did not make 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 public guardian office)
- 

**AUTHORITY OF PERSONAL REPRESENTATIVE**

The superior court authorizes the personal representative; e.g., executor, administrator, or conservator, to administer the estate under the Independent Administration of Estates Act with either full authority, limited authority, or no authority without court supervision to do 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 written notice of the following to the Employment Development Department (EDD) within 30 days after assuming office as required by UIC §1090(a):

- Name and address of the employer
  - Name and address of the administrator or executor
  - Other information as may be required by the Director
  - Succeed to all the rights and obligations of the deceased employer as set forth in UIC §1090(b)
-

**SOURCES OF INFORMATION**

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

- Published obituaries
- Radio
- Television news
- Newspaper articles
- Telephone calls from relatives, friends, attorneys
- Notices from executors, administrators, conservators
- Alteration to contribution returns and statements
- Dishonored checks
- Returned mail
- Information obtained from field offices during audit, collection activities
- Notice 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 EDD shall file or present its claim for contributions, penalties, and interest based upon wages paid by the employer during their lifetime. Probate Code (PC) §9100(a) requires a creditor to file a claim before expiration of the later of the following times:

- Four months after the date letters are first issued to a general personal representative
- Sixty days after the date notice of administration is given to the creditor, if notice was given as provided in the Code of Civil Procedure (CCP) §366.2

Bankruptcy Group in Special Procedures Section 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 the personal representative.

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

**COLLECTION  
STAFF  
PROCESSING**

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

Upon receipt, determine whether the deceased is an employer or a responsible person (RP) assessed under UIC §1735.

IF DECEASED WAS	THEN
Not an employer or RP assessed under UIC §1735	<ul style="list-style-type: none"> <li>• Reply if requested</li> <li>• Discard document</li> </ul>
An employer or RP assessed under UIC §1735	<ul style="list-style-type: none"> <li>• Write the employer account number in the upper right-hand corner of the document</li> <li>• Include all related account numbers</li> </ul>

Determine if previous probate action was taken:

- Yes
  - Send notice or correspondence to Bankruptcy Group
- No
  - Enter the following information:
    - Date of death
    - Probate case number (if available)
    - Name of executor/administrator (if available)

Verify if any problems are outstanding. Send the notice or correspondence to Bankruptcy Group.

**COLLECTION  
STAFF  
PROCESSING**  
(cont'd.)

Upon receipt of a copy of the notice or correspondence, or a telephone call from the decedent's agent, the assigned staff shall:

- Complete an Auditor's Report of Probate Information (DE 1959). Enter the following information:
    - Account number
    - Name and address of employer
    - Name of decedent
    - Date of death
    - Title of fiduciary
    - Name and address of fiduciary
    - County in which the estate is being probated
    - Probate number
    - Attorney for fiduciary
    - Address of attorney for fiduciary
  - Determine if the business is being continued. The following information is required when the business is being continued either by the order of the court or as expressed in the will:
    - Name and address of the bonding company
    - Amount of bond posted
  - Determine current management of business and/or ongoing ownership
  - Resolve all outstanding collection actions
  - Forward the completed DE 1959 to Bankruptcy Group
  - Transfer the case
-

**BANKRUPTCY GROUP RESPONSIBILITIES**

Bankruptcy Group receives probate cases in the following manner:

- DE 1959 from collection staff

If a case involving a probate is transferred from collection staff without a DE 1959, probate notice, or correspondence, a DE 1959 will be prepared based upon the information.

- Probate notices from the superior court, notices or correspondence from executors, administrators, etc.

Notices or correspondence mailed directly to Bankruptcy Group by the superior court, administrators, executors, etc. will be researched.

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**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, per Government Code (GC), Section (§) 13943.1, a discharge does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the State. A discharge only releases a State agency from further accountability for collection of the discharged liability.

**APPLICATION FOR DISCHARGE FROM ACCOUNTABILITY** Financial Reporting Group (FRG) prepares the STD. 27 and certifies that the Employment Development Department (EDD) has completed all of the collection actions as prescribed in State Administrative Manual (SAM) §8776.6 and §8790.1 - 8790.8.

The STD. 27 will include the following information:

- A statement of the nature of the amounts due
- The name(s) of the person(s) liable
- The estimated cost of collection
- Any other fact(s) supporting the request, including offset attempts
- Signature, phone number, printed name, and title of person completing the STD. 27
- Signature, printed name, and title of manager authorizing the STD. 27

**APPLICATION FOR DISCHARGE FROM ACCOUNTABILITY**  
(cont'd)

The GC §13942 mandates that SCO shall audit the applications and recommend that the California Victim Compensation and Government Claims Board approve an order discharging the applicant (EDD) from further accountability for collection. The Claims Board must obtain approval from the Attorney General’s office for all items over \$7,500. The applicant will be authorized to close its books on the item, providing the following applies:

- The matters contained in the application are correct
- No credit exists against which the debt can be offset
- Collection is improbable for any reason
- The cost of recovery does not justify the collection
- The Claims Board will receive notification from the Attorney General that the collection of amounts exceeding \$7,500 is not justified by the cost or is improbable for any reason

**AUTHORIZATION TO FOREGO COLLECTION OF STATE DEBT**

SECTION CODE	DESCRIPTION
GC §13940	Any State agency required to collect taxes, licenses, fees, or money owing to the State for any reason that is due and payable may be discharged by the Claims Board from accountability if the debt is uncollectible or the amount of the debt does not justify the cost of its collection.  See SAM §8776.6.
GC §13941	The application for a discharge shall be filed with SCO.
GC §13942	The SCO shall audit the applications and recommend to the Claims Board an order discharging the applicant from further accountability for collection and authorizing the applicant to close its books on that item.

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

SECTION CODE	DESCRIPTION
GC §13943	The Claims Board may delegate to SCO, under terms and conditions that are acceptable to the Claims Board, the authority to discharge from accountability a State agency for accounts that do not exceed the amount specified in GC §13942(e) (presently \$7,500) and hereby authorize the closing of the agency's books in regard to that item.
GC §13943.1	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.
GC §13943.2	Upon authorization from the Claims Board, 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 \$250 or less.
SAM §8776.6	<p>Provides that 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 an STD. 27 with SCO.</p> <p>Applications for relief of accountability of uncollectable amounts of more than \$7,500 will be filed separately from applications for amounts of less than \$7,500.</p> <p>The STD. 27 requires, in detail, the collection efforts made and circumstances warranting discharge.</p>