



March 23, 2020

Betty T. Yee
 California State Controller
 300 Capitol Mall #1850
 Sacramento, CA 95814

Dear Ms. Yee,

We write to request that you immediately suspend Franchise Tax Board (FTB) collections on debts owed to state and local government¹ and halt the accrual of interest on all such debts for 120 days or for the second full month following the end of the public health emergency, whichever is later.

Governor Gavin Newsom has called for a statewide shelter in place. Though this unprecedented action is necessary to lessen the harm to the estimated 57% of Californians who could fall ill in the next eight weeks, it is not without significant economic impacts. Not only is family economic stability impacted by this shelter-in-place order, but so are the procedural processes at every level of government which underpin essential due process rights in the debt collection process.

As Controller, you have the statutory authority and the legal mandate to stop such collections, and we urge you to exercise that authority during this unprecedented public health and economic emergency.

The economic fallout from the COVID 19 crisis will be devastating.

Experts expect that the COVID-19 crisis will last for 18 months.² As Governor Newsom has repeatedly emphasized, “the economic disruptions caused by this public health crisis will have immediate and devastating effects on our entire country, including too many families in California.”³ Without substantial intervention from every level of government, middle class households will fall into poverty, and low-income households will be unable to afford rent, food, and other life necessities.

In a recent executive order, the Governor declared that the Franchise Tax Board “shall use their administrative powers where appropriate to provide” specific COVID-19 related relief.⁴

The FTB should not intercept financial aid and income during the crisis.

Federal and state policy makers are working tirelessly to develop new programs to put much-needed cash in the hands of every American. California’s existing EITC program also provides a refundable tax credit for the lowest-income Californians.⁵ This is a critical poverty-fighting measure – the tax credits build up family reserves and promote economic stability.

If the FTB intercepts such payments in order to collect debt owed to state and local entities, it will only deepen the economic crisis.

Currently, the FTB intercepts tax refunds, garnishes wages, levies bank accounts, and undertakes other efforts to collect debt owed to state and local entities.⁶ The debt at issue stems, largely, from sources such as juvenile and criminal fees, parking tickets, welfare overpayments, and the like. These are debts typically held by the lowest income Californians. Most fees currently charged to people who come into contact with the justice system were authorized during the 1980s and 90s during the War on Drugs, and disproportionately affect communities of color.

As you know, advocates (including some of the signatories here) are asking the State to reconsider the propriety of many of the fines and fees collected by the FTB.⁷ In this letter, however, we simply ask that you pause collection on state and local debt during this crisis.

The Controller has the discretion to suspend collections.

The Controller has the power and duty to “superintend the fiscal concerns of the state.”⁸ As such, the controller is granted statutory “discretion” to collect—or not collect—amounts that are owed to state agencies, local agencies, and courts.⁹ Further, the FTB can decline to collect if “the debt is uncollectible” or the amount of the debt does not justify collection.¹⁰ With millions of families suffering substantial hardship as a result of COVID-19, collection is not justified.

The FTB is prohibited from collecting absent full due process protections.

During the economic crisis it will be difficult if not impossible for the FTB to provide legal safeguards necessary to ensure that it only collects debt that is legally owed and due. The FTB may not collect without first providing people with notice and a reasonable opportunity to object.¹¹ Targets of collections must have the opportunity to show error – that they are not the person who owes debt, that the amounts are incorrect, that they are entitled to a payment plan, etc.

As of March 20, 2020, the entire State is ordered to shelter in place. Under this order, there will be a drastic reduction in staffing at local and state agencies and courts that provide procedural safeguards, and people who owe debt will have severely reduced opportunity to obtain or provide evidence of error. Collecting debt under such circumstances would likely violate basic constitutional due process protections.¹²

These are extraordinary times, and they call for extraordinary measures. We ask that you exercise your authority as Controller to temporarily suspend all FTB collections measures for debts owed to state and local entities.

Sincerely,

Esteban Nuñez, #cut50
Manuel Galindo, A New Way of Life
Lizzie Buchen, ACLU-California
Dorsey Nunn, All of Us or None, Legal Services for Prisoners with Children

Kent Mendoza, Anti-Recidivism Coalition
Rebekah Evenson, Bay Area Legal Aid
Lucia Mattox, Center for Responsible Lending
Asher Waite-Jones, East Bay Community Law Center
Emily Harris, Ella Baker Center for Human Rights
Donna Harati, Homeboy Industries
Brandon Greene, Individual
Jhumpa Bhattacharya, Insight Center for Community Economic Development
Elisa Della Piana, Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Stephanie Haffner, Legal Aid of Marin
Stephen Bingham, National Lawyers Guild—SF Bay Area Legislative Reform Committee
Lewis Brown, PolicyLink
Milinda Kakani, Public Counsel
Katherine Katcher, Root & Rebound
Jane Fischberg, Rubicon Programs
Manohar Raju, San Francisco Public Defender's Office
Stephanie Campos-Bui, UC Berkeley School of Law, Policy Advocacy Clinic
Jessica Bartholow, Western Center on Law and Poverty
Anthony Robles, Youth Justice Coalition

cc:

The Honorable Holly J. Mitchell, California State Senate
The Honorable Maria Elena Durazo, California State Senate
The Honorable Governor Gavin Newsom
The Honorable David Chiu, California State Assembly
The Honorable Senate President pro Tempore Toni Atkins
The Honorable Assembly Speaker Anthony Rendon

¹ We recognize that all ongoing debt collection will harm families across the state but this letter does not address consumer, student loan, or child support debt. For more information about child support, please contact Julia Root, jroot@ceoworks.org, about consumer debt please contact Noah Zinner, nzinner@baylegal.org, and about student loans please see President Trump's announcement of the suspension of all federally held student loan interest and loan payments for the next 60 days, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-c-oronavirus-task-force-press-briefing/>.

² PANCAP ADAPTED U.S. GOV'T COVID-19 RESPONSE PLAN 4 (2020) <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf#page=1>.

³ Letter from Gavin Newsom, Governor of California, to The Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives, The Honorable Mitch McConnell, Majority Leader of the U.S. Senate, The Honorable Kevin McCarthy, Republican Leader of the U.S. House of Representatives, The Honorable Chuck Schumer, Democratic Leader of the U.S. Senate (March 19, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-Letter.pdf>.

⁴ Executive Order N-25-20, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>

⁵ S. 80 (2015) (enacted). http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB80

⁶ Cal. Rev. & Tax § 19280 (Court-Ordered Debt Collection Program); Cal. Gov. Code §§ 12419.5; 12419.7; 12419.9; 12419.8; 12419.10 (Interagency Intercept Collection Program).

⁷ S. 190, 2017-2018 Reg. Sess. (Cal. 2017) (enacted); S. 144, 2019-2020 Reg. Sess. (Cal. 2019); S. 1290, 2019-2020 Reg. Sess. (Cal. 2020).

⁸ Cal. Gov. Code § 12410.

⁹ See Cal. Gov. Code §§ 12419.5, 12419.8; see also §§ 12419.10, 12419.12 [offsets shall only be taken "to the extent feasible"].

¹⁰ Cal. Gov. Code § 12433.

¹¹ Cal. Rev. & Tax Code § 19280(c); SAM-Miscellaneous Accounting Procedures § 8776.6.

¹² Cal. Franchise Tax Board, Collection Procedure Manual, 10.1.3 Collection Process Court Ordered Debt 7-9 (2018). ["Statutory due process is where the law requires that notice be given before an action is taken. Procedural due process is when FTB has a program or process in which we afford due process and then extend the same due process procedure to similar programs or processes. It must be ensured that the debtor has received due process before taking involuntary collection."]