

2. RESPONSIBILITY SECTION

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Last Revision: 08/13/2018

2.0.1 Standards of Conduct

Purpose

The purpose of this section is to inform collection personnel that certain activities are incompatible with their collection responsibilities and may lead to termination of employment or other severe, adverse action.

It is the responsibility of Franchise Tax Board (FTB) employees to conduct themselves in a responsible and professional manner.

Employees should do the following:

- Only request or access information on a **"need to know"** basis.
- Not become involved with any collection account in which they have a personal or financial interest.
- Not show or discuss confidential information to/with anyone, who does not have the **"need to know."**

Requesting or accessing information for curiosity or other personal reasons is prohibited. "Need to know" means you will only obtain the taxpayer information you need to "execute your official responsibilities."

It is a misdemeanor for an employee of the FTB to make any willful unauthorized inspection or unwarranted disclosure or use of state information (Revenue and Taxation Code Sections [19542](#), [19542.1](#), and [19552](#)).

FTB is required to notify the owner of the information that may have been breached.

FTB employees may be subject to civil action by the owners of the information.

Reference

[FTB Disclosure Manual](#)

Revenue and Taxation Code Sections [19542](#), [19542.1](#), and [19552](#)

Civil Codes Sections [1798.29](#), [1798.82](#) and [1798.84](#)

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

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Last Revision: 08/09/2018

2.0.2 Personal Responsibility and Liability of Collection Employee

Purpose

The purpose of maintaining Personal Responsibility and Liability of collection employees are to ensure that collection employees perform their duties within the scope of their administrative rights when applying the Revenue and Taxation Codes for the collection of delinquent debts.

Responsibility

It is the responsibility of the collection employees, in resolving collection accounts, to ensure that:

- Actions are taken in a fair and impartial manner
- Sound technical conclusions are made; and
- The revenue base of the State of California is protected through use of available legal actions (i.e., issuance of an Order to Withhold Tax, Earnings Withholding Order for Taxes, liens, warrants, etc.).

In addition to collecting taxes, FTB employees are responsible for informing debtors of their rights (i.e., Taxpayers' Bill of Rights) and assuring that their rights are protected.

[Government Code \(GC\) Section 995](#) provides that a public entity will undertake the defense of any civil action brought against public employees in their individual or official capacity for acts done in the scope of employment.

Furthermore, [GC Section 860.2](#) states, "Neither a public entity nor a public employee is liable for an injury caused by:

- (a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- (b) An act or omission in the interpretation or application of any law relating to a tax."

[GC Section 825](#) provides that if public employees make a written request to their employer for defense not less than 10 days before trial,

the public entity must pay any judgment or any compromise of the action.

Reference

[Government Code Section 19990](#)

[California Taxpayers' Bill of Rights](#)

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2.0.3 Acceptance of Service

Background

The department is regularly served with a wide variety of legal documents that require action within a prescribed timeframe. Service of documents includes subpoenas, summonses and complaints.

Purpose

To ensure procedures set forth in the department ((****)) are followed and to prevent the department's legal position from being prejudiced by delay.

Action

Anyone making an inquiry regarding service of legal process should be advised of the following:

Subpoenas should be served on the department by personal service at 9646 BUTTERFIELD WAY, SACRAMENTO CA 95827. As a general rule, service by mail is not valid service. When records are being sought, the subpoena should be addressed to, "Custodian of Records."

Summonses and complaints may be served either (1) in person or (2) by mail in accordance with the [Code of Civil Procedure \(CCP\) Section 415.30](#). Personal service should be made at 9646 BUTTERFIELD WAY, SACRAMENTO CA 95827.

Service by mail should be directed to: CHIEF COUNSEL, FRANCHISE TAX BOARD, PO BOX 2229, SACRAMENTO CA 95812-2229. In accordance with the provisions of the CCP Section 415.30, two copies of the Notice and Acknowledgment of Receipt and a return envelope, postage prepaid, addressed to the sender should be included. Service by mail does not take place until the Notice and Acknowledgement of Receipt is signed and returned. The decision as to whether FTB will sign and return the Notice of Acknowledgement of Receipt can only be made by legal.

The department will not accept service with respect to its employee's personal matters.

Reference

For specific information regarding the department's procedures pertaining to acceptance of service of legal process refer to: ((***)

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

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2.0.4 Employee Actions

Background

Generally, public employees acting within the scope of their employment will not be held personally liable for damages resulting from their official acts.

The Statement of Collection Principles states that collection staff have guidelines to minimize financial liability. Additional and specific protection is available for public employees involved in tax administration.

[Government Code Section 860.2](#) provides: "Neither a public entity nor a public employee is liable for any injury caused by:

- Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- An act or omission in the interpretation or application of any law relating to a tax."

Purpose

The purpose of Employee Actions in regard to civil actions against employees is to ensure that collection employees adhere to the Statement of Collection Principles in order to minimize the possibility of incurring personal financial liability when performing assigned duties.

Responsibility

It is the responsibility of the collection employees to adhere to the Statement of Collection Principles and Policies to minimize the possibility of incurring personal financial liability.

In addition, Public employees do not have absolute immunity from personal liability for wrongful acts committed in the scope of their employment. Such acts would include the following:

- Extortion or Fraud
 - Collector should not attempt to secure payment or returns by threatening to initiate any action that is not lawful or actually intended to be taken. Such acts may

constitute crimes of extortion or fraud even through no personal gain is involved.

- Violation of Constitutional Rights
 - The Fourteenth Amendment of the United States Constitution guarantees individuals will not be deprived of property without due process of the law. The essential elements of due process of law are reasonable notice and an opportunity to be heard and present any claim or defense. If a question is raised regarding the recognition of a taxpayer's right to process of law, the issue should be resolved before proceeding with collection. Violation of a taxpayer's clearly established constitutional rights could expose a collector to personal liability.

Reference

For more specific information regarding:

- Additional and specific protection for public employees involved in tax administration
- Identifying a public employee paying any claim or judgment that a public entity is required to pay
- Disputed indemnification

Refer to Government Code Sections [825.2](#), [825.4](#), [825.6](#), and [860.2](#).

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2.0.5 Media Activity Procedures

Background

The public affairs office responds to news media inquiries on a variety of subjects, including; products, services, and inquiries regarding enforcement activities against individual taxpayers.

Public affairs gives media news interviews, prepare news releases, articles, newspaper editorial pieces, and public service announcements.

In the event an FTB employee is contacted by any member of the media including: reporters, free-lance journalists, bloggers, or any other type of media, please direct that persons to contact Public Affairs (see Internal Contact List).

Purpose

It is the purpose of Franchise Tax Board (FTB) to conduct media activity and/or press releases in a manner which recognizes and protects the rights and dignities of the individual, the State and the general public.

Responsibility

It is the responsibility of the Criminal Investigation Bureau, Reactive Collections Bureau, Statewide Collection Bureau, Field and Complex Account Collection Bureau to identify accounts for potential media activities. In general, recognizing the important contributions made by the news media in disseminating tax information to the public and otherwise facilitating administration of the tax laws. FTB employees will, in conducting criminal investigating or seizure activities, assist or cooperate with public affairs in providing information under the following guidelines:

- General information (without reference to specific accounts) may be provided about the objectives, work and results of the criminal investigation and other enforcement activities conducted by the employee.
- After an arrest in a criminal account, information which is a matter of public record about specific individuals may be

provided in the form of written or electronic press releases.
Note: Press advisories prior to an arrest will not be issued.

- In the event an unsolicited inquiry is received regarding an impending arrest or pre-trial activities in a criminal case, the questions will be referred to the appropriate district or city attorney.
- In accounts where the district attorney or other appropriate authority in charge of the account wishes to initiate news coverage, the employee will advise FTB prior to providing assistance in that effort.

Action

Using the media to educate the public is extremely sensitive. The following procedures and guidelines must be followed:

- Account Criteria
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- ((***)
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- Account Approval Process

All potential media event account are to be referred to the media coordinator in Public Affairs (Communication Services Bureau). The review will determine the appropriateness of developing and conducting a media event. Information on all potential media events will initially be provided over the phone or by e-mail and must include:

- A general history of the account.
- ((***)
- ((***)
- Roles/Responsibilities

The media coordinator will review the account to further develop the potential of the media event:

- Approvals

When an account is determined to be appropriate for a media event, the media coordinator will make contact with the appropriate employee in public affairs:

- Coordination of the Event

Coordination of the event is the most critical element to consider in developing and conducting a media event. The following is a step-by-step procedure:

- When approval of the media event is received, the Franchise Tax Board (FTB) employee will refer the account to the program/branch manager. The manager in consultation with the region coordinator will make arrangements to meet with the law enforcement agency responsible for conducting the action. Public Affairs will be kept informed of every detail.
- The program/branch manager in consultation with their region coordinator will coordinate the details of the event with branch office employee, the law enforcement agency, and Public Affairs. This process can be done either in person or over the phone.

The following critical elements must be provided to Public Affairs:

- Date and time of action - This must be provided 5 days prior to the action.
- Location of action - Determine where action is to take place and designate a point to meet prior to action.
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- Results
- FTB field employees are responsible for monitoring the results of the media event and providing copies of newscasts and articles to Public Affairs.
- FTB central office employees and programs/branch office employees will be responsible for monitoring and tracking contacts from taxpayers resulting from the event and the type of actions taken by the taxpayer such as filing tax returns and

making payments. This is especially important and will enable the department to measure the effect of media events on taxpayer's actions. This information will be provided to public affairs.

The success of media events in informing the public of the consequences of not complying with the tax law depends on identifying good assets and effectively coordinating the event. Publicizing enforcement actions is a very sensitive matter. All caution should be taken to ensure we are sensitive to the taxpayer's circumstances as well as the appropriateness of our actions. Whenever a recommended collection action, which meets the event criteria, is not approved for a media event, the media coordinator in the Planning and Evaluation unit will inform the branch office manager of the reasons for not going forward with the event.

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2.0.6 Disabilities Accessibility Policy

It is our policy to provide access to FTB programs, services, and facilities to persons with disabilities in accordance with Title II of the Americans with Disabilities Act of 1990. For additional information, go to ftb.ca.gov and search for [accessibility policy](#) *ADA Regulations*.

Disabled individuals or their representatives may request reasonable accommodations in alternative format, including documents, by contacting:

Mail:

EQUAL EMPLOYMENT OPPORTUNITY OFFICE
FRANCHISE TAX BOARD
PO BOX 550; MS A163
SACRAMENTO CA 95812-0550

Telephone:

916.845.7003 (Voice)
711 or 800.735.2929 (California Relay Service)
800.822.6268 (TDD)

Fax:

916.843.2404

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2.0.7 Social Media Policy

"It is our policy that when Supervisors and managers identify a business need for employees to access to Social Media Sites (Example Facebook, etc.).

Facebook, as a tool for purposes of tax collection, they can authorize access on a case-by-case basis. The access should be removed once the search, or reason for accessing, has been completed. Collectors are required to follow the attached guidelines.

Note: Facebook access for the department has a host of security/access issues. In some instances, users may lose their access as a result of system updates or changes with security as a result of the substantial security measures in place. These interruptions may result in users being unable to use Facebook. Supervisors and Managers may have to resubmit a request for access to social media for their employees. However, it's recommended that the employee wait 24-48 hours before resubmitting a request for access."

References

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