# 10 Non Tax Debt Collections



**Last Revision: 10/04/18**

# 10.1.1 Introduction Court Ordered Debt

## Background

The Court-Ordered Debt (COD) Collections Program uses the collection expertise, automated systems, administrative remedies, and statewide jurisdiction of the Franchise Tax Board to assist in reducing local government costs and increase the collection of delinquent court-ordered fines, fees, as well as most Vehicle Code Violations, or other amounts upon a person for criminal offenses, and make restitution to the State of California.

Resolving account liabilities includes initiating contact, skip tracing, providing resolution options, and educating debtors to achieve future compliance. Collectors work a variety of complex non-tax debt accounts by responding to phone calls in the voluntary and involuntary stages.

## Program Overview

In 2004, Court-Ordered Debt Collections became a permanent program to include participation from all 58 counties. This allowed Franchise Tax Board (FTB) to create a working partnership with the California courts system in an effort to reduce the significant delinquent court-ordered debt in California.

In this effort to assist the California courts, the debts referred for collections under this program are "final, due and payable to the State of California, and are collected from the debtor by FTB in any manner authorized under the law for the collection of a delinquent personal income tax liability."

## Authority

Franchise Tax Board's Court-Ordered Debt Collection Program is authorized under California Revenue and Taxation Code (R&TC) Sections 19280-19282, which authorizes FTB to collect the debt as if it were a tax.

Debts authorized to collect include the following:

- Court fines and fees
- Court-appointed counsel costs
- Vehicle Code Violations
- Civil assessments

- Probation
- Victims Restitution

Debts **not** authorized to collect:

- Homeless Youth Section 1463.011 of the Penal Code
- Homeless Veterans Section 1463.012 of the Penal Code

**Reference**

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California R&TC Sections 19280 – 19283
FTB Website
Aug 30, 2014 SB 246
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## 10.1.2 Account Referrals Court Ordered Debt

### Background

Accounts are referred from the clients/courts to Court-Ordered Debt (COD) electronically.

Electronic account updates between Court-Ordered Debt and its clients are done via SWIFT (Secure Web Internet File Transfer) on a daily, weekly and monthly basis.

COD clients include:

- Superior Courts
- Probation departments
- Revenue departments
- Central collection departments
- State agencies

### Purpose

Franchise Tax Board (FTB) and our clients develop working relationships to ensure the flow of work and payments are updated in a regular basis. Assist client/courts with the collections of Court-Ordered Liabilities.

### Responsibility

Clients/courts are responsible for referring accounts that meet the requirements of California R&TC Section 19280. They must also meet the following criteria:

- Cases must be 90 days or more delinquent.
- Minimum case balance of $25.00.
- Minimum account balance due of $100.00.
- Cases must include the debtor’s complete first and last name.
- Cases must have either a social security number, date of birth or driver license number.
- Addresses must be complete, valid and recognized by the U.S. Postal Service.

Accounts will be rejected by COD for the following reasons:

- Incomplete, missing or inaccurate data
- Invalid address
- Bankruptcy

To ensure smooth transitions, Franchise Tax Board clients/courts will contact Court-ordered Debt by the following methods:

- File transfer protocol
- Phone
- Fax

Our clients will adjust accounts for the following reasons:

- Accepted payment or payment in full at the court/county of origin
- Account was sent in error
- Judge dismissed debt/account
- Agency Offset of tax refund
- Court modification
- Time served

Our clients will withdraw accounts for the following reasons:

- Payment arrangement made by the court
- Account dismissed
- Hardship
- Bankruptcy
- Deceased
- Incarcerated
- Uncollectable
- Paid in full
- Tax Intercept
- Incorrect balance
- Pending court hearing
- Sent in error

Our Clients will revise accounts for the following reasons:

- Tax Intercept
- Court payments
- Court adjustments

Our clients will contact Court-Ordered Debt for the following reasons:

- When immediate action is needed
- Account is paid in full and COD is distributing payments
- Court provided incorrect SSN
- Incorrect debtor is being levied

## Action

The clients/courts maintain management responsibility for all accounts referred to FTB. All debtor disputes regarding amounts owed or complaints about aspects of the accounts are referred back to the referring agencies.

Court-Ordered Debt will return accounts to the client for the following reasons:

- Uncollectable accounts
- Closed accounts
- Accounts paid in full
- Bankruptcy
- Zero balance

Payments are distributed from Franchise Tax Board Court–Ordered Debt to the State Controller to the client/court. Payments collected by COD are distributed on a pro-rated basis.

## Reference

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MYCOD Account Web-link

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## 10.1.3 Collection Process Court Ordered Debt

### Background

If debtors do not pay their debt voluntarily to the client/court, the client/court issues a series of delinquent notices. If necessary, the client/court pursues other collection actions, which may include suspension of the debtor's California Driver License if the debt is a result of a Vehicle Code Violation.

If the debtor's California Driver License has been suspended by the client/court, the debtor must pay their debt in full to get their license reinstated by the client/court.

As a result, Assembly Bill 3343 and Senate Bill 1106, created the Court-Ordered Debt (COD) Collection Program to assist the client/court with collection of outstanding liabilities.

The referring clients/courts own the delinquent accounts receivable items referred to COD throughout the collection process. The clients/courts retain management responsibility for all accounts they refer. All debtor disputes regarding amounts owed or complaints about aspects of the account are referred back to the referring client/court. COD does not compute statutory interest nor enter into agreements which may compromise the liability of the account.

Prior to the account being referred to COD Collections, the client/court has given the debtor reasonable notice to ensure the debtor has received due process under the law. Reasonable notice is deemed as being met by the court prior to the referral of the account.

The Fourteenth Amendment of the United States Constitution guarantees individuals will not be deprived of property without due process of law. The essential elements of due process are:

- Reasonable notice
- 10 day hold
- Opportunity to be heard
- Present any claims or defense

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 actions.

### Purpose

To ensure due process is completed before any involuntary collections are taken. FTB must provide notice to the debtor prior to taking legal actions.

### Responsibility

The client/court may also refer the account to COD. As mandated by law, our collection process does not require COD to obtain a judgment prior to enforcement action. The debt must be at least 90 days delinquent and the balance must be at least $100 in an aggregate amount.
The COD Collection Program requires that Franchise Tax Board (FTB) issue one written notice to the debtor demanding payment before involuntary collection action begins.

### Action

When an account is accepted, the COD Collection program first mails a Demand for Payment notice to the debtor's last known address. As long as the department mails a notice to the last known address supplied by the client/court, due process has been served. The mailing of an FTB notice to the last known address is adequate notice whether or not the debtor actually received the notice, unless FTB is given clear and concise notice of a different address.

The Demand for Payment notice is the initial point of contact with the debtor. This notice advises the debtor that their debt has been referred to FTB for collection. This notice also advises the debtor that **Payment in full (PIF)** must be received within 10 days from the date of the notice. The notice advises the debtor to pay in full or contact the COD unit~~.~~

The debtor has the option to Pay in full by:

- Web Pay (Credit Card)
- Check or money order
- Payments accepted at the court/county of origin

If the debtor does not resolve the debt within ten days from the date of the notice, then assets identified by the automated collection system are pursued. In this effort, COD searches through income records, including wage information on all California employees and interest and dividend information on all California accounts.

COD will suspend collection action for the following reasons:

- Higher priority debts
- Service members civil relief act
- Disaster zone
- Financial Hardship

Court-Ordered Debt deposits money collected for our clients/courts into the Court Collection Account, an account created specifically for Court Order Debt. FTB distributes this revenue to the State Controller, minus our administrative costs, to our clients.

**Reference**

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## 10.1.4 Legal Actions Court Ordered Debt

### Background

Franchise Tax Board (FTB) is able to administer different legal actions to resolve outstanding court order liabilities.

An Order to Withhold (OTW) is an administrative collection remedy to collect unpaid Court-Ordered Debts. An OTW is a one-time legal order seizing 100% of the available funds from an account with a financial institution, escrow company, or other third party. Potential payers for an OTW will include California banks or escrow companies holding funds (e.g., checking or savings account, or proceeds from a sale of property or another asset) of a debtor.

An Earnings Withholding Order (EWO) creates a levy upon the earnings of the debtor in the amount of the debtor’s outstanding Court-Ordered Debt (COD) liabilities. The term “earnings” means compensation payable by an employer to an employee for personal services performed by such employee, whether designated as wages, salary, commission, bonus, or otherwise.

A Continuous Order to Withhold (COTW) attaches rents, commissions, and scheduled payments from a sale of property or any other type of asset where continuous payments are made. The COTW cannot be used to levy upon the earnings of an employee (wages).

### Purpose

It is the responsibility of Court-Ordered Debt employees to issue an EWO, OTW or COTW when appropriate without violating the rights of the debtor.

### Responsibility

An OTW secures payment from a third party in possession of funds or property belonging to the debtor in order to satisfy an outstanding Court-Ordered Debt liability.

An EWO secures payment from the debtor’s employer to be paid towards an outstanding Court-Ordered Debt liability.

A COTW attaches available funds for a maximum of 12 months from the received date until the amount on the order is withheld in full or the twelve months has expired.

**Action**

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COD employees must ensure a debtor receives due process before issuing any legal action. Once due process is served and assets are located, Court-Ordered Debt employees may take the following collection actions:

- Issue an Order to Withhold (California RT&C Sections 19280 and 18670) on bank accounts such as checking, savings, IRA and Keogh. Order to Withhold (FTB 2230). An OTW is a valuable collection tool and must not be used indiscriminately.

Multiple OTW's can be issued at one time only when providing proper documentation for an exception and only after receiving supervisor approval.

When a levy attaches to a bank account (OTW), the debtor has ten days to resolve his/her debt, or the bank forwards the funds to FTB.

- Issue an Earnings Withholding Order (pursuant to section 19280 of the California Revenue and Taxation Code, and section 706.074 on the California Code of Civil Procedure) to an employer. Earnings Withholding Order (FTB 2229) when:
    - The debtor does not respond to a demand for payment.
    - Previously promised to pay and fails to do so.
    - History of delinquency.
    - Does not make full disclosure of their financial condition.
    - Defaulted Installment Agreement.

- An EWO may be served on an out-of-state employer of a resident and non-resident debtor when:
    - The debtor is employed and the payroll department is located outside of California.
    - A non-resident debtor is employed by a California company.

  - A foreign corporation qualified to do business in California employs the debtor and the payroll department is located outside of California.

A court order wage assignment for support has priority over EWOs and civil judgments.

When a levy attaches wages (EWO), the debtor has at least fifteen days from the end of the pay period after receipt of the levy to resolve the entire balance before the employer begins withholding up to 25 percent of the debtor's disposable income.

- Issue a Continuous Order to Withhold (California Revenue and Taxation Code sections 19280, 18671, and 18674) to a miscellaneous payer for commissions, rents, royalties, or other eligible continuous payments. Continuous Order To Withhold (FTB 2231), including but not limited to the following:

  - Payments due for services rendered as an independent contractor
  - Rent(s)
  - Dividends, royalties and residuals
  - Payments due as a result of written or oral contracts for services or sales
  - Payments due periodically as a result of an enforceable obligation to the debtor
  - Payments due for the lease of real or personal property

An EWO generally attaches 25% of the debtor's disposable earnings on a continuous basis; the debtor has a right under Code of Civil Procedure Section 706.075(c) to an administrative hearing to reconsider or modify the EWO.

An administrative hearing can be requested at any time by the debtor after the EWO is issued. FTB is required by law to grant the hearing and make a decision regarding whether to modify the EWO within 15 days of the debtor's request. The request should be in writing to avoid any disagreement as to the date of receipt.

For Court-Ordered Debt (COD) collections, accounts with an outstanding EWO requesting an administrative hearing should first be handled within the account's associated unit through negotiation with the debtor

If an agreement cannot be reached, the debtor should request a formal administrative hearing in writing. The request should include the following:

- Debtor's first and last name
- Social Security Number
- POA name and phone number if applicable
- Debtor's telephone numbers - work/home

Once the written request (via fax or email) is received:

- The collector must **immediately** hand the request to their lead or supervisor.
- The collector will need to advise the debtor that they will be contacted within 24-48 hours of the date of the request (have financial information and documents available).
- The collector should comment the COD account.
- The lead or supervisor will then contact the debtor to obtain financial statement information over the phone and request any necessary supporting documentation be faxed within 48 hours (**timeframe is imperative as FTB must respond within 15 days**).
- The lead or supervisor will need to fax the request and supporting documentation **immediately** to the supervisor of the Collection Advisory Team (CAT).
- CAT will advise the collector of the hearing determination and advise of any actions needed to comply with the hearing results (i.e. modify EWOT, release EWOT, route to hardship state, etc.)

If a debtor requests a face to face hearing CAT will contact the field to coordinate the hearing.

The following hearing guidelines will be followed by both CAT and the field offices:

- Two FTB employees must attend the hearing. One employee will be designated as the hearing officer and the other employee as a witness. The FTB employee directly responsible for the collection of the account usually will not be the designated hearing officer. Generally, the collection supervisor or branch manager in the field offices will be designated as the primary hearing officer with one or more employees designated as alternates.

The hearing is a formal conference where the parties discuss the information shown on the taxpayer's financial statement and any other information provided by the taxpayer regarding their financial condition. The purpose of the hearing is to determine whether any of the taxpayer's earnings reached by the EWO are necessary for the support of the taxpayer and/or the taxpayer's family.

All persons attending the hearing, whether they actively participate or not, must identify themselves to the satisfaction of the hearing officer. In addition, if a person(s) not normally entitled to confidential information pertaining to the taxpayer is in attendance, the taxpayer or authorized representative, are required to sign a statement authorizing FTB to disclose confidential information. After the hearing, a written report of the hearing and the hearing officer's decision must be prepared. A statement and a list of the names of all persons in attendance at the hearing must be included in the hearing officer's report. The written decision, Administrative Hearing Determination Notice (FTB 757) must be mailed to the taxpayer within the 15-day time limit.

**Note:** A debtor may be allowed to record the hearing but only in the instance where FTB also records the hearing. In the event FTB is not able to record the hearing then the hearing should:

- Not be recorded by either party, or
- Be rescheduled to allow FTB employee time to obtain the necessary equipment.

The above note applies to audio taping only; under no circumstances is videotaping of the hearing allowed.

FTB's decision at the hearing is subject to judicial review if the taxpayer files a petition for writ of mandate pursuant to Code of Civil Procedure Section 1094.5 within 90 days from the date the hearing report was delivered or mailed to the debtor. A copy of the hearing report and all records related to the hearing and decision must be retained and routed to CAT's supervisor, during the 90-day period. Please Note: a debtor may only request one formal hearing per EWO. Subsequent modifications to an EWO (that was previously the subject of a formal hearing) can be requested if the debtor's financial circumstances have changed and the collector determines the modification is warranted.

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## 10.2.1 Introduction Vehicle Registration Collections

### Background

The Vehicle Registration Collections (VRC) program collects delinquent and unpaid registration fees and penalties, which may include parking fees, toll fees and dishonored checks.

Collection activities include initiating contact, skip tracing, providing resolution options, involuntary collection actions, and educating debtors to achieve future compliance. Collectors work a variety of complex non-tax debt accounts by responding to phone calls in the voluntary notice and involuntary stages.

### Mission Statement

The Vehicle Registration Collection (VRC) Program takes pride in providing exceptional customer service by assisting the Department of Motor Vehicles in bringing registered owners into compliance through education and account resolution.

### Program Overview

In 1993, VRC became a permanent program to act on the behalf of Department of Motor Vehicles (DMV). This allowed Franchise Tax Board (FTB) to create a working partnership with DMV to reduce the significant delinquent vehicle registration debt owed to California.

In this effort to assist the DMV, the debts referred for collection under this program are treated as "final, due and payable to the State of California, and are collected from the debtor by FTB in any manner authorized under the law for the collection of a delinquent personal income tax liability."

## Authority

Franchise Tax Board's VRC Program is authorized under California R&TC Section 10878, which transferred responsibility for collecting overdue vehicle registration fees to FTB.

Debts authorized to collect include the following:

- Registration fees and penalties
- Transfer Fees
- License Fees
- Use Taxes
- Parking fees
- Court-imposed fine or penalty assessment
- Dishonored payment and fees
- Unpaid tolls

## References

((****))
California R&TC Section 10878
FTB Website

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## 10.2.2 Account Referrals Vehicle Registration Collections

### Background

Accounts are referred from the California Department of Motor Vehicles (DMV) to Vehicle Registration Collections (VRC) electronically.

Referred cases include the following types of delinquent debts:

- Registration Fees
- Transfer Fees
- License Fees
- Parking Fees
- Unpaid Tolls or Toll Violations
- Use Taxes
- Court Imposed Fines/Penalties
- Any added Interest, Penalties and Services Fees, including Dishonored Checks

### Purpose

Franchise Tax Board (FTB) assists the DMV with the collection of motor vehicle liabilities. DMV provides the FTB with information required for processing unpaid motor vehicle liabilities. VRC may collect in any manner authorized under the Revenue and Taxation Code laws.

Vehicle Registration Collection employees will use the DMV information to collect debts referred by DMV to FTB.

### Responsibility

DMV is responsible for referring accounts that meet the requirements of California R&TC Section 10878.

To ensure smooth transitions, DMV will contact VRC by the following methods:

- File transfer protocol
- Phone
- Fax

DMV will adjust accounts for the following reasons:

- Accepted payment at DMV
- Account sent in error
- Reduction in fees or penalties
- Increase in fees or penalties

DMV will withdraw accounts for the following reasons:

- Bankruptcy
- Hardship
- Closed – California Registration not required – Nonresident
- Notice of Release of Liability
- Balance is $4.99 or less from DMV
- Balance is $4.99 or less from FTB
- Deceased
- Uncollectable
- Paid in full
- Sent in error
- Other change in account status – Fees not due

DMV will revise accounts for the following reasons:

- DMV payments
- DMV adjustments

DMV will contact VRC for the following reasons:

- When immediate action is needed
- Account is paid in full and payments are being received
- DMV provided incorrect debtor information
- Incorrect debtor is being levied

## Action

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VRC will close accounts for the following reasons:

- Fees paid in full
- Balance is $4.99 or less from DMV
- Uncollectible – No assets
- Uncollectible– Out of State

- Uncollectible – Bankrupt
- Uncollectible – Deceased
- Uncollectible – Unable to Locate
- Release of Liability

The following is the flow of payments from FTB to DMV:

- Payments are transferred from Franchise Tax Board, Vehicle Registration Collections to the State Controller.
- State Controller distributes payments to DMV weekly.
- Payment files, containing detailed payment information, are transmitted to DMV daily by FTB

**References**

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California R&TC Section 10878

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## 10.2.3 Collection Process Vehicle Registration Collections

### Background

In an effort to pursue debtors, the California Legislature transferred the responsibility for collecting delinquent vehicle registration fees to the Franchise Tax Board (FTB) in 1993 with the enactment of California R&TC Section 10878.

DMV primarily assists customers in obtaining or renewing driver licenses and the licensing of vehicles. They also oversee the annual registration of vehicles in the state. When a fee becomes delinquent, DMV does not possess the administrative authority to take involuntary administrative collection actions. Rather, they must file actions against debtors in small claims court. Once the judgment is received, DMV employees can request and then exercise a writ of execution against available assets.

Our Vehicle Registration Collection (VRC) program is funded through the Motor Vehicle Account, State Transportation Fund, Motor Vehicle License Fee Account, and the Transportation Tax Fund.

### Collection Process

DMV sends an annual renewal notice to the vehicle's last known registered owner 60 days before the registration expires. If the owner fails to pay the renewal amount by the expiration date, DMV sends two collection notices advising the owner (now referred to as a debtor) that the account will be referred to FTB for collection action if the debt is not paid.

Once FTB accepts an account for collection, a Demand for Payment notice is mailed to the debtor's last known address. If the debtor does not resolve the debt within 30 days, FTB pursues involuntary collection actions. FTB searches through income records of delinquent registered owners, including wage information, interest and dividend account information. Once assets are located, FTB may take the following collection actions:

- Issue an Order to Withhold to a financial institution for accounts such as checking, savings, IRA's and Keogh.

- Issue an Earnings Withholding Order to an employer.
- Issue a Continuous Order to Withholding to a miscellaneous payer for commissions, rents, and royalties.
- Seize both real and personal property, including vacant land, cash, safe deposit boxes, and vehicles.

When a levy attaches to a bank account, the debtor has 10 days to resolve the entire balance or the bank forwards the funds to FTB. When a levy attaches wages, the debtor has at least 15 days to resolve the entire balance before the employer begins withholding 25 percent of the debtor's disposable income. On all accounts, FTB chooses the best collection remedy and may return an account or rescind action at any time until the issue is settled.

As DMV's collection agent, FTB forwards all monies collected to the DMV.

**References**

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## 10.2.4 Legal Actions Vehicle Registration Collections

### Background

Franchise Tax Board (FTB) is able to administer different and additional legal actions than the Department of Motor Vehicles (DMV) to resolve delinquent vehicle registration accounts.

An Order to Withhold (OTW) attaches to funds or property due the registered owner at the time the order is received and does not have a continuing effect. Upon receipt of the OTW, the third party notified is required to remit to Franchise Tax Board (FTB), after the appropriate holding period, all funds due or belonging to the registered owner at the time the OTW was received. (See CPM Section 7.0.1.1 Order to Withhold Information (OTW))

An Earnings Withholding Order (EWO) creates a levy upon the earnings of the registered owner in the amount of the outstanding liabilities. The term "earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether designated as wages, salary, commission, bonus, or otherwise. The EWO is a continuing levy which attaches 25% of the registered owner's disposable income until the amount on the order is satisfied or terminated by FTB. (See CPM Section 7.2.1.1 Earnings Withholding Order for Taxes (EWOT))

A Continuous Order to Withhold (COTW) attaches rents, commissions, scheduled payments from a sale of property or any other type of asset where continuous payments are made. The COTW can be used to levy upon the earnings of an independent contractor. The COTW cannot be used to levy upon the earnings of an employee (wages). Vehicle Registration Collections (VRC) program does not currently utilize the COTW in its collection process. However, efforts are currently under way to institute this type of levy into the collection process. (See CPM Section 7.0.1.3 BE and PIT Continuous Order to Withhold (COTW))

### Purpose

It is the responsibility of VRC employees to issue an EWO or OTW when appropriate without violating the rights of the registered owner.

## Responsibility

An OTW secures payment from a third party in possession of funds or property belonging to the registered owner in order to satisfy an outstanding VRC liability.

An EWO secures payment through the registered owner's employer to be paid towards an outstanding VRC liability.

A COTW attaches available funds for a maximum of 12 months from the received date of order until the amount on the order is withheld in full or the 12 months has expired.

## Action

Vehicle Registration Collection (VRC) employees must ensure a registered owner receives due process before issuing any legal action. Once due process is served and assets are located, VRC employees may take the following collection actions:

- Issue an OTW (FTB 2230) pursuant to California R&TC Sections 19280 and 18670 on financial institution accounts such as checking, savings, IRA, and Keogh. An OTW is a valuable collection tool and must not be used indiscriminately.

Multiple OTW's can be issued at one time only when providing proper documentation for an exception and only after receiving supervisor approval.

When an OTW attaches to an account, the registered owner has 10 business days to resolve the debt, or the financial institution forwards the attached funds to FTB.

- Issue a EWO (FTB 2229) pursuant to Section 19280 of the California Revenue and Taxation Code, and Section 706.074 of the California Code of Civil Procedure to an employer. The EWO is sent when the registered owner:
    - Does not respond to a demand (FTB 2205 MEO) for payment.

- Previously promised to pay and fails to do so.
- History of delinquency.
- Does not make full disclosure of their financial condition.
- Defaulted Installment Agreement.
- Does not have an account at a financial institution.

- An EWO may be served on an out-of-state employer of a California resident and non-resident registered owner when:

  - The registered owner is employed in California and the payroll department is located outside of California.
  - A non-resident registered owner is employed by a California company.
  - A foreign corporation qualified to do business in California employs the registered owner and the payroll department is located outside of California

When a EWO attaches wages, the registered owner has at least fifteen days from the end of the pay period after receipt of the levy to resolve the balance in full before the employer begins withholding 25 percent of the registered owner's disposable income.

As DMV's collection agent, FTB forwards all monies collected to DMV.

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