May 27, 2022

VIA INTERNET

Dear Interested Party:

The Compliance Policy and Procedures Manual (CPPM) is a guide for the California Department of Tax and Fee Administration (CDTFA) in administering tax and fee programs. It is available to the public and can be accessed from the CDTFA web page at http://www.cdtfa.ca.gov/taxes-and-fees/staxmanuals.htm.

The Business Tax and Fee Division is proposing to revise the following sections of Chapter 7 of the CPPM:

- Sections 740.010-740.100 and 740.210-740.240 to incorporate current policies and procedures regarding taxpayers who have filed for bankruptcy.
- Sections 776.000-776.180 and Exhibit 1 to incorporate current policies and procedures for requesting a discharge from accountability for an uncollectible account.

The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed CPPM revisions, you may contact the CDTFA at CPPMRev@cdtfa.ca.gov. Your comments or suggestions must be received by the CDTFA no later than June 27, 2022, to be considered. Thank you for your consideration.

Sincerely,

Aimee Olhiser, Chief
Tax Policy Bureau
Business Tax and Fee Division
BANKRUPTCIES, ASSIGNMENTS FOR THE BENEFIT OF CREDITORS, RECEIVERSHIPS, AND PROBATES  740.000

BANKRUPTCY – IN GENERAL  740.010

Bankruptcy is a system of federal laws, rules, and procedures pursuant to which persons and entities may submit their assets, liabilities and financial affairs to the jurisdiction of the United States bankruptcy courts. Bankruptcy often involves the interplay of both federal bankruptcy law and state law. The Bankruptcy Reform act of 1978 created the Bankruptcy Code, which became effective in October 1979. The Bankruptcy Code contains the federal statutes that provide the substantive law for all bankruptcy cases. The Federal Rules of Bankruptcy Procedure govern bankruptcy procedures, administration, and litigation. Bankruptcy case law interprets the statutes and rules under the specific facts of a case and provides legal precedents for cases with similar facts.

The California Department of Tax and Fee Administration (CDTFA) is prohibited from collecting from a tax debtor outside of bankruptcy when a tax or fee is discharged in a bankruptcy case. If a debtor has a liability that is excepted from the bankruptcy discharge, creditors may continue to take collection action against the debtor, since the debtor is no longer protected by the automatic stay provided by filing bankruptcy. When a debtor has a current or potential unpaid tax or fee liability to the CDTFA, the Bankruptcy Team in the Collections Support Bureau (CSB) should review the bankruptcy case to determine whether the CDTFA has a right to receive a distribution from a bankruptcy estate and to collect from a debtor. If so, the Bankruptcy Team should take appropriate action to protect the CDTFA’s right to receive a distribution from the bankruptcy estate and to collect from a debtor outside the bankruptcy case. Ordinarily, to receive distributions in bankruptcy cases, creditors, including tax agencies, must file proofs of claim. The Bankruptcy Team monitors the status of bankruptcy cases, files proofs of claim, and collects liabilities for accounts in bankruptcy. Once a case exits bankruptcy the case is closed, the Bankruptcy Team will remove it from legal status, and return the account to the office responsible for the collection, if appropriate.

PACER  740.020

There are thirteen Bankruptcy Courts in California, spread among four districts: Southern (San Diego area), Central (Los Angeles area/Santa Barbara/San Fernando Valley/Santa Ana/Riverside), Northern (San Francisco/Oakland/San Jose/Santa Rosa Bay Area), and Eastern (Fresno/Sacramento/Modesto/Central Valley areas). Although many of the CDTFA’s tax debtors file bankruptcy in California, cases affecting the CDTFA’s tax debtors may be filed in bankruptcy courts throughout the country.

The court dockets of cases filed in these courts and most legal papers filed in these cases can be accessed using the PACER System (Public Access to Court Electronic Records). PACER is accessible via iCDTFAmyCDTFA or through the internet at: http://pacer.psc.uscourts.gov/pasco/cgi-bin/links.pl. The CDTFA has a general username and password used by the entire agency. This information is available through the responsible supervisor. To access this site, CDTFA has specific usernames and passwords available through the responsible team supervisors.
The U.S. Party/Case Index serves as a locator index for PACER. The U.S. Party/Case Index is a national index for U.S. district, bankruptcy, and appellate courts that searches the entire nation’s bankruptcy filings by name, social security or case number.

PACER can also be used as a collection tool since it can be used as support for issuing dual determinations and successor liabilities.

**IDENTIFICATION OF BANKRUPTCY STATUS** 740.030

General notice that a bankruptcy case is commencing may come from many different sources such as actual written notice, verbal notice from a taxpayer, attorney or trustee, a search in PACER, or the media. After receiving notification and verifying that a bankruptcy case has commenced, the bankruptcy information should be entered into the online legal subsystem if the CDTFA has either a current interest (current liability due or active account) or future interest (potential liability due) in the case. After receiving notification and verifying that a bankruptcy case has commenced in PACER, the bankruptcy information should be entered into the Bankruptcy Case Springboard when CDTFA has either a current interest (current liability due on active and closed out accounts) or future interest (potential liability due) in the case. Additionally, there are occasions where it is appropriate to add a bankruptcy case that has already closed for historical purposes.

Either PACER information or an actual written notice of a taxpayer’s bankruptcy is required in order to update accounts in the online system with the legal status. Field Operations Division (FOD) and Business Tax and Fee Division (BTFD) collection staff and CSB are collectively responsible for designating bankruptcy status for accounts in the system. Collection staff should enter the bankruptcy information into the system when:

1. A notice regarding the commencement of a bankruptcy case is sent directly to a CDTFA office either via mail or Electronic Bankruptcy Noticing (EBN).
2. Collection staff is made aware of a bankruptcy filing by a taxpayer or their representative and verifies the filing with the court.
3. Staff becomes aware of an immediate deadline in a bankruptcy case. If such a deadline occurs, CSB must be notified without delay after entering the bankruptcy information.

Information on adding bankruptcy information is available in the system’s Help Manager.

Adding the legal case information in the system requires input from audit staff regarding pending audits. The section/office that created the legal case in the system is responsible for communicating with audit staff to determine if an audit is anticipated and if so, when it will be completed.

When a notice regarding commencement of a bankruptcy case is sent directly to the headquarters office of the CDTFA, CSB will enter the bankruptcy information into the system. CSB does not forward the bankruptcy notice to other divisions. All other bankruptcy related notices received by FOD or BTFD offices should be sent to CSB (MIC 55). See CPPM 740.230 regarding procedures for inputting information into the Bankruptcy Case springboard.

In the California bankruptcy court registries, the CDTFA has designated the following address to be used for notification of all general bankruptcy matters:
California Department of Tax and Fee Administration, Account Information Group, MIC 29, PO Box 942879, Sacramento CA 94279-0029.
AUTOMATIC STAY

United States Bankruptcy Code §362 places a “stay” (stop order) on most collection activity starting the moment the debtor files bankruptcy. Most collection efforts must be immediately released, removed and/or stopped from that date until the automatic stay and the discharge injunction no longer restrain the CDTFA’s collection actions.

CDTFA collection actions prohibited by the automatic stay include:
1. Revocation of a seller’s permit.
2. Supplier cut off letters.
3. Liens.
4. Levies or withholds.
5. Warrants (including keepers, till taps, and seize and sells).
6. Demands for payment (including demand notices).
7. FTB, EDD and other offsets.
8. Suspension of Liquor License.

CDTFA actions that are not prohibited by the automatic stay include:
1. Demands for tax returns to be filed.
2. Assessments including compliance assessments, field billing orders, dual determinations, successor billings and audits.
4. Continuance of any petition or appeal.
5. Withholds on transfer of liquor licenses.
6. Filing of criminal complaints.
7. Correspondence or discussions with the debtor and counsel regarding the things specifically listed in this section.

When in doubt as to whether an action may violate the automatic stay, please contact the Bankruptcy Team before proceeding. A violation of the automatic stay can lead to sanctions against the CDTFA.

EFFECTS OF LAW CHANGES

Since the enactment of the Bankruptcy Code in 1978, there have been many significant amendments. Some of the more significant amendments that affect the CDTFA are:

1. The Bankruptcy Reform Act of 1994. The automatic stay exception was broadened to permit taxing agencies to take the following actions:
   a. Audit to determine a tax liability.
   b. Issue a notice of tax deficiency to the debtor.
   c. Demand delinquent tax returns.
   d. Make an assessment for any tax.

2. The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) became effective beginning October 17, 2005 and it:
   a. Codified the tolling of certain periods while a previous bankruptcy case was pending.
   b. Added exceptions to discharge in both chapter 13 and chapter 11 cases for:
      1. Failure to file
      2. Fraud
CLAIM PREPARATION ON PRE-PETITION LIABILITY  740.060

Prior to the filing of a bankruptcy proof of claim:

1. All potential pre-petition liabilities must be identified. To accomplish this:
   a. Delinquent returns must be filed, or estimated returns should be processed and billed.
   b. Pending audits should be completed and billed.
   c. In cases where successor liability exists, a notice of successor liability should be issued and billed.
   d. In cases where responsible person liability exists, a notice of dual determination should be issued and billed.

2. In addition, prior to filing a bankruptcy proof of claim, CSB staff should:
   a. Review filed returns to determine whether they are correct.
   b. Return any money collected in violation of the automatic stay.
   c. Determine whether a cash deposit may be applied to the account.
   d. Verify correct application of payments.

After completing the above steps, CDTFA staff should prepare a proof of claim including all pre-petition tax and fee liabilities. The proof of claim must indicate the appropriate designation of a liability as secured, priority, or general unsecured. When an audit or other determination has not been completed, a contingent proof of claim indicating a potential tax or fee liability should be filed.

CSB is responsible for accounts in bankruptcy legal status until the Bankruptcy Case springboard is closed in the system. All account maintenance and compliance tasks required to prepare and file a proof of claim in a bankruptcy case will be handled by CSB. Staff members in FOD and BTFD offices should continue to provide taxpayers with all other account related services requested by the taxpayer (e.g., provide split returns, close-out of permits, update addresses, etc.)

DELINQUENT AND SPLIT RETURNS  740.070

After transmitting a legal case from the legal claim case screen, the office responsible for the account or the CSB must ensure all pre-petition returns have been filed. In many cases, a tax/fee return must be split to account for liabilities incurred before and after the bankruptcy petition date.

Although this function is primarily the responsibility of the CSB, if the taxpayer is present in a field office or in communication with staff members, they should assist the CSB by determining whether the permit or license is active or closed out and obtaining delinquent or split returns.

An FO is established at the time the tax return is addressed for mailing.

1. If at the time the legal claim is entered on the legal claim case screen, and the system has not yet established a FO, the system will automatically split the FO. Split tax/fee returns will be mailed to the taxpayer by the system, however, if circumstances require that the returns be mailed immediately, the CSB may manually prepare and mail split returns to the taxpayer.

2. If a tax/fee return for the full reporting period was filed without payment, the CSB will prorate the difference for the purpose of filing the claim.

3. If an FO for the entire period has been established, but the return has not been
filed, staff will need to manually split the FO to create a pre-petition and a post-petition return. Staff will then print and mail these returns to the taxpayer. It is the responsibility of the office responsible for the account to obtain the returns and establish follow-ups.

When pre-petition returns cannot be obtained with adequate time (two weeks) for the CSB to file a claim, estimated returns should be prepared (see CPPM 540.170).

**AUDIT ON PRE-PETITION LIABILITY** 740.080

In all cases where an audit is to be conducted or is in process, but is not yet completed, the audit information must be indicated in the system. Once completed, the audit information will be transmitted to CSB promptly so proper controls can be established for the timely filing of a proof of claim.

In any case where an audit is to be conducted or is in process but is not yet completed and audit team members are aware of an existing bankruptcy, they should consult with CSB immediately. Audit staff should be informed of a bankruptcy claims bar date so that an audit can be billed with sufficient lead-time to permit CSB staff to timely file a proof of claim. CSB staff needs at least two weeks prior to a claims bar date to process and file a proof of claim.

Audit staff should periodically communicate with CSB staff regarding the status of the audit. If there are problems or delays in the completion of the audit, communication should take place as early as possible to ensure that all required steps to preserve the CDTFA’s claim are taken by both audit staff and CSB.

If audit staff is contemplating an audit after a bankruptcy case was filed and the audit period is pre-petition, or pre-confirmation (Chapter 11 cases), audit staff should contact the Bankruptcy Team to determine whether the bankruptcy case affects the liability not yet billed, prior to investing time in an audit.

For requests for Determination of a Tax Liability pursuant to section 505(b)(2) of the bankruptcy code, see CPPM 740.190.

**DUAL DETERMINATIONS ON PRE-PETITION CORPORATE LIABILITY** 740.090

If an officer of a corporation that has a liability with the CDTFA files a bankruptcy petition, the corporate account should be reviewed for a possible responsible officer dual determination against the officer. If a responsible person dual determination cannot be completed in time to file a proof of claim, but there are indications that a responsible person liability may be established, CSB staff should file a contingent claim. A contingent claim asserts the potential liability of the corporate officer. The minimum threshold for issuing a dual determination when Bankruptcy is involved is $5,000.

**DISPOSITION OF SECURITY** 740.100

If a bankruptcy case is pending when an account is closed out with no delinquencies or liabilities pending or otherwise, the taxpayer's security deposit should be returned in care of the:

1. Bankruptcy trustee (Chapter 7 cases).
2. Debtor-in-Possession (DIP) or trustee (Chapter 11 cases).
3. Debtor (Chapter 13 cases).

If a liability exists when an account in bankruptcy status is closed out, the taxpayer's security deposit should be applied to the outstanding liability and the Bankruptcy Team will be notified so that a review of the account can be made. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the CDTFA in trust to be used solely in the manner provided by Revenue and Taxation Code (RTC) sections 6701 and 6815. Generally, demands are not made on surety bonds or guarantees until after the bankruptcy case is closed.

**PARTNERS IN BANKRUPTCY**

When two or more persons are jointly responsible for payment of a CDTFA tax liability (partnership accounts, husband and wife married co-ownership accounts, etc.), the Collections Support Bureau (CSB) will be responsible for determining which liabilities, if any, have been discharged by a joint debtor's bankruptcy discharge. If all joint debtors have discharged liabilities, the liabilities may be legally adjusted. If not, the tax liability should not be adjusted, nor should the Discharge From Bankruptcy (DFB) status code be set. If a lien release is appropriate for a discharged joint debtor, but not for all joint debtors, a partial release as to the affected person should be issued.

There are several options that can be utilized to make sure that the partnership liability is handled correctly post-bankruptcy. These are used based on the best option for the individual circumstances involved in the case. CSB team members will analyze the situation and proceed with the best option.

The options include:

- **Liability Remains Due (No Change)** – the debt is not subject to discharge and it remains due by all partners.
- **Adjustment of the Partnership Liability** – typically used when all partners are relieved of the debt.
- **Account Transfer** – typically used when the account is closed and one of the partners is no longer liable in any capacity.
- **Creation of Separate Partner Collections** – typically used when all partners remain liable for some of the debt but not the same liabilities.
- **Marking the Entire Liability Discharged** – typically used when all partners are discharged and there are pre-petition tax lien issues – or – when only one partner remains liable and the total remaining liability is less than $500.

A partner that is not in bankruptcy is not protected by the automatic stay of the partner in bankruptcy. Collection can continue on the partner not protected by the automatic stay. When a partnership consists of a married couple, marital community property and funds will be protected from collection by the automatic stay of 11 U.S.C. Section 362(a). It does not matter whether one or both of the spouses file for bankruptcy. Most or all of the marital community's property and funds will belong to the bankruptcy estate pursuant to 11 U.S.C. Section 541(a)(2)(A). Case specific questions about community property should be directed to CSB.

**Demand Notices for Non-Bankrupt Partners**

CSB staff can create and issue a demand notice in CROS to an individual non-bankrupt partner whose partnership account has a legal designation. The demand copy that is
addressed to the partnership, as well as the copy belonging to the partner(s) who filed bankruptcy, will not be produced if a legal designation on the partnership account exists. If a demand notice is created and one or more partners are ineligible to receive the demand due to the legal designation on the partnership account, the demand for the ineligible partners will reject and an assignment (BNK) will be created in assignment control for follow-up by CSB supervision. If a demand notice is created and one or more partners are ineligible to receive the demand due to discharged liabilities, the demand for the ineligible partners would reject and an assignment (DFB) will be created in assignment control for follow-up by CSB supervision. If a notice is suppressed for either reason, the appropriate rejection code will be displayed on the DIF BN screen.

Browse Client/Difference Relationship Screen (DIF XB):
The DIF XB screen displays Difference Client Relationships for a selected Client ID. All account and difference information belonging to the identified client will be displayed. Query fields allow the list to be positioned at a selected relationship type or account number. If a relationship type code is entered in the “Rel” seek field, the list is displayed starting from the relationship type code. If an account number is also entered in the account seek field, the list is displayed starting from the account number. A user can then select a record that will navigate him or her to the Maintain/Inquire Difference Client Relationship screen. The DIF XB screen is available to all CDTFA staff.

The Browse Client/Difference Relationship screen has a second panel. The second panel provides additional information (e.g., legal case ID, case name) that will help you find the desired record. Press function key F20 in order to access the second panel. The additional information will only appear if the user has entered the legal case ID and case name for the relationship.

Maintain/Inquire Difference Client Relationship (DIF XM):
The DIF XM screen allows a Client Difference Relationship to be entered or viewed. A Client Difference Relationship specifies the type of relationship between the two entities and the date range the relationship was effective. The system will check for a relationship between client and difference and process according to the relationship’s existence at the time. For example, if a partner’s liability is discharged in bankruptcy, then a demand would not be sent to the partner.

If the Client Difference Relationship is ended, the relationship is no longer in effect for any process that runs after that update. To reestablish the relationship, a new relationship must be created. This new relationship may have the same effective date as the previous record’s end date. It may also have the same effective date as the previous record, if the previous record ended the same day. The DIF XM screen may only be accessed and modified by CSB staff.

Field Offices and Special Taxes and Fees:
Field Office and Special Taxes and Fees staff will often enter an account into the legal subsystem when a legal action is pending (Bankruptcy, Probates, Assignments, etc.). The responsibilities and procedures of data entry will remain the same with one exception. Since partners are tracked on an individual basis, the bankrupt partner’s Taxpayer Identification Number (TIN) must be entered. The partnership’s TIN should no longer be linked to the legal action unless the entire partnership has filed bankruptcy. It is imperative that the bankrupt partner’s TIN be entered so the notice process will be effective and accurate.

This functionality will allow the tracking of an individual partner’s personal liabilities by providing a comprehensive listing of accounts, differences, and effective dates at the
client level. In addition, the system will automatically and accurately determine who is eligible to receive a demand based on the pending legal actions of partnership accounts. This will allow CDTFA to pursue these types of partnership liabilities without violating the automatic stay and will uphold the goals and objectives of RUPA and CDTFA.

BANKRUPTCY IN IRISTHE SYSTEM

**Important Legal Screens:**

1. **LGL LC (Legal Case):** To see the information entered, or to enter information on CROS concerning a legal case.
2. **LGL SC (See Claim):** To see what claim or claim(s) the CDTFA may have filed on any given case.
3. **LGL MC (Make Claim):** Used only by CSB staff to enter information about a new claim.
4. **LGL AG (Attorney General):** To see the information entered, or to enter information on CROS concerning an Attorney General case (only CSB staff can enter an AG case).

Staff may access legal subsystem screens by using 1) the account number (a), 2) the case number (c) or 3) the case id number (i).

**Accessing Legal Screens by Account Number, Case Number or Case Id Number:**

1. **CDTFA Account Number:** Users should enter the desired LGL screen on the first two spaces of the “GO” line in CROS. On the third space, users should enter the letter “A”, followed by the nine-digit CDTFA account number.
2. **Bankruptcy Case Number:** Users should enter the desired LGL screen on the first two spaces of the “GO” line in CROS. On the third space, users should enter the letter “C”, followed by the bankruptcy case number.
3. **Case ID Number:** Users should enter the desired LGL screen on the first two spaces of the “GO” line in CROS. On the third space, users should enter the letter “I”, followed by the case ID number.

**Initial Legal Entry:**

1. Promptly upon learning the taxpayer is involved in bankruptcy, staff will obtain the required information and complete the Legal Claim Case screen online (LGL LC).
2. Lists of appropriate TIN numbers to use for courts, chapter 13 trustees, and some chapter 7 trustees have been provided to all field offices. If collectors need assistance relating to TIN numbers for courts and trustees in the LGL LC screen, they should contact CSB.
3. The case must be transmitted using the F20 key in order for the account to be put in legal status.

**During the Pending Bankruptcy:**

1. Pre-petition periods are marked with B07, B11, or B13 (on DIF DA) depending on the type of bankruptcy filed.
2. Liability in a chapter 11 that is post-petition, but pre-confirmation, is marked with just the letter “B.”
3. Post-petition and post-confirmation chapter 11 periods are not marked.
4. Staff will not be able to send a demand on any period “marked” with a bankruptcy indicator.

**After the Bankruptcy Concludes:**

1. CSB will mark any discharged period with a DFB indicator in the “status” column. Occasionally the DFB indicator will be hidden under other status
indicators. Staff should use the DIF DI screen and place an “M” on the moveable field to view the status for the period.

2. Once a discharged period is marked “DFB”, a demand for payment cannot be issued for that period. However, a statement of account may be issued to the taxpayer.

3. Collection should not take place on any period marked with a DFB status indicator.

4. Questions concerning why a DFB status indicator is placed on a particular liability should be directed to CSB.

In the system, all information concerning a bankruptcy case is coordinated under the Bankruptcy Case springboard.

Generally, CSB is notified directly of new bankruptcy cases via Electronic Bankruptcy Noticing (EBN). CSB receives this data stream from all California Courts into the system with information concerning new case filings. The system then screens the data identifying when it matches one of our taxpayers and enters the case into the Bankruptcy Case springboard in a batch run. EBN also notifies CDTFA when a case receives a discharge, closes, or receives certain types of notices like Notice of Assets.

The Bankruptcy Case springboard can be accessed using the Customer or Account springboard, under the Collections Tab, and Bankruptcies Subtab. Cases that are active will be highlighted in blue; cases that have been closed in gray (to see closed cases, the History button may need to be selected).

Attached to the Bankruptcy Case springboard, under the CRM tab, will be all correspondence sent by CSB team members, copies of any CDTFA claims filed, Discharge Reviews, Discharge Orders and other documents that are used during the time the case is pending.

Adding a New Case

Prior to adding a new case, verify that the case is not yet in the system. If the case is not in the system, you may proceed with adding the case.

Having a copy of the Bankruptcy Notice or having PACER available will ensure all information is available for entering the case.

Search all parties associated with the bankruptcy filing to ensure they are already listed as Customers in the system. These would include the taxpayer in bankruptcy, any co-debtors, bankruptcy trustee, etc. By searching and accessing the Customer Springboards before you begin to enter the Bankruptcy Case, those Customers will appear at the top of your history and can easily be selected when adding the Bankruptcy Case Springboard. The important parties include our Customer in Bankruptcy, the Trustee, and any Co-Debtors. See the Bankruptcy Help Manager.

Understanding a Liability in the System after a Discharge Has Occurred

Every case should have a Discharge Review note entered by CSB prior to being released back to collections. This note should be reviewed carefully before proceeding with collections (see CPPM sections 740.150).

In cases where the taxpayer’s balance may include discharged liability an indicator is displayed in the yellow bar at the top of the Customer springboard. This indicator should prompt team members to read the review notes on the Bankruptcy Case springboard prior to proceeding with collections.
If the liability is a Primary Liability, the taxpayer’s balance will continue to include the discharged liability (until the discharged liability is adjusted off the system). The collection amount however, will be reduced by the discharged liability and will reflect only the collectible balance. This means that there is a pre-petition tax lien that survived the discharge (see CPPM section 740.160).

If the liability is a Secondary Liability, the taxpayer’s balance will not include the discharged liability. Liabilities with no liens in place will be removed from the collection amount. Liabilities with liens will be marked Discharged from Bankruptcy (DFB) to remove it from collection, but it will leave the lien securing the balance. The collection amount will only reflect the collectible balance. However, a pre-petition tax lien may survive and need to be resolved by the taxpayer (see CPPM section 740.160). Team members can confirm which liabilities are secured by a tax lien by reviewing the liens in the system on the Collection Tab/Liens Subtab. See Discharge From Bankruptcy in the Help Manager.

**BANKRUPTCY IN ACMS**  
740.240

1. Initial entry and transmission of the legal screen will automatically route the account to CSB for monitoring, on the next day. Do not place a hold on the account because it could impede this automatic process.

2. Once the bankruptcy case is removed from legal status, the case will automatically route to the office of control the following day.

3. Collections staff should look for the comment under “Legal Case Summary” in ACMS that gives them a review of the impact of the bankruptcy proceedings on the liability prior to working the account.

4. DFB status on any given liability will be reflected in ACMS. ACMS will stop and/or warn regarding any collection on a liability marked with a DFB indicator.

5. Any questions regarding comments made in ACMS in reference to a bankruptcy should be directed to the Bankruptcy Team member that made the comment.
DISCHARGE FROM ACCOUNTABILITY 776.000

GENERAL 776.010

When an amount due from a taxpayer is not economically feasible to pursue, or when collection efforts have been unsuccessful and recovery of the amount due is improbable, the California Department of Tax and Fee Administration (CDTFA) may request a discharge from accountability from the State Controller’s Office (SCO) pursuant to the Government Code. A discharge from accountability, also referred to as a “write-off,” relieves the CDTFA of the responsibility to collect the amount due and removes the liability from CDTFA’s accounts receivable. When an amount due from a taxpayer is not economically feasible to pursue, or when collection efforts have proven to be unsuccessful and recovery of the amount due is improbable, the California Department of Tax and Fee Administration (CDTFA) may file an Application for Discharge (Std. 27) requesting the liability be discharged from accountability. Requests for discharge are forwarded to the State Controller’s Office (SCO) for approval pursuant to the Government Code. A discharge from accountability, also referred to as a “write-off,” relieves CDTFA of the responsibility to actively pursue uncollectible amounts due and removes the liability from CDTFA’s accounts receivable.

MANUAL WRITE-OFFS

Write-offs in field offices, or the equivalent Headquarters unit, are initiated by the responsible collector. A write-off checklist (see Exhibit 1) must be completed for all accounts over $2,000 and attached with all supporting documents when it is submitted to the compliance supervisor or their designee for review. Write-offs are initiated by the responsible collector. A write-off checklist (see Exhibit 1) and all supporting documents must be submitted to the compliance supervisor or their designee for review and approval for all accounts over $2,000. Collectors should use the checklist as a tool to ensure all efforts to collect the liability have been exhausted. Not all points on the write-off checklist are applicable for all accounts. The designated write-off reviewer will use the checklist to determine if there are actions appropriate to the case that have not been addressed.

Once the compliance supervisor or their designee approves the write-off, it will be submitted electronically to the Collections Support Bureau (CSB). The checklist and documentation will not be forwarded to the CSB. The compliance supervisor, or their designee, reviews the case and all supporting documentation and approves the write-off request in the system. Once approved, the write-off case is staged in the system to the Collections Support Bureau (CSB). The write-off checklist and documentation are only used by the collector and the designated reviewer and do not need to be forwarded to CSB.

In addition, The CDTFA-908, Important Notice: OIC Program for Closed Businesses, will be mailed to all accounts prior to being written off, except for:

1. Accounts that previously requested an offer in compromise (OIC) and were rejected,
2. Accounts that do not qualify for the OIC Program, and
3. Accounts that do not have a good mailing address.

A reasonable amount of time, generally fifteen 15 days, should be given to the taxpayer to respond before initiating the write-off.
Based upon information available in CDTFA’s files or furnished by the office responsible for the account, the CSB periodically initiates schedules of uncollectible items, which are submitted to the SCO for approval. CSB reviews and approves write-off cases submitted through the system, which places the liability in pending write-off status. Every month, the system generates schedules of uncollectible items, which are submitted to SCO for final approval along with the Application for Discharge. Offices should have a continuing program to recommend write-offs as accounts become uncollectible. If the account is, in fact, not collectible, the case has not been completed until the write-off recommendation has been forwarded to the CSB and accepted for discharge from accountability, and further approved by the SCO. Supervisors should encourage their team members to actively submit accounts for write-off when collection efforts have been exhausted. If an account is not collectible, the case is not completed until the write-off recommendation is forwarded to CSB, accepted for discharge from accountability, and subsequently approved by SCO.

**WRITE-OFF DOES NOT RELIEVE THE TAXPAYER OF LIABILITY** 776.020

Although the CDTFA is relieved of the collection responsibility after writing off an account, this action does not relieve the taxpayer of the liability. If assets are located after the write-off of a taxpayer’s liability, collection action should be taken as though the account is still active in CDTFA’s records. Full collection procedures are available for use provided the appropriate statute of limitations for such actions has not expired. If a taxpayer requests the release of a lien after the write-off process is complete, full payment of the liability is required before releasing the lien. If the taxpayer does not pay with certified funds, additional time is required to allow the funds to clear the bank before a lien release can be issued. Although CDTFA is relieved of the collection responsibility after writing off a liability, this action does not relieve the taxpayer from the liability. If assets are located after the write-off, collection action should be taken as though the liability was still active in CDTFA’s records. Full collection action may be taken, provided the appropriate statute of limitations has not expired. However, a notice of levy should not be issued on a deceased taxpayer’s account once CDTFA has been notified and the information has been confirmed. If a taxpayer requests a release of lien after the write-off process is complete, full payment of the liability is required before the lien can be released, barring a court order stipulating a release for a lesser amount paid. If the taxpayer does not pay with certified funds, additional time is required to allow the funds to clear the bank before a lien release can be issued.

**Write-off Re-establish Work item**

Written off accounts can be recommended for re-establishment either automatically by the system or by team members if assets are located from sources such as EDD, FTB, IRS, and others. A write-off does not need to be re-established for one payment or lien payoff. See Write-off Re-establish Work item in the system’s Help Manager for additional information.

**WRITE-OFF RECOMMENDATION** 776.030

The write-off recommendation is processed using the online system. For detailed instructions on how to initiate a write-off in the online system, see IRIS Cheat Sheets located on CDTFA’s intranet site. When preparing a recommendation to request a discharge from accountability, a description of the significant points of the investigation and the results of the collection actions taken is required. The write-off
recommendation is processed on the Customer case in the system. When preparing a recommendation to request a discharge from accountability, complete the required fields for the corresponding reason selected in a Write-Off Taxpayer case.

Before initiating a write-off recommendation, the following issues must be resolved:

1. Unapplied credits,
2. Negative amounts entered in the system for tax, penalty, or interest,
3. Credits,
4. Unbilled collection costs, and
5. Unresolved tasks requiring user action, including legal actions.

The State Controller’s Office requires that multiple accounts with different TATs owned by the same entity must be written off together. This means that these accounts must be on the same write-off schedule and have the same write-off status. SCO, in conjunction with the State Administrative Manual, requires that multiple accounts owned by the same entity/customer must be written off together. This means these accounts must be on the same write-off schedule and have the same write-off status.

The CSB will either:

1. Approve the write-off recommendation and initiate schedule a request for discharge from accountability, or
2. Send a request for additional information or further investigation back to the originator through Assignment Control. Stage the case in the system to the requestor’s supervisor for additional information or further investigation.

REASONS FOR RECOMMENDATION 776.035

In the online system, staff must select a reason code for recommending the write-off. Only one reason code will be checked even though the account may fall under more than one category. A full summary of the collection activity must be recorded to support a recommendation for write-off. The summary must be supported by appropriate comments for the respective points to be covered. Enter the comments in chronological sequence within each point covered. In the system, only one reason for recommending a write-off can be selected for a taxpayer even though more than one category may be applicable. A summary of the collection activity must be recorded to support a recommendation for write-off.

The completed write-off may be reviewed by the State Controller’s Office, the Attorney General, or other control agencies. Do not use catch phrases, acronyms, initialisms, form numbers, or terminology exclusive to the CDTFA. The completed write-off may be reviewed by SCO, the Attorney General, or other control agencies. Common outcomes in the drop-down list of write-off points should be used for consistency. Do not use catch phrases, acronyms, initialisms, form numbers, or terminology exclusive to CDTFA.

TAXPAYER DECEASED 776.040

Reason code one is “Taxpayer deceased—no estate or estate distributed.” If a taxpayer, who owes a delinquent balance, is deceased and has not left an estate, or if the estate has been distributed by the time the death becomes a matter of knowledge to the CDTFA, a recommendation for write-off may be made. If a claim in probate has been
filed, and the CSB later learns through correspondence with the estate attorney that the assets of the estate are insufficient to pay the claim or any portion thereof, a write-off request can be initiated by a collector. The CSB will enter comments in ACMS noting that no payment is expected from the CDTFA’s claim. A recommendation for write-off may be submitted if a taxpayer is deceased and has no estate, or the estate has been distributed by the time CDTFA obtains knowledge of the death. If a claim in probate has been filed, and CSB later learns through correspondence with the estate attorney that the assets of the estate are insufficient to pay the claim or any portion thereof, a write-off request can be initiated by a collector. CSB will enter notes in the system that no payment is expected from CDTFA’s claim.

**TAXPAYER CANNOT BE LOCATED 776.050**

Reason code two is “Taxpayer cannot be located.” A recommendation for write-off because a taxpayer cannot be located should occur only after making a diligent effort to locate the taxpayer. The amount of the liability is a prime factor in determining whether sufficient time and effort was expended to support requesting a discharge from accountability under reason number two. Some other factors to consider are:

1. Whether all sources of information have been checked.
2. If the taxpayer is absent from this state, whether it appears that such absence is permanent.
3. Possible future sources of information, e.g., relatives, personal references, or business associates remaining in this state.

**OUT-OF-STATE TAXPAYER OUTSIDE OF STATE JURISDICTION 776.060**

Reason code three is “Taxpayer outside of state jurisdiction—referral to Attorney General not recommended.” Generally, taxpayers who are permanently situated outside of California, owe a liability less than $10,000, and have no assets in California are potential cases for write-off. However, a case is never an automatic candidate for write-off even though the liability is less than $10,000. The final course of action depends upon the availability of assets owned by the taxpayer and the type of legal action anticipated. Each case must be evaluated individually for write-off potential or possible referral for an out-of-state judgment.

The collector is responsible for the initial investigation and should check on the following points prior to forwarding their recommendations to the CSB:

1. Does the taxpayer have any out-of-state assets? and, if so, is their worth sufficient and If so, is the value of the asset(s) sufficient and/or cost effective to pursue and of a nature to make a referral to CDTFA counsel worthwhile?
2. Is the taxpayer sufficiently established in their new location to the extent that obtaining a judgment would be practical? For example:
   a. Is the taxpayer operating a business?
   b. Does the taxpayer currently own a home or is he or she in the process of buying one?
   c. Is the taxpayer employed? If so, who is the employer?
3. Are the taxpayer’s assets encumbered and, if so, to what extent? i.e., practically paid for or newly purchased and subject to lengthy loan term or high payments? For example, is their home mortgage nearly paid in full or was the home newly purchased and subject to a lengthy loan
term or large payments? This is not an all-inclusive list. The above items are not all-inclusive, but merely some of the items to review before deciding to proceed with a legal referral or requesting a discharge from accountability.

Legal referrals on out-of-state taxpayers can range from corresponding with the taxpayer for payment, to offers in compromise, to proceeding with full collection efforts through out-of-state attorneys after obtaining a judgment in California. If the CDTFA enlists the services of an out-of-state attorney to pursue collection from the taxpayer, the attorney will retain approximately 1/3 of any money collected as payment for their fees.

If the amount exceeds $10,000, a determination must be made whether the amount due, when considered with the financial condition of the taxpayer, will warrant a legal referral for further action. The CSB will make this decision after examining the facts supplied by the collector and ensuring that all collection efforts have been exhausted.

**INACTIVE CORPORATION/LLC**

Reason code four is “Inactive corporation—no assets and no personal liability.” A recommendation for write-off is appropriate when a corporation or limited liability company is found to be:

1. Inactive or suspended.
2. Without assets.
4. Void of corporate officer liability Without any collection against secondary parties due to collection being exhausted and written off.

**ATTORNEY GENERAL AGREEMENT**

Reason code five is “Settlement in accordance with agreement by Attorney General.” Staff should not initiate a write off using reason number five. The majority of these settlements result in a liability that is no longer legally collectible and the CSB or the Settlement Unit will adjust off the liability rather than writing it off. When an amount determined to be uncollectible is the joint liability of a person not named in the settlement, or when a portion of the uncollectible liability was not included in the settlement agreement, the collector from the responsible office should process a write off using a reason other than reason number 5.

**TAXPAYER WITHOUT NO ASSETS OR INCOME**

Reason code six is “Taxpayer has no assets or income on which to levy”. Before taking any action to recommend a write-off Prior to recommending a write-off because of inability to pay, a number of factors must be evaluated, such as:

1. The amount of the liability.
2. The possibility of acquiring future acquisition of assets or income.
3. The taxpayer’s age, occupation, physical and mental condition, earning capacity, rehabilitation if disabled, or release from an institution or prison.

If the taxpayer appears to have placed, or is placing, assets in the name of another person, a recommendation for write-off should not be processed merely because there are no assets currently available. Continued investigation to establish the taxpayer’s interest in the assets is more in order than a write-off recommendation. If the taxpayer
appears to have placed, or is placing, assets in the name of another person, a write-off should not be processed. Continued investigation to establish the taxpayer’s interest in the assets should be made prior to a write-off recommendation.

**BALANCE OUTLAWED**

Reason code seven is “Balance outlawed”. “Outlawed” balances are those that are more than ten years delinquent and are not secured by a recorded lien. “Balance Outlawed” is also used when a liability is discharged in bankruptcy, but a valid state tax lien was recorded prior to the bankruptcy petition date (see CPPM 740.160).

**SMALL BALANCE – DOES NOT JUSTIFY FURTHER COLLECTION EFFORT**

Reason code eight is “Small balance – does not justify further collection effort.” A compliance supervisor will approve these types of accounts after a reasonable effort has been made to collect the liability. To avoid costly collection efforts out of proportion to the amount to be realized, the CSB will process approved requests for write-off of balances of $500.01 through $5,000.00 on closed-out accounts. Only a minimum explanation of previous collection efforts will be required from the responsible office. (See CPPM section 776.180 for automatic write-off of balances of $10.01 through $500.00.)

A reasonable effort is defined as collection effort(s) where the cost is commensurate with the amount to be realized. For example, conducting a number of several field calls to collect an item of less than $5,000 goes beyond a reasonable effort.

The CSB will generally accept and approve write-offs for small balances on closed-out accounts when the amount of tax, penalty and interest is $500.01 through $5,000 and the account meets the following conditions:

1. The account is not a Consumer Use Tax account.
2. For accounts where an individual may be held liable in any manner, an offset with the Franchise Tax Board must be attempted and sufficient time must pass for the offset to be effective (usually September 30 of the year following the offset request).
3. Department of Motor Vehicles, Employment Development Department and real property records must be checked for assets.
4. A search of the online system must be conducted for other permits held by the taxpayer.

**COLLECTIONS SUPPORT BUREAU NOTIFICATION**

The CSB reviewer retrieves the approved case through Assignment Control: Account Basket (ASC AB) or Assignment Control: In Basket (ASC IB). The office or unit approver’s name displays in the Office Aprvl field. For approved write-off requests, a schedule number displays in the Schedule No field. The CSB approver’s name displays in the S/P Aprvl field. If the write-off is not approved, a review assignment is created back to the office or unit approver. Reasons for disapproval are entered into the task note screen (ASC NO) via the Assignment Control: Maintain Tasks screen (ASC MT).
Several months may elapse before final approval is granted and the CSB receives notification of the discharge from SCO. A “pending write off” flag is placed on a balance to be written off until final approval for the discharge from accountability is received. Once the case is approved by the supervisor, the write-off case should be staged to CSB in the system. The CSB reviewer will retrieve the approved case through the system. For additional steps see the system’s Help Manager “Review and Approve a Write-Off Case.”

When the write-off case is staged to “Approved-Send to SCO” in the system by the CSB reviewer, the collection will automatically stage to “Pending Write-Off” and a Pending Write-off indicator is added to the customer. The collection is also automatically unassigned from the collector when staged to “Pending Write-Off.” Several months may elapse before final approval is granted and CSB receives notification of the discharge from SCO. A Written-Off indicator is added to the customer when SCO approval is noted in the system for every schedule that listed the customer’s liabilities.

**AUTOMATED WRITE-OFF OF BALANCES OF $500 OR LESS**

An online write-off case should not be prepared for liabilities of $500 or less. Under Government Code section 12438, the CDTFA is not required to collect small balances under $500. Although all amounts over $10 are billed, liabilities of $10.01 through $500 are automatically written off once the liability is final for 180 days provided:

1. The account is closed out or is a Consumer Use Tax account. **All accounts are closed.**
2. No delinquency or other **liability active collection task** exists.
3. No payments or adjustments have been made **on the account** in the preceding six months.
4. A security deposit is not available to be applied to the existing liability.

Since the CDTFA does not normally make demand on a surety bond for amounts of $250 or less, surety bonds solely securing the liability and meeting the other three automatic write-off criteria should be “ended” in IRIS by a supervisor or authorized designee security technician.

**AUTOMATED WRITE-OFF RECOMMENDATION FOR BALANCES GREATER THAN $500**

The system will automatically create a write-off case when all of the conditions below are met. Once the write-off case is created, the case must then be completed by a collector:

1. **Balance is over $500.**
2. No impact exists that would prevent write-off, such as an active payment plan or delinquency
3. No SCO collected account with a balance on the customer.
4. No secondary/dual debt is linked to the customer.
5. No open offer-in-compromise or bankruptcy case.
6. All accounts have a cease date over three years old.
WRITE-OFF CHECKLIST

Account No: __________________ Taxpayer Name: ____________________________
Prepared by: ___________________________ Date: ____________________________

(Place the date attempts to locate debtors, assets, and personal information next to each item when completed or write N/A for items not applicable. Add an explanation below the item, if necessary, and enter your findings on the “External Sources” tab in the system.)

Date Attempts to locate debtors, assets, and personal information

____ Security checked and applied, if available.
____ System was checked for related accounts.
____ Evaluated for dual determination (RTC 6829, corporate suspension, questionable ownership, including trustees).
____ Determined if successor liability exists and successor billing done, if warranted.
____ Checked Pacer and entered findings on the External Sources tab.
____ CLEAR searched for address, phone numbers, assets (including out-of-state assets) and real property. Attach PDF to Customer springboard and enter findings on the External Sources tab.
____ Contacted landlord and/or sent CDTFA-1511 to obtain address, employment, payment/bank information, and copy of lease agreement, if applicable.
____ Data Warehouse checked (enter dates below) and findings entered on the External Sources tab.

EDD ____ FTB _____ DMV ____ IRS ____ Other _____

SOS Entity No. ____ Registration Date ____ Status ____ Status Date ____

____ If information exists that cannot be obtained through the Data Warehouse, order EATS reports for EDD _____ FTB ____ DMV _____

____ Sent Post Office letter, CDTFA-53, to obtain taxpayer’s address if unknown.

____ Sent OIC Program Notice, CDTFA-908 to last address of record and most recent address found through investigation unless OIC previously submitted.
WRITE-OFF CHECKLIST (Cont.) EXHIBIT 1

Date Attempts to locate debtors, assets, and personal information

_____ Levies sent to all recent banks, spousal blurb included, if applicable. Levies should not be sent when the taxpayer is deceased. (Levies must be resolved before write-off submitted.)

_____ EWO sent, including referral for spousal EWO, if applicable. (EWOs must be resolved before write-off submitted).

_____ Liens filed in all corresponding counties and with SOS, if applicable (including nominee lien, if applicable).

_____ Searched ABC website for liquor license, if applicable, and liquor license withhold placed and/or license seized. Entered findings on the External Sources tab.

_____ Internet searched for taxpayer whereabouts or activity (search myCDTFA for Collection Tools).

_____ Checked Department of Consumer Affairs licenses for contractor’s or other occupational licensing and entered findings on the External Sources tab.

_____ For auto dealerships, verified status of dealer’s license and entered findings on the External Sources tab.

_____ Verified documentation regarding proof of death and mailed Probate Letter, CDTFA-1079 to probate court in county of residence and county of death. (Customer will need to be ceased in the system in order to send Probate Letter.)

_____ UCC Online website checked for possible assets and entered findings on the External Sources tab.

_____ Obtained physician’s statement or medical record from taxpayer to verify disability.

_____ Taxpayer’s age verified.

_____ Searched Inmate Locator and contacted prison/institution for taxpayer’s release date, if applicable.

_____ Referred to Collection Support Bureau (CSB) for pursuit of out-of-state collection, if feasible. Write-off case should not be submitted until out-of-state collection is exhausted.

_____ refreshed and resolved all system Recommendations on Collection springboard.

_____ Ensured all open tasks were resolved and ceased applicable indicators before submitting the case for review.

_____ Created Write-Off Case in the system and completed all points.