

Gordon B. Ford

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Treasurer-Tax Collector

BOARD AGENDA # *B-5

Urgent

Routine

prt

AGENDA DATE March 22, 2011

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Treasurer-Tax Collector to Enter into an Agreement with the State of California Court Ordered Debt Collections Program

STAFF RECOMMENDATIONS:

Authorize the Treasurer-Tax Collector to sign the contract with the State of California Franchise Tax Board for Court Ordered Debt Collections.

FISCAL IMPACT:

The benefit received from the utilization of this program would increase revenue from debtors who have not paid through current collection methods and increase debtor accountability. The State's collection fee of 15 percent is offset against the revenue collected as cost for collection under Penal Code 1463.007. Since the program was implemented in 2008, the County has received over \$1.5 million in revenue.

BOARD ACTION AS FOLLOWS:

No. 2011-176

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

The Court Ordered Debt (COD) Collections Program was established in the State of California in August 2004 and is presently being utilized by approximately 49 government entities within the State, including the counties of San Joaquin, Merced, Santa Clara, Plumas, and Mendocino.

In an effort to increase revenue on the collection of court ordered debt accounts by Revenue Recovery, it is requested that the Treasurer-Tax Collector continue a partnership with the State of California Franchise Tax Board. The State requires all counties who enter into such collection partnership to sign the State's standard contract/MOU. This program is a continuation of the program approved by the Board of Supervisors in 2008. The COD collection program has access to 225 million pieces of taxpayer data for location of previously undiscovered asset and employment information. The COD collection program enhances collections by the use of various enforcement actions. By utilizing the State of California COD collection program, Revenue Recovery and the County as a whole benefits from previously uncollected revenue. The court ordered fines/fees that would be referred to this program would be a minimum of 90 days delinquent and possess a balance greater than \$100.00. The accounts selected have had all practical collection efforts exhausted by Revenue Recovery.

POLICY ISSUES:

Franchise Tax Board Court Ordered Debt Collection Program is authorized under Section 19280 of the California Revenue and Taxation Code.

Approval of this agenda item will support the Board's priority of efficient delivery of public services and partnerships.

STAFFING IMPACT:

There is no staffing impact associated with this agenda item.

CONTACT PERSON:

Gordon B. Ford, Treasurer-Tax Collector. Telephone: 525-4463

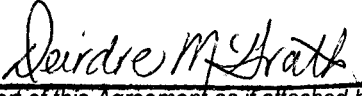
STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER C1000188
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME Franchise Tax Board
CONTRACTOR'S NAME Stanislaus County Treasurer-Tax Collector
- The term of this Agreement is: **April 1, 2011 or date of approval, whichever is later, through March 31, 2014**
- The maximum amount of this Agreement is: **FTB will charge an Administration Fee in accordance with the governing R & TC (19280-19283) as amended by subsequent legislation**
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	6 pages
Exhibit B – Budget Detail and Payment Provisions	1 page
Exhibit C* –Terms and Conditions: (www.ols.dgs.ca.gov/Standard+Language/default.htm)	GTC610
Exhibit D - Special Terms and Conditions	1 page

APPROVED AS TO FORM:
 STANISLAUS COUNTY COUNSEL
 BY 

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language/default.htm

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.



CONTRACTOR		California Department of General Services Use Only <input checked="" type="checkbox"/> Exempt per: SCM 1-4.04.5.b.
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Stanislaus County Treasurer-Tax Collector		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS P.O. Box 1003, Modesto, CA 95353		
STATE OF CALIFORNIA		
AGENCY NAME Franchise Tax Board		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Lisa Garrison, Chief Financial Officer		
ADDRESS P.O. Box 2086, Rancho Cordova, CA 95741-2086		

EXHIBIT A**SCOPE OF WORK****Purpose**

This Memorandum of Understanding (MOU) is entered in between the Franchise Tax Board's Court-Ordered Debt Collections Program, herein after referred to as "FTB-COD" and Stanislaus County Treasurer-Tax Collector, herein after referred to as "Court/Client" for the purpose of the collection of unpaid court ordered fines, forfeitures and penalties by the Franchise Tax Board.

Legal Authority

This Agreement is authorized under the provisions of Revenue and Taxation Code Sections 19280 through 19283 and the Penal Code Sections 1463.01 through 1463.02.

Duration

1. **Term:** The Agreement will be from April 1, 2011 or date of approval, whichever is later, and will be in effect until March 31, 2014.
2. **Amendments:** This Agreement may be amended by FTB-COD in writing. No alteration or variation of the terms of this Agreement shall be valid by Court/Client unless made in writing and signed by the parties hereto. Should an Agreement change be necessary the current Agreement terms will remain in effect until a new Agreement is signed by all parties.
3. **Cancellation:** Either party may terminate this Agreement for any reason, upon thirty days (30) prior written notice. This Agreement may be terminated immediately, to be followed by written notice, by either party upon material breach by the other party of the terms of this Agreement.
4. **Mutual Indemnification:** Each party will defend, indemnify, and hold the other party harmless, to the maximum extent permitted by law, from claims, damages, expenses, or liabilities, including attorney fees and associated costs, that arise out of its duties or obligations, or that of its officers, judicial officers, judges subordinate judicial officers, board members, employees, representatives, or agents under this Agreement. The right to be indemnified extends to an indemnified party's officers, employees, representatives, and agents and: in the case of FTB-COD, this right extends to the State of California; in the case of Court/Client, this right extends to Court's judicial officers, judges and subordinate judicial officers, and the Judicial Council of California, including its members and the Administrative Office of the Courts and its officers, employees, representatives and agents.

The foregoing does not apply to the extent a claim, damage, expense, or liability arises out of an indemnified party's failure to perform a duty or obligation under this Agreement, or an indemnified party's negligence or willful misconduct.

General Provisions

The Contract Administrators for this Memorandum of Understanding shall be the following person:

Franchise Tax Board

FTB - Court-Ordered Debt Collections
Christopher Hicks
PO Box 1328
Rancho Cordova, CA 95741-1328
Phone: (916) 845-6354
Email: Christopher.Hicks@ftb.ca.gov

Stanislaus County Treasurer-Tax Collector

Gordon P. Ford
P.O. Box 1003
Modesto, CA 95353
Phone: (209) 525-4463
Email: fordg@stancounty.com

EXHIBIT A

SCOPE OF WORK (continued)

Definitions:

1. "Delinquent Amount" is the amount of court-ordered fine, fee, state or local penalty, forfeiture restitution fine, failure to appear fine, restitution order, or combination thereof, which has not been paid 90 days after payment of the amount first becomes delinquent.
2. "Case" is a delinquent amount owed by a person or debtor, which has been referred by the Court/Client to FTB-COD for collection.
3. "Pro Rata Distribution": If the amount collected is not sufficient to satisfy the amounts referred for collection, then the amount collected shall be distributed on a pro rata basis as provided in R&TC Section 19282, subdivisions (a) and (d). This is based on a percentage equal to the current balance of each case divided by the total balance of the account.
4. "Account" is the primary location of a debtor's case or cases from one or more Court/Client. Unique identification numbers are assigned by FTB-COD to each debtor that is assigned to our collection program.
5. "Administrative Fee": The cost for FTB-COD to administer the program pursuant to R&TC Section 19282.

EXHIBIT A

SCOPE OF WORK (continued)**Court/Client Responsibilities:**

1. **Account/Cases and Amounts Referred for Collection:** The Court/Client is responsible for referring accounts that comply with criteria and dollar amount minimums set forth in R &TC 19280-19283 and Penal Code 1463.01-1462.02 (refer to Exhibit A). The amount referred by the Court/Client may include any interest, which accrued prior to the date of referral. The Court/Client may update the debt balance to include any additional accrued interest-through the FTB secure automated information exchange process.
2. **FTB-COD Reimbursement:** The Court/Client agrees to work cooperatively with FTB-COD to resolve erroneous payment/debtor refund issues. The Court/Client will be responsible for reimbursing FTB-COD when:
 - FTB-COD initiates the transmittal of funds to the Court/Client.
 - Debtor's check to FTB-COD has been identified as a "Bad Check", and such funds have been transmitted to Court/Client.
 - Credit card payments are charged back or reversed by debtor and such funds have been transmitted to the Court/Client.
 - FTB-COD erroneously collected money as a result of inaccurate case data provided by the court and sent the funds collected to the Court/Client.
3. **Case Balance Adjustments Made by the Court/Client:** Case adjustments to the amount of fees and fines imposed on a defendant/debtor for cases referred and accepted by the FTB-COD, which are the result of judicial review of the case or payments and/or credits received from the defendant/debtor, must be immediately communicated by the Court/Client to FTB-COD through the FTB secure automated information exchange process. Case balance adjustments made to cases referred to and accepted by the FTB-COD that are adjusted by the Court/Client, while subject to the FTB-COD collection procedures are not eligible for refund of administration fees if such adjustment resulted in over collection of the case balance.
4. **Court/Client Collection Activity Suspended:** With the exception of referring accounts to the FTB Interagency Intercept Collections Program, Court/Client will refrain from any and all collection activity, including referring said cases/accounts to another contractor for collection action, on any cases/accounts that have been referred to the FTB under this Agreement.
5. **Court/Client to Resolve Disputes with Debtor:** Cases referred to FTB-COD are deemed final, due and payable in full. Questions or disputes made by a debtor raised with FTB-COD regarding the accuracy of the debt will be referred back to the Court/Client for resolution. FTB-COD collection activity may, at FTB-COD's sole discretion, be suspended pending resolution of the issue.
6. **Information Exchange:** Case Information must be exchanged with FTB-COD through the FTB secure automated information exchange process. FTB will provide a schedule for weekly processing of client new referrals and case up dates to FTB, and updates back to the client. Specific case information exchanged is contained in the record layout and is used to manage the case collection process. The Court/Client agrees to follow the most currently prescribed record layout. The record layout and exchange process instructions can be found at: http://www.ftb.ca.gov/online/Court_Ordered_Debt/record_layout.pdf

FTB-COD will provide an Action File through the FTB secure electronic information exchange process. Data on this file includes but is not limited to bills sent to the debtor, cases withdrawn, returned or rejected and sent back to the Court/Client. The Court/Client agrees to process the FTB-COD Action file and to update their case management system before submitting their next case information file.

EXHIBIT A

SCOPE OF WORK (continued)

Court/Client Responsibilities:

7. **Payment Notification:** The Court/Client will provide to the FTB-COD a weekly report of any payments received on referred accounts regardless of the payment source and location received/collected.
8. **Distribution of Money Collected:** The Court/Client is responsible for distributing amounts received under this Agreement pursuant to applicable law.
9. **Refunds and Administration Fees:** Cases referred to FTB-COD with inaccurate case data resulting in payments collected erroneously will be refunded to the affected parties by the Court/Client. The Court/Client agrees to refund the full amount of erroneously collected funds to include the administration fees if assessed by FTB-COD.
10. **Information to be made available:** The Court/Client will make available to the FTB-COD, for use in its collection efforts, all necessary information and the sources including enforcement remedies and capabilities available to the court.

EXHIBIT A**SCOPE OF WORK (continued)****FTB-COD Responsibilities**

1. **Collection and Support Services:** FTB-COD will determine the appropriate enforcement remedies and/or services to be utilized for the collection of amounts referred under this Agreement. To the extent authorized by Revenue and Taxation Code Section 19280, subdivision (d)(2), any enforcement remedies and capabilities available to the court shall apply without limitation to amounts referred under the provisions of Revenue and Taxation Code Sections 19280 - 19283 and this Agreement.

Support Services: FTB-COD provides the Court/Client with the following services:

- Telephone access for Court/Client liaisons, available Monday through Friday during typical business hours except observed state holidays
 - New and Refresher Client Service Training
 - Monthly Collections Report.
 - It will be common business practice, on a weekly basis, for FTB-COD to provide the Court/Client a schedule of payments received and applied to the applicable accounts.
 - Updates on policies, procedures, and applicable business news through periodic communication notices via email.
 - Conference calls for resolutions to issues that cannot be resolved through normal Client Liaison telephone contact
 - Call Center for debtors available Monday through Friday except observed state holidays.
 - In the event of a disaster, FTB-COD may not be able to fulfill the aforementioned services until such time FTB-COD can resume normal business operations.
 - Informational Website to include frequently asked questions and technical Updates:
My Court-Ordered Debt Account - General Information
2. **FTB-COD Data Sources: Confidentiality of Debtor Information:** The Information Practice Act, Public Records Act, and Revenue and Taxation Code prohibit FTB-COD from disclosing personal debtor information secured by our collection efforts to our Court/Clients. In addition, this Agreement does not provide for the use of confidential Federal Tax Returns or confidential tax return information obtained from the Internal Revenue Service.
 3. **Case and Data Retention:** All records received by FTB-COD and any database created, copies made, or files attributed to the records received will be destroyed when the information is no longer needed for the business purpose it was obtained for in accordance with established Data Retention Guidelines which are four (4) years from the date the last active case on the account was withdrawn or closed. The records shall be destroyed in a manner to be deemed unusable or unreadable and to the extent that an individual record can no longer be reasonably ascertained.

Exception: Accounts will not be destroyed per the Data Retention Guideline if:

- A payment was received within four (4) years
- A payment issue is being reviewed
- A credit balance exists on the account
- A refund, fund transfer or general fund credit existed within the last four (4) years

EXHIBIT A**SCOPE OF WORK (continued)****FTB-COD Responsibilities**

4. **Return of Cases:** FTB-COD, at its sole discretion, may return any case that has been pursued for collection to the most practicable extent. Cases will be returned to the Court/Client when the following conditions apply:
 - After 12 months when the case does not have a social security number (SSN), known assets or payments collected.
 - After 24 months when the case has a social security number but we have no activity.
 - Debtor files Bankruptcy.
 - Higher priority debt has been confirmed.
 - Confirmation of a deceased debtor.
 - A zero balance due.
5. **FTB-COD Installment Agreement:** FTB-COD may, upon proof of debtor's financial condition, in its sole discretion, enter into an installment Agreement with the debtor. The terms of the Agreement may exceed one year.
6. **Potential Incorrect Debtor (PID)/Identity Theft:** When identity theft or potential incorrect debtor information is determined by FTB COD, the FTB-COD will take appropriate action to remedy resulting adverse affects. Such action will include, but not limited to:
 - Notify the referring client if the referring client provided the incorrect name and/or identifying information, such as the social security number. The referring clients will either withdrawal the case or provide correct identifying information.
 - Withdrawal case or provide correct identifying information.
 - Release all orders on account. (Earning Withholding Order and Order to Withhold).
 - Withdraw all cases and return to the appropriate client(s).
 - Contact appropriate client(s) by phone to inform them of potential identity theft.
 - Identify any misapplied funds and request a refund (if applicable).
7. **Audit By the Court/Client:** FTB-COD agrees that those matters connected with the performance of any work done under this MOU, including, but not limited to, the costs of administering the MOU, may be subject to the examination and audit by the Court/Client or its authorized representative, for a period of three (3) years after final payment is made.
8. **Audit Report:** In the event an audit is conducted of FTB-COD, specifically as to this MOU by any Federal or State auditor, or by any auditor or accountant employed by the FTB-COD or otherwise specified regarding this MOU, then FTB-COD shall file a copy of such audit report with the Court/Client within thirty (30) days of FTB-COD's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. The Court/Client shall maintain the confidentiality of such audit report(s) to the extent required by law.

EXHIBIT B**BUDGET DETAIL AND PAYMENT PROVISIONS**

1. **Deposits to State Treasury:** All amounts collected by FTB-COD or by the Court/Client for amounts owing on delinquent court ordered debts should be transmitted to the State Controller's Office for deposit in the Court Collection Account in the General Fund. Amounts collected pursuant to this program are amounts collected pursuant to a comprehensive program as provided in Section 1463.007 of the Penal Code.
2. **State Controller Distribution:** The State Controller's office shall transfer amounts collected to the Court/Client, less the administrative costs of the program. Such amount deducted by FTB-COD for administrative costs shall not exceed the maximum percentage authorized by Revenue and Tax Code (R&TC) Section 19282 of the amount collected. The State Controller's Office shall make transfers at least once each month. This Agreement makes no provision for any such other direction of amount recovered. This provision shall not be construed to preclude or affect any contractual Agreement by the State Controller and the Court/Client regarding transfers, except as to the deduction for cost of administration.
3. **Payments Collected In Error:** Payments collected in error by FTB-COD will be refunded to the affected parties by FTB-COD. The Court/Client will not be assessed administrative fees on those payments.
4. **Partial Recovery - Pro Rata Distribution:** If the amount collected is not sufficient to satisfy the amounts referred for collection, then the amount collected shall be distributed on a pro rata basis as provided in R&TC Section 19282, subdivisions (a) and (d). This is based on a percentage equal to the current balance of each case divided by the total balance of the account.
5. **Administrative Fees:** Payments to cases referred to the FTB-COD for collections and accepted by the FTB-COD are subject to an administrative fee provided for in R&TC Section 19282. FTB-COD may receive administrative fees for amounts collected up to one year of the return of a case, subject to the fiscal provisions in this Agreement and provisions relating to payments deemed FTB-COD collected. Administrative fees will be assessed on payments received and applied to the referred case regardless of where or by whom payment is made subject to the following exceptions:
 - Payments collected through the FTB Interagency Intercept Collection program (R&TC 19280-19283).
 - Payments collected through liens filed by the Court/Client or an agent for the Court/Client prior to referral to FTB-COD.
 - The payment is collected after the FTB-COD has returned the case/account under guidelines set forth in this Agreement and the FTB-COD cannot prove that the collection resulted from FTB-COD collection activity.
 - Payments that the Court/Client can prove did not result from FTB-COD collection activity
6. **Refunds and Administration Fees:** FTB-COD will refund monies, not yet transferred to the respective client, to the affected parties wherefrom money was collected erroneously as a result of FTB-COD's actions. Administration fees will not assessed on monies collected in error by the FTB-COD.
7. **Payment Application for Withdrawn or Returned Cases:** Payments received by FTB-COD on cases that have been withdrawn and/or returned will be applied in the following manner:
 - Recovery of bad checks
 - To the last case that was withdrawn\returned.

Any refund issues resulting from payments on the above case types will be the responsibility of the Court/Client.

EXHIBIT D**SPECIAL TERMS AND CONDITIONS**

1. **Statement of Confidentiality:** The Franchise Tax Board has confidential taxpayer tax returns and other data in its custody. Unauthorized inspection or disclosure of State returns or other confidential taxpayer data is a misdemeanor (Sections 19542 and 19542.1, Revenue and Taxation Code and 90005, Government Code). Unauthorized inspection or disclosure of confidential data that includes Federal returns and other data is a felony (Sections 7213(a) (1) and 7213A (a) (1) (B) Internal Revenue Code).
2. **Employee Access to Information:** FTB-COD agrees that the information obtained will be kept in the strictest confidence and shall be made available to its own employees only on a "need to know" basis. Need to know is based on those authorized employees who need information to perform their official duties in connection with the uses of the information authorized by this Agreement. FTB-COD agrees to ensure that the information received under this Agreement is disclosed only to those individuals and for such purpose as specified in this Agreement.
3. **Contingency Clause to Budget Act:** This Agreement is valid and enforceable only if sufficient funds are made available by the Budget Act for this current fiscal year and subsequent years, if applicable, for the purpose of this program. In addition, this Agreement is subject to additional restrictions, limitations or conditions enacted by the Legislature and contained in the Budget Act or any statute enacted by the Legislature, which may affect the provisions, terms or funding of the Agreement in any manner. It is mutually agreed that if the Budget Act of the current year and or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program; this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to any contained in the Budget Act or any statute enacted by the Legislature, which may affect the provisions, terms or funding of the Agreement in any manner.