

First Supplement to Memorandum 86-202

Subject: Study L-1025 - Probate Code (Claims by Public Entities--
comments of state taxing authorities)

The existing Probate Code contains special provisions that require the personal representative to give written notice to various state taxing authorities of the death of the decedent and that allow different times for the state taxing authorities to make claims against the estate. In connection with its work on creditor claims, the Commission decided to investigate the possibility of consolidating these special provisions with the general creditor claim provisions in the interest of uniformity and simplicity.

The staff wrote to each affected state taxing authority. The staff specifically inquired whether the requirement of actual notice to general creditors would also by its terms cover that agency, whether the general notice form would give that agency sufficient information to compile its claim, and whether the 4-month or 30-day claim period would be sufficient time in which to prepare and submit its claim.

We have received responses from all the affected state taxing authorities. See comments of Department of Developmental Services (Exhibit 1), Department of Health Services (Exhibit 2), State Board of Equalization (Exhibit 3), Employment Development Department (Exhibit 4), and Franchise Tax Board (Exhibit 5). In a nutshell, the agencies feel that special notice to them is essential, that the general notice of death form is inadequate for their purposes, and that 30 days after receipt of notice in which to make a claim is not enough. Their reasons are elaborated in the responses.

After reviewing the state agency responses, the staff has come to the conclusion that it will not be possible to consolidate the state agencies with general creditors, but that some simplification and unification of some aspects of the state taxing authority claim procedure may be feasible. Specifically:

(1) Notice to state taxing authority. Typically the notice of death given to each state taxing authority must be in the form prescribed by that agency. The contents of each notice varies with the particular agency, depending on the nature of its record keeping system. This means that many different forms of notice are required.

It should be possible to develop a single form of notice that is useable for all purposes. The existing notice of death in Probate Code Section 333 requires the name of the decedent and the name and address of the personal representative or his or her attorney. If this notice were expanded to include the following information, it would not only satisfy the specifics required by the state taxing authority, but would also be more useful to general creditors and others:

- address of the decedent
- age and marital status of the decedent
- social security number
- tax identification numbers

This information should be relatively easy to ascertain and it would not add substantially to the length of the notice of death.

Alternatively, a form could be developed as a supplement to the notice of death that would be attached when given to state taxing authorities. This form could either be prescribed by statute, or could be worked out by the state taxing authorities with the Judicial Council.

(2) Time for notice. Existing law in most cases does not consistently prescribe any particular time within which notice of death must be given to a state agency, but typically the agency's claim is not cut off until lapse of a specified time after notice is given. Probate Code Section 700.1 requires that a notice of death be given on Medi-Cal claims within 90 days after the date of death. It may be useful to require notice to all agencies within 90 days. If such a rule were adopted, the statute should make clear that the 90 day limit is directory and not mandatory; failure to comply with the notice requirement does not affect the validity of the probate proceeding but assets distributed are recoverable from the distributees with interest. Such a 90 day requirement would help

remind the personal representative to take care of this matter promptly and get the estate settled, as well as help state taxing authorities collect the amount due them without excessive delay.

(3) Time for claim. It takes the state taxing authorities some amount of time to process the notice information, search their records, and prepare a claim. Most of the agencies believe 90 days would be the least amount of time necessary. Four months would probably be better, and is the time allowed for Medi-Cal claims. The Franchise Tax Board (Exhibit 5) indicated that it has a time problem, but also that the Board "attempts to file its claims within the usual four month period allowed for creditors" even though not bound by that time limit.

The State Bar team (see Exhibit 15 to Memorandum 86-202) seeks "a uniform time period for filing claims following the expiration of which the agencies' claims would be barred", and suggests that a 90-day period would be sufficient. The staff agrees that a uniform time limit is feasible and would improve estate administration. The staff recommends a four month period. This seems to be the least common denominator for most state agencies and is also consistent with the time allowed general creditors.

(4) Medi-Cal claims. Medi-Cal claims are governed by a separate statute in the Probate Code. These claims are not unique, and should be treated together in general legislation with other state taxing authority claims.

Other comments received concerning the draft statute governing claims by public entities are noted following the relevant sections in Memorandum 86-202.

If the Commission decides to pursue any of the foregoing suggestions, the staff will develop draft legislation in consultation with the affected state agencies.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

DEPARTMENT OF DEVELOPMENTAL SERVICES**PATIENT BENEFITS AND ACCOUNTS BRANCH**1600 9TH STREET
SACRAMENTO, CA 95814

(916) 445-3477



September 23, 1986

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
400 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. Sterling:

This is in reply to your letter of August 22, 1986 regarding proposed amendments to Welfare and Institutions Code Section 7277.1 and Probate Code Section 707.5. The unique creditor's claim filing process, as currently found in the statutes, was based on a unique need by the Department. That need has not changed.

The Department has concerns regarding the reliability of receiving notice under the proposed change. It is not uncommon that a representative of an estate is unaware that the decedent was ever in a state hospital. Clients frequently do not tell friends or relatives of their hospitalization, and because the State does not bill clients in a fashion similar to other creditors, it may well be that the representative would not have "actual knowledge" that a debt existed. The Department frequently discovers estates through its investigative process.

Claims for state hospital care and treatment are preferred claims, and the State is not a general creditor in the ordinary sense. Because of these considerations, and the confidentiality of state hospitalization, we believe it is absolutely necessary for the Department to retain its ability to file claims under the current process.

The Department is also concerned about the 30 day after notice filing limit. Our experience has shown that it would be difficult to meet this timeframe.

Please keep us informed, and if we can provide any additional information, please let us know.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. L. Thatcher".

T. L. THATCHER
Chief

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
SACRAMENTO, CA 95814

(916) 445-6141

September 25, 1986



Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Notice of Death Under Probate Code Section 700.1

Gentlemen:

We appreciate this opportunity to respond to your letter of August 22, 1986 regarding the proposed general notice to all known creditors of the decedent's estate.

The Medi-Cal program is in accord with the concept of simplifying administration of decedent's estate. However, the requirements of compliance with federal law create problems in attempting to utilize a general notice. In answer to your specific questions:

1. No, Medi-Cal would not be covered as a "creditor." Federal law only permits recoupment of correctly paid Medicaid benefits following the death of the beneficiary. Thus, no demand for payment could be issued during the lifetime of the beneficiary and Medi-Cal would not be a "creditor" as you have defined.
2. Notice of administration (instead of death certificate) would create difficulties because of absence of data usually included on a death certificate, such as age and marital status. Federal law prohibits Medicaid recoupment for services rendered before age 65 or if a surviving spouse is present.
3. Thirty days would not be sufficient time to submit a claim because of the following procedure. The decedent's Medi-Cal number and usage is established by cross-checking of name, address, social security number and date of birth. Then an inquiry letter is sent to establish the existence of claimable property and the responsible person handling the probate proceedings. When a positive response is received, an itemization of Medi-Cal benefits utilized is distilled from raw data processing figures usually comprising 25 to 30 pages per decedent. This detailed preparation must be processed for approximately 1,000 accounts per month. Thus, the current four month claim filing period is generally necessary to perfect the claims.

Nathaniel Sterling

Page 2

Your attention in soliciting our views on the proposal for probate notice consolidation has been greatly appreciated. Please feel free to contact me at the above address if you desire any further details of the impact on the Medi-Cal program of any potential revision to Probate Code Section 700.1.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard P. Wilcoxon".

Richard P. Wilcoxon, Chief
Medi-Cal Policy Division



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)
Telephone (916) 445-3956

WILLIAM M. BENNETT
First District, Kenfield

CONWAY H. COLLIS
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

RICHARD NEVINS
Fourth District, Pasadena

KENNETH CORY
Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

October 8, 1986

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Ste. D2
Palo Alto, CA 94303-4739

Re: Written requests for deficiency determinations under Rev. and
Tax Code §§6487.1, 7675.1, 8782.1, 30207.1 and 32272.1

Dear Mr. Sterling:

Here is this Board's response to your letters of August 22 and September 3, 1986, addressed to Messrs. Padilla and Frank. In the interest of brevity, our response corresponds to the item number in your letters and is as follows:

- (1) The Board would fall under the proposed general statute.
- (2) Service of notice of administration would be satisfactory, providing the Board's account number(s) are listed on the notice.
- (3) A thirty-day limitation period after receipt of notice would not be adequate time in which to submit a claim. Board staff believes that a minimum of 90 days is needed in which to complete an audit, issue notice of determination and prepare the claim. Experience has shown that often the personal representative turns out to be a family member who is generally unaware of the decedent's business affairs, preventing that person from assisting in meeting a shorter limitation period.

We do urge that failure to give notice provisions, similar to those found in Probate Code Section 707.5, become a part of your proposed new legislation.

Sincerely,

A handwritten signature in cursive script that reads "Douglas D. Bell".

Douglas D. Bell
Executive Secretary

DDB:jw

cc: Mr. J. D. Dotson
Franchise Tax Board
Department of Employment Development

EMPLOYMENT DEVELOPMENT DEPARTMENT

800 Capitol Mall, Sacramento, CA 95814 (916) 445-9707



• October 9, 1986

REFER TO: 92:282:md

• Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-1335

Re: NOTICE OF PERSONAL REPRESENTATIVE UNDER CALIFORNIA UNEMPLOYMENT
INSURANCE CODE SECTION 1090

The Employment Development Department has received your letter requesting our assistance on the above matter.

As you know, this Department administers the California Unemployment Insurance Code. This includes the collection from employers of payments and wage returns. It is imperative that we file probate claims in a timely manner in order that we do not lose funds necessary to administer the benefit sections of the CUIC. Therefore, in response to your question of what impact your proposed revisions to the Probate Code will have on this Department, we offer the following response to your three items:

- (1) Refer to your statement; "If a general statute were to require the personal representative to serve notice on creditors of whom the personal representative has 'actual knowledge'...." As the Department's liability is not established until the delinquent date and employers are not notified of their failure to report wages until one month from the delinquent date, it is possible the "personal representative" would not have "actual knowledge" and also would not be familiar with our filing/paying requirements.

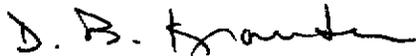
It is this Department's position that the notice should be left as it now is in the Probate Code to ensure our administration of the CUIC.

- (2) It is our belief that the statutory written notice requirement is the only method to ensure notification to this Department.

Nathaniel Sterling (cont.)

- (3) The 30 Day time frame to submit a claim is not adequate. Taking into consideration the time lapse from the initial mailing of the notice; the time needed for the processing of mail received in a Department as large as EDD; the time required to secure the information needed and preparation of the claim along with other control paperwork, a minimum of 90 days could be acceptable.

In summation, to adequately protect our rights as a creditor of a deceased employer, we need specific notice of the representative's appointment and at least 90 days to prepare and submit our probate claim.



D. B. Krauter
Tax Compliance Supervisor

State of California

FRANCHISE TAX BOARD

Sacramento, California 95867
(916) 369-4326

October 10, 1986

California Law Revision Commission
4000 Middlefield Road, Ste D-2
Palo Alto, CA 94303-4739

Attn: Nathaniel Sterling
Assistant Executive Secretary

Attached as you requested, is the department's preliminary analysis of the impact that the tentative proposal for the new Estate and Probate Code would have on its programs. As Patricia Hart, Franchise Tax Board legal counsel, discussed with you on September 30, 1986, the department has identified several major concerns with the proposal which would cause the department to recommend an oppose unless amended position on the legislation if it is introduced in its current form.

From your conversion, it is understood that the next meeting that is scheduled with respect to the proposed Estate and Trust Code is on October 16 and 17, 1987. After reviewing this analysis, if you want a representative from the department to be in attendance at the meeting, please do not hesitate to call me. The department will be pleased to assist you in making necessary modifications to the proposal.

Carol Horowitz

Director, Legislative Services Bureau

Attachment

FRANCHISE TAX BOARD'S PRELIMINARY ANALYSIS OF
THE CALIFORNIA LAW REVISION COMMISSION'S
TENTATIVE RECOMMENDATION FOR THE
NEW ESTATE AND TRUST CODE

SUMMARY

This proposal revises the existing laws relating to creditor claims and payments of debts during probate, and consolidates the probate laws into a single body of law to become known as the Estate and Trust Code.

Under this proposal, the personal representative (fiduciary) must serve the creditor with a Notice of Administration of the Estate, on a prescribed form, only if the fiduciary has actual knowledge of the creditor. The department would be considered a creditor only if it has demanded payment from the decedent or from the estate.

Creditors must file their claims four months from the date the letters of administration are issued and published, or 30 days after service of the Notice of Administration, whichever period is later. The department is excepted from this timeframe when a fiduciary requests an audit of a filed return pursuant to Section 19266 of the Personal Income Tax Law. In this situation, the department would still have 18 months from the date of the request to mail a notice of proposed deficiency assessment. (This proposal may be amended to remove this 18-month statute of limitations and to lengthen the 30-day period for filing claims.) The court clerk would serve the creditor with a copy of the filed allowance or rejection of the claim.

Debts would continue to be paid in a specified order of priority, and, it would be stated that debts having preference under federal and state laws would be given the priority to which the debt is entitled. Upon having sufficient funds, the fiduciary would be required to immediately pay certain priority debts, including preference debts under the state's laws.

The accrual of interest would be restricted to either: 1) the rate applicable to judgements (10% per annum) from the date of the court order to the date of payment, or 2) in the case of debts based on written contracts, in accordance with the terms of the contract.

DESCRIPTION

Current State Law

Currently the department learns of a taxpayer's death in the following ways:

- 1) information received through the normal course of business via returned mail, final returns filed by relatives or fiduciaries, and third-parties;
- 2) voluntary (courtesy) notice of the probate by the fiduciary;
- 3) a fiduciary requests an audit of a particular income tax return that was filed by the taxpayer, on behalf of the decedent, or for the estate (Personal Income Tax Law, Section 19266);
- 4) a fiduciary requests the certificate that is required when the fair market value of the assets of the estate exceeds \$400,000 and the fair market value of the assets distributable to one or more

nonresident beneficiaries is \$100,000 or more (Personal Income Tax Law, Section 19262).

Under current law, the department is not considered a creditor but is a public entity claimant. As such, it attempts to file its claims within the usual four month period allowed for creditors, however, the department is not bound by that time limit. The department's time limit for filing claims is governed by the Personal Income Tax Law:

- o the statute of limitations is determined by the type of liability, e.g., there is no statute of limitations for the issuance of assessments which arise from fraud, nonpayment, or the failure to file a return; in the case of a deficiency assessment, the department, generally, has four years after the return was filed to mail the notice of deficiency.
- o When a fiduciary requests an audit under Section 19266, the department's timeframe for issuing the notice of deficiency is reduced from the usual four years to 18 months from the date of request.
- o When a fiduciary requests the required certificate under Section 19262, the department only has 30 days after receiving the request to either issue a certificate that the taxes are paid, notify the fiduciary of the amount due, or notify the fiduciary of the amount of security that is necessary as a condition of issuing the certificate. However, issuance of this certificate does not relieve the fiduciary from the liability for taxes which may become due after issuance of the certificate.

Interest on unpaid income taxes compounds daily at an annual rate that is adjusted based on the prime rate charged by banks. Currently the department's claims include interest at that applicable rate.

Under the Personal Income Tax Law, the tax return of a deceased taxpayer is due on the regular due date, which is the fifteenth day of the fourth month following the close of the taxable year of death. The fiduciary must file the return for the year in which death occurred and for any years that returns have not been filed. Any person acting in a fiduciary capacity shall assume the duties and, upon giving notice to the Franchise Tax Board, assumes the rights and privileges of the taxpayer in respect of any tax imposed, until notice is given that the fiduciary capacity is terminated.

Under the Personal Income Tax Law, the fiduciary is only allowed to pay expenses of administration, funeral expenses, expenses of last illness, and family allowance prior to the payment of taxes, otherwise the fiduciary can be held personally liable for the taxes to the extent of such payments and distributions, even though the estate is closed. Also, beneficiaries can be held liable for improper distribution.

Creditor's claims are generally filed with respect to the debts of the decedent, however in addition to administering the income tax law with respect to the decedent, the department also administers the income tax law with respect to the income of the estate.

Under the current Probate Code, if a creditor's claim is not included when the final accounting of the estate is settled, the creditor has no right to collect from the beneficiaries, and if a fiduciary fails to give notice to the creditor by publication in the newspaper, the creditor's only remedy for recovery is from the bond that the fiduciary is required to file.

Current Federal Law

The Internal Revenue Code that relates to fiduciaries and decedent returns is similar to California's Personal Income Tax Law, however, under federal law:

- o the amount of any deficiency must be assessed within three years after the return is filed;
- o the fiduciary may request an audit of a filed tax return in order to specifically be released from personal liability for such taxes. The Internal Revenue Service must notify the fiduciary of the taxes due within nine months of the request;
- o there are no provisions relative to a request for a certificate prior to distribution; and
- o the federal government is not bound by California law.

Implementation

To treat the department as a creditor would have an adverse affect on the department's operating procedures for filing claims on the tax debts of decedents and estates:

- o the department would have no way of determining whether the fiduciary is actually aware of a decedent's tax liability, so, the department could not rely on the fiduciary to give notice to the department in order to activate the 30-day timeframe for filing claims. Therefore, to protect the claim from being barred, the department would have to file the claim within four months after notice is published. However, to accomplish this under the current practice, the department would have to: 1) subscribe to and check every publication statewide which prints probate notices and 2) conduct an audit to determine whether the decedent has an assessed or potential tax debt. This search to identify deceased taxdebtors is made more difficult because only the decedent's name and county of the probate is published in the newspaper. Because so many names of taxpayers are common, the department uses social security numbers, names, and residence addresses (without the county) to aid in taxpayer identification.

In order for the department to be assured of receiving a timely notice and for the department to respond in a timely manner, it is suggested that the fiduciary be required to report all probates to the department by social security number.

- o The four-month or 30-day statute of limitations would be inappropriate for the department because of the characteristic differences between contractual obligations, which give rise to debts, and taxes. At the time of an individual's death, creditors are generally known to a fiduciary because the individual voluntarily entered into the debt and there is usually a monthly billing. However, tax debts may not be readily apparent if the individual failed to file returns or filed a late return just prior to his or her death. In addition, the final return of the decedent is not due until the close of the taxable year of death which will usually be well after the four-month period for filing the claim.

The department is also responsible for the administration of the income tax law as it relates to the income tax of the estate. The debts of the estate are not specifically provided for in this proposal. These debts are, generally, incurred well after the four-month period for filing claims, since the estate is created upon the death of the individual. Therefore, if this proposal is applicable to these taxes, the debt is barred even before it is incurred. Even if the fiduciary were to file the estate income tax return required under the Personal Income Tax Law and, with the return, sends the notice that extends the filing of the claim for 30 days beyond the 4-month period, the return, generally, could not be received, processed, and billed within the allotted time.

The above obstacles can be resolved by amending Section 9251 of the proposed Code to restate Section 707.5(b) of the Probate Code. This would continue to except public entities from the usual creditor statute of limitations and would invoke the statutes of limitations that are applicable under the Personal Income Tax Law (PITL) commencing with Section 17001.

- o An additional obstacle is with respect to the standard form for filing a claim, which could not be used by the department for final assessments without some revisions because of the department's processing requirements. The department would prefer to prescribe its own forms, but if requested, would work with the Judicial Council so that the department's forms would be analogous to the standard form. It should be noted that the standard form can not be used for proposed deficiency assessments because of statutory requirements under the Personal Income Tax Law (PITL). A revision to the notice would not be feasible because of the due process and assessment information required to be included on the notice.

FISCAL IMPACT ON STATE BUDGET

Administrative Costs

The effect that this proposal would have on the department's administrative costs is unknown at this time. It is not known whether the changes would be implemented through additional clerical and audit

staff or whether the changes would be accomplished through a redirection of resources.

Tax Revenue Estimate

This proposal would result in a revenue loss of an unknown amount under the PITL. There is no way of determining how many of the department's claims would be barred by the four-month period because the department was unaware of the death or the debt was not assessed at the time of the death.

In addition, if it were necessary to redirect the resources from a line audit program rather than increase the staff, an additional revenue loss could be experienced.

POLICY CONSIDERATION

Historically, taxes have been considered a priority obligation and this priority status is not retained or preserved in this proposal. The following demonstrates the priority status that the legislature has intended taxes to have:

- o The PITL (Section 18933) explicitly gives taxes priority over other debts of the decedent.
- o The PITL (Section 19261) and the Internal Revenue Code (Section 6903) requires a fiduciary to assume the duties, rights, and privileges of the taxpayers, which include the filing of tax returns.
- o The PITL provides that the fiduciary (Sections 19265, 18621 and 19264) may be held personally liable for unpaid taxes if the assets are distributed other than as provided. In addition, beneficiary(s) (Section 18621) may be held liable.
- o Case law (People v. Hochwender, 20 C. (2d) 181) provides that taxes are not debts due by contract and are not subject to the creditor's statute of limitations for filing claims.
- o The current Probate Code (Section 707.5) distinguishes tax debts from creditor claims by: 1) excepting tax debts from the creditor statutes of limitation, 2) considering income tax debts to be claims of a public entity, and 3) applying all of the PITL's statutes of limitation to the claims rather than creditor limitations.
- o The PITL requires the fiduciary, under certain conditions, to request a "tax clearance" certificate prior to the closing of the estate (Section 19262). The debt of an estate is separate and apart from the decedent's debts and is not a debt that is common to a creditor claim. The issuance of a certificate does not relieve a fiduciary from being personally liable, if the situation warrants.

Of additional concern is that state tax law, in general, conforms to that of the federal law with respect to claims and debts of a decedent and estate. This proposal would remove that conformity.

The above considerations could be satisfied by amending Section 9251 of the proposal to restate Section 707.5(b) of the current Probate Code. This would continue the existing practice and preserve the department's identity as a public entity claimant and preserve the department's statutes of limitation that are exclusive to the Personal Income Tax Law. In addition, it is suggested that the fiduciary responsibilities under the PITL be codified or referenced in the proposed Code so that the fiduciaries are fully aware of their duties and obligations.

TECHNICAL CONSIDERATION

The following are items identified in the proposal of a technical nature that should be amended regardless of other considerations that have been expressed:

- o If the department is to be considered a creditor, the definition under Sections 9000, page 1, and 9050, page 3, should be clarified and expanded upon, so that the definition is more encompassing.
- o Any notice to the department should contain a social security number for identification. Therefore, Section 9052, page 4, and Section 9300, page 13, should be amended, accordingly.
- o The "Comment" relative to Section 9251 indicates that it is to continue Probate Code 707.5(b) without substantive change. However, the change in the last few words of the last sentence of the proposed law does make a substantive change as it applies to the PITL. To continue 707.5(b) without substantive change, the statute should preserve all the PITL statutes of limitations with respect to tax debts. The last sentence of Section 9251, page 13, should be amended to read "If no written notice or request is made the claim is barred at the time otherwise provided in the statute in such laws or codes."
- o Pursuant to the PITL, taxes are a priority obligation along with the expenses of administration, funeral expenses, expenses of last illness and family allowance. Section 11420 (a), page 26, should be amended to specifically include taxes as a priority debt rather than just make a broad reference in subsection (c). Since taxes, under PITL, are debts that must be paid before debts of wages, Section 11421 should be amended to allow for the immediate payment of taxes along with the other specified priority debts, but before wages.
- o The interest on a tax obligation continues to accrue at the rate prescribed under PITL, even though the individual is deceased. Section 11423, page 28, should be amended to also provide for payment of interest at the rate prescribed under the PITL for income tax debts.

Additional Comments

It is understood that the proposed revision is made pursuant to legislative directive, with the objective to simplify and expedite decedent estate administration. However, consolidating taxes with other debts and combining public entities with other creditors may not achieve the desired objective. It should be noted that there are laws that contain exceptions to facilitate

the uniqueness of public entities and/ or taxes. Therefore, to preserve this uniqueness would not take away from the legislative objective, and under the circumstances, may actually move closer to achieving that objective. For example, the Wage Garnishment Law was enacted with a separate article for withholding wages for taxes (CCP commencing with Section 706.070), the Bond and Undertaking Law has separate provisions exempting public entities from bond requirements (CCP Section 995.220), and the Probate Code (Section 700.1) (and this proposal (Section 9254, page 14)) has a separate process for claims by the Director of Health Services.

Position

Oppose unless amended. The staff would be opposed to this legislation, as proposed, unless it is amended to preserve the department's identity as a public entity and preserve the department's ability to use the Personal Income Tax Law's statutes of limitations rather than the creditor statutes.