

Memorandum 80-76

Subject: Study D-300 - Enforcement of Judgments (Enforcement of State Tax Liability)

Attached to this memorandum is a staff draft of a proposed new Chapter 8 to be added to Division 1 (definitions and general provisions) of Title 9 relating to enforcement of a state tax liability. In the Tentative Recommendation of March 1979, the tax enforcement provisions were scattered through the draft, but the staff has concluded that the provisions would be more useful if put in a separate chapter.

The draft chapter implements the decision of the Commission at the June 1980 meeting generally to continue existing law with respect to the application of exemptions to tax enforcement until a separate study is made at some future time. The jurisdictional rules have been revised so that court jurisdiction to hear exemption claims and third-party claims would no longer be exclusively in the superior court; there would be concurrent jurisdiction in the municipal or justice court when the amount of the tax claim was within the jurisdictional amount of the municipal or justice court.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Enforcement of State Tax Liability

Under existing law, whenever a state agency may properly issue a warrant for the collection of taxes pursuant to eight enumerated Sections of the Revenue and Taxation Code and the Unemployment Insurance Code, the agency is entitled to all of the remedies available to judgment creditors.¹ Whenever pursuant to those sections the agency actually issues the warrant, or pursuant to Section 1755 of the Unemployment Insurance Code issues a notice of levy, the tax debtor is entitled to the exemptions available to a judgment debtor² and a third party may claim ownership or the right to possession of the property levied upon by the state.³ The proposed law continues these provisions and extends them to apply to seven additional comparable warrant provisions.⁴

Unlike a warrant which is given to a levying officer for levy,⁵ a notice of levy pursuant to Section 1755 of the Unemployment Insurance Code does not involve a levying officer. Hence, the proposed law provides that, when a notice of levy is used, the claim of exemption or the third-party claim shall be filed with the state agency which issued the

1. Code Civ. Proc. § 722.5. Section 10111 of the Revenue and Taxation Code, which is referred to in Section 722.5 of the Code of Civil Procedure, was repealed in 1972. See 1972 Cal. Stats. ch. 563.
2. See Code Civ. Proc. § 690.51.
3. See Code Civ. Proc. § 689d.
4. Pub. Res. Code §§ 3423.2 (oil and gas conservation charges), 3772.2 (geothermal resources charges); Rev. & Tax Code §§ 3201 (postponed property taxes), 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), 41125 (emergency telephone surcharge). The proposed law also adds language requiring that, before the state may use the remedies available to a judgment creditor, the provision authorizing the warrant must also provide that the warrant may be levied with the same effect as a levy pursuant to a writ of execution. Such a provision is contained in the various warrant sections. See Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 3202, 6776, 7882, 9001, 16071, 18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785.
5. See Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax. Code §§ 3202, 6776, 7882, 9001, 16071, 18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785.

notice of levy. Determination of the claim is made in judicial proceedings in the same manner as if the property were levied upon pursuant to a writ of execution.

Under existing law, the superior court has jurisdiction when judicial proceedings are required for the enforcement of a tax liability.⁶ The proposed law continues the provision for superior court jurisdiction and adds concurrent jurisdiction in the municipal or justice court when the amount of the tax claim being enforced is within the jurisdictional limits of the municipal or justice court.

The proposed law also adds a provision making clear that when the tax claim is reduced to judgment, the judgment is enforceable in the same manner as judgments generally.

In addition to tax enforcement by warrant or notice of levy, existing law permits enforcement in a number of situations by giving a notice to withhold or notice of delinquency to any person who has personal property of or owes a debt to the tax debtor.⁷ There are no provisions permitting the tax debtor to claim exemptions when enforcement is by a notice to withhold or notice of delinquency. The Commission does not recommend that exemptions be extended to apply to a notice to withhold or notice of delinquency at the present time. The Commission may study this question and make a recommendation in the future.

6. See Code Civ. Proc. §§ 689d, 690.51, 722.5.

7. See, e.g., Rev. & Tax. Code §§ 6702 (sales and use taxes), 7851 (vehicle fuel license tax), 8952 (use fuel tax), 11451 (private car tax), 16101 (gift tax), 18817 (personal income tax), 26132 (bank and corporation taxes), 30311 (cigarette tax), 32381 (alcoholic beverage tax).

CHAPTER 8. ENFORCEMENT OF STATE TAX LIABILITY
Article 1. Enforcement Pursuant to Warrant or
Notice of Levy

§ 688.010. Jurisdiction

688.010. For the purpose of effectuating the remedies afforded by this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, even though the municipal or justice court has jurisdiction under subdivision (b).

(b) The municipal or justice court if the amount of tax liability sought to be collected does not exceed the jurisdictional amount of such court and the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

Comment. Section 688.010 supersedes a portion of former Section 689d, a portion of the second sentence of former Section 690.51, and a portion of the second sentence of former Section 722.5. Under former law, jurisdiction was in the superior court exclusively. Section 688.010 permits concurrent jurisdiction in the municipal or justice court when the amount sought to be collected is within the jurisdictional amount of that court.

§ 688.020. Remedies of state tax agency when warrant may be issued

688.020. (a) Except as otherwise provided by statute, whenever a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to judgment creditors under this title.

(b) The proper court for the enforcement of such remedies is a court of any of the following counties:

(1) The county where the person against whom enforcement is sought resides.

(2) The county where the property against which enforcement is sought is located.

(3) If the person against whom enforcement is sought does not reside in this state, any county of this state.

Comment. Subdivision (a) of Section 688.020 continues the substance of the first sentence of former Section 722.5, except that the requirement that the tax statute provide that the warrant may be levied with the same effect as a levy pursuant to a writ of execution is new. For examples of statutes authorizing the issuance of a warrant and giving the levy pursuant to the warrant the same effect as a levy pursuant to a writ of execution, see Pub. Res. Code §§ 3423.2, 3772.2; Rev. & Tax Code §§ 3202, 6776, 7881-7882, 9001, 16071, 18906-18907, 26191, 30341, 32365, 38541, 40161, 41125; Unemp. Ins. Code § 1785. For special provisions relating to wage garnishment for the collection of state taxes, see Sections 706.010-_____.

Former Section 722.5 applied to nine enumerated sections giving authority to issue warrants. By applying to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, Section 688.020 expands former law to apply to Sections 3423.2 (oil and gas conservation charges) and 3772.2 (geothermal resources charges) of the Public Resources Code and Sections 3201 (postponed property taxes), 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), and 41125 (emergency telephone surcharge) of the Revenue and Taxation Code.

Under subdivision (a), the remedies available to judgment creditors are given to the state agency if a warrant may properly be issued, whether or not the warrant is actually issued.

Subdivision (b) continues the substance of the venue provisions of the second sentence of former Section 722.5. See also Section 688.010 (jurisdiction).

§ 688.030. Exemptions and third-party claims

688.030. (a) Whenever pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a tax liability:

(1) The tax debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section

720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency which issued the notice of levy.

(2) The state department or agency which issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not serve upon or give to itself the notices which the levying officer is required to serve upon or give to the creditor or the notices which the creditor is required to give to the levying officer.

(c) The claim of exemption or the third-party claim shall be heard and determined in the court specified in Section 688.010 in the county where the property levied upon is located.

(d) The provisions of Chapter 4 (commencing with Section 703.010) of Division 2 do not apply to a notice to withhold or a notice of delinquency under Section 6702, 7851, 8952, 11451, 16101, 18817, 26132, 30311, or 32381 of the Revenue and Taxation Code.

Comment. Section 688.030 supersedes former Sections 689d (third-party claims) and 690.51 (exemptions). Subdivision (a) continues former law by permitting exemption claims and third-party claims when a notice of levy is issued pursuant to Section 1755 of the Unemployment Insurance Code or a warrant is issued pursuant to Section 1785 of the Unemployment Insurance Code or Section 6776, 7881, 9001, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code. By applying to all warrant and notice of levy provisions of the Public Resources Code, Revenue and Taxation Code, and Unemployment Insurance Code, subdivision (a) newly includes warrants issued pursuant to Sections 3423.2 (oil and gas conservation charges) and 3772.2 (geothermal resources charges) of the Public Resources Code, and Sections 3201 (postponed property taxes), 16071 (gift tax), 38541 (timber yield tax), 40161 (energy resources surcharge), and 41125 (emergency telephone surcharge) of the Revenue and Taxation Code.

Subdivision (b) makes the procedural adjustments required by the fact that a levying officer is not used in the case of a notice of levy. See Unemp. Ins. Code § 1755.

Subdivision (c) continues the venue provisions of former Sections 689d and 690.51 and picks up the new jurisdictional rules of Section 688.010.

Subdivision (d) is new and codifies the effect of existing law which was silent concerning the application of exemptions to a notice to withhold or a notice of delinquency.

[Notes.] (1) The Tentative Recommendation of March 1979 contained a provision in Section 706.130(d) that, since a public entity need not give an undertaking, the public entity should be required to file a

notice of opposition to the third-party claim with the levying officer. It appears that this is a problem with respect to third-party claims generally, and not merely with respect to third-party claims in the context of tax enforcement. Hence, this provision is not included in this chapter, but should be generalized in the third-party claims provisions.

(2) Section 6799 of the Revenue and Taxation Code needs a conforming revision to delete the second sentence concerning third-party claims procedure.]

§ 688.040. Meaning of terms used elsewhere for purpose of this article

688.040. For the purpose of this article, as used in this title:

(a) "Judgment creditor" or "creditor" means the state or the department or agency of the state seeking to collect the tax.

(b) "Judgment debtor" or "debtor" means the tax debtor.

Comment. Section 688.040 is new and is to make clear the meaning of the defined terms when applied in the context of this article.

Article 2. Enforcement of Judgment for Taxes

§ 688.110. Enforcement of judgment for taxes

688.110. Except as otherwise provided by statute, if a claim for taxes by a public entity has been reduced to judgment, the judgment is enforceable pursuant to this title in the same manner as judgments generally.

Comment. Section 688.110 is new and is consistent with Sections 3106, 6739, 14323, 14672, 16081, 16421, 18865, 32362, and 38524 of the Revenue and Taxation Code. For special provisions relating to wage garnishment for the collection of state taxes, see Sections 706.010-

[Conforming revision]

Revenue & Taxation Code § 6799. Return of excess proceeds; third-party claims

6799. If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the ~~State~~ state , the board shall return the excess to the person liable for the amounts and obtain his receipt. ~~If any person having an interest in or lien upon the property files with the board prior to the sale notice of his interest or lien, the board shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction.~~ If for any reason the receipt of the person liable for the amount is not available, the board shall deposit the excess moneys with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

Comment. Section 6799 is amended to delete the second sentence. The third-party claims procedure is now governed by Division 4 (commencing with Section 720.010) of Title 9 of Part 2 of the Code of Civil Procedure. See Code Civ. Proc. § 688.030.