



March 19, 2021

Betty T. Yee
California State Controller
300 Capitol Mall #1850
Sacramento, CA 95814

Dear Ms. Yee:

We write regarding the Franchise Tax Board's (FTB) recent action to suspend the income tax refund offset program.¹ Specifically, we request that you expand this action to include the suspension of wage garnishments and bank levies on all debts owed to state and local governments,² and to halt the accrual of interest on all such debts until the end of the current recession or until unemployment for Black Californians in the state reaches under 4 percent.³

¹ *State Suspends Certain Debt Collection Activities*, STATE CAL. FRANCHISE TAX BD. (Feb. 22, 2021), <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-02-state-suspends-certain-debt-collection-activities.html>.

² We recognize that all ongoing debt collection activities harm families across the state, but this letter does not address consumer, student loan, or child support debt. For more information about child support, please contact Julia Root, jroot@ceoworks.org; about consumer debt, please contact Noah Zinner, nzinner@baylegal.org; and about student loans, please see President Biden's announcement of the suspension of all federally held student loan interest and loan payments, *Pausing Federal Student Loan Payments*, WHITE HOUSE BRIEFING ROOM (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments/>.

³ Unemployment rates in California were at historical lows in January 2020 at 3.9 percent. Press Release, Emp. Dev. Dep't, State of Cal., California Unemployment Continues Record Low 3.9 Percent in January (Mar. 13, 2020), <https://www.edd.ca.gov/newsroom/unemployment-march-2020.htm>. The unemployment rate for Black people has historically been twice as high the rate for White people (6 percent compared to 3.3 percent in 2018) in California. Economic Policy Institute, *State Unemployment by Race and Ethnicity*, <https://www.epi.org/indicators/state-unemployment-race-ethnicity-2018-q4/>.

One year ago, Governor Gavin Newsom called for a statewide shelter-in-place order due to the COVID-19 pandemic. While we anticipated that high numbers of Californians would fall ill and/or otherwise experience negative economic impacts from the pandemic, we could not have imagined the extent of the devastation experienced by families and communities across the state.

In March of last year, you provided relief to millions of Californians by placing a moratorium on the collection of all debts owed to government agencies.⁴ Just last month, you took the important step of reinstating a moratorium on the interception of tax refunds.⁵ As advocates and impacted people, we applaud your efforts to help ensure that poor people and people of color with court-ordered debt, and their families, are able to keep these much-needed funds. However, this important relief remains incomplete without also placing a pause on bank account levies and wage garnishment. These collection efforts deprive families of earned income and remove critical funds, including deposits of economic relief to help pay rent, food, and other essentials, from bank accounts. With millions of families continuing to suffer substantial hardship as a result of COVID-19, continuing with these collection efforts is not justified.

As Controller, you have the statutory authority and the legal mandate to stop all collections by the FTB, and we urge you to exercise that authority during this unprecedented public health and economic emergency.

The economic fallout from the COVID-19 pandemic has been and continues to be devastating, particular for people of color and women.

Experts predicted that the COVID-19 crisis would last for 18 months.⁶ As we head towards 13 months since the Governor declared a state of emergency, over 3.5 million Californians have tested positive for COVID-19 and over 50,000 have died.⁷ Over 14.1 million people have filed for unemployment.⁸ California renters collectively have been unable to pay over \$400 million in rent.⁹ In the Bay Area alone, renters face an estimated \$488 million in rent debt, approximately \$3,600 per household.¹⁰

As Governor Newsom has repeatedly emphasized, “the economic disruptions caused by this public health crisis will have immediate and devastating effects on our entire country, including too many families in California.”¹¹ The devastation caused by the COVID-19 pandemic and resulting economic downturn is not evenly spread: Black and Brown workers, individuals, and families face

⁴ DEBT FREE JUST. CAL., FRANCHISE TAX BOARD SUSPENDS COLLECTION OF DEBTS OWED TO GOVERNMENT AGENCIES (Mar. 2020), http://ebclc.org/wp-content/uploads/2020/04/2020.04.07_DebtCollectionSuspension_FTB_Flyer-DFJC1.pdf.

⁵ *State Suspends Certain Debt Collection Activities*, STATE CAL. FRANCHISE TAX Bd. (Feb. 22, 2021), <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-02-state-suspends-certain-debt-collection-activities.html>.

⁶ U.S. DEP’T OF HEALTH & HUM. SERVS., PANCAP ADAPTED U.S. GOVERNMENT COVID-19 RESPONSE PLAN 4 (2020), <https://int.nyt.com/data/documenthelper/6819-covid-19-response-plan/d367f758bec47cad361f/optimized/full.pdf#page=1>.

⁷ *Tracking COVID-19 in California*, Cal. All, <https://covid19.ca.gov/state-dashboard/> (last visited Mar. 12, 2021).

⁸ *Unemployment Insurance (UI) Data Dashboard*, STATE CAL. EMP. DEV. DEP’T, <https://edd.ca.gov/newsroom.htm#UIDataDashboard> (last visited Mar. 12, 2021).

⁹ LEGIS. ANALYST’S OFF., HOW HAS COVID-19 AFFECTED RENTERS AND HOMEOWNERS? (2021), <https://lao.ca.gov/Publications/Report/4312>.

¹⁰ BAY AREA EQUITY ANALYSIS, FACT SHEET: PREVENTING EVICTION AND INDEBTEDNESS IN THE BAY AREA (2021), https://bayareaequityatlas.org/research/baea_evictionrisk_library.

¹¹ Letter from Gavin Newsom, Governor of Cal., to The Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives; The Honorable Mitch McConnell, Majority Leader of the U.S. Senate; The Honorable Kevin McCarthy, Republican Leader of the U.S. House of Representatives; and The Honorable Chuck Schumer, Democratic Leader of the U.S. Senate (Mar. 19, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-Letter.pdf>.

disproportionate rates of layoff, unemployment, and financial loss.¹² The jobs most impacted by layoffs and furloughs have been disproportionately held by people making less than \$40,000 per year.¹³ Women of color in low-income households have suffered the worst job losses.¹⁴ Job sectors hit the hardest have included food services, accommodations, arts and entertainment, and personal services.¹⁵ Unemployment rates have skyrocketed, reaching 16.4 percent at its height in April 2020.¹⁶ For women in households making less than \$30,000 specifically, that rate rose to 29 percent.¹⁷ In the Bay Area, 87 percent of renters who are behind on payments are people of color.¹⁸

The pandemic has laid bare the ways in which the rules and practice of our state’s economy are rigged against women and Black and Brown communities. The jobs that have been the most vulnerable to layoffs and furloughs mentioned above are primarily held by Black and Brown people. Indigenous, Black, and Pacific Islander people have also had the highest death tolls from COVID-19.¹⁹ These communities are the same ones disproportionately targeted by police and disproportionately penalized by the criminal justice system—and as a result, they are disproportionately burdened by unjust, unsustainable, and regressive fines and fees. With little to no income coming in, families simply cannot survive, let alone pay off these burdensome debts.

Ceasing tax refund intercepts does not do enough to provide critical financial relief and income during the crisis.

Federal and state policy makers have worked tirelessly to develop new programs to put much-needed cash in the hands of every American. The American Rescue Plan (ARP) will be providing much-needed relief checks to families so they can pay for their basic needs.²⁰ On top of California’s existing Earned Income Tax Credit program,²¹ the ARP will also expand child tax credits. As you know, these are critical poverty-fighting measures—these tax credits build up family reserves and promote economic stability. While these refunds are protected by the suspension of the income tax refund offset program, many Californians direct deposit or deposit checks into personal bank accounts, leaving them vulnerable to potential bank levies by the FTB.

Ceasing bank levies is particularly important during COVID-19, when low-income individuals and families face unprecedented economic harm. Recognizing the importance of individuals retaining at least some funds, the California Legislature recently passed Senate Bill 616, which established a “floor”

¹² INST. FOR THE FUTURE (IFTF) FOR THE CAL. FUTURE OF WORK COMM’N, THE FUTURE OF WORK IN CALIFORNIA (2021), <https://www.labor.ca.gov/wp-content/uploads/sites/338/2021/02/ca-future-of-work-report.pdf>; see also Aaron Klein & Ember Smith, *Explaining the Economic Impact of COVID-19*, BROOKINGS (Feb. 2021), <https://www.brookings.edu/research/explaining-the-economic-impact-of-covid-19-core-industries-and-the-hispanic-workforce/#:~:text=COVID%2D19%20has%20decimated%20tourism,in%20each%20industry%20in%202019>.

¹³ INST. FOR THE FUTURE (IFTF) FOR THE CAL. FUTURE OF WORK COMM’N, THE FUTURE OF WORK IN CALIFORNIA (2021), <https://www.labor.ca.gov/wp-content/uploads/sites/338/2021/02/ca-future-of-work-report.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ BAY AREA EQUITY ANALYSIS, FACT SHEET: PREVENTING EVICTION AND INDEBTEDNESS IN THE BAY AREA, *supra* note 10.

¹⁹ *The Color of Coronavirus: Covid-19 Deaths by Race and Ethnicity in the U.S.*, APM RSCH. LAB (Mar. 5, 2021), <https://www.apmresearchlab.org/covid/deaths-by-race>.

²⁰ American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1319/text#toc-HD3775910A72A4D1D96B9A7FBC4660E00>.

²¹ S. 80, 2015-2016 Leg., Reg. Sess. (Cal. 2016) (enacted).

amount of cash that could not be removed from a bank account when levied by creditors.²² Under SB 616, all funds “equal to or less than the minimum basic standard of adequate care for a family of four,” currently \$1,788,²³ is automatically exempt from levy by creditors.²⁴ There are no such protections for court-ordered debt. The Franchise Tax Board can and does remove **all funds** in individuals’ bank accounts. This leaves individuals and their families, including many of our clients and loved ones, unable to pay rent, purchase food, and care for their families. As a result, individuals are plunged further into poverty, and often take their money out of banks. These actions by the FTB are unconscionable, particularly during COVID-19.

As discussed at length above, during COVID-19, poor people and Black and Brown people are disproportionately harmed by the economic crisis caused by this pandemic. With lower wages and skyrocketing numbers of furloughs and layoffs, individuals and families need whatever wages they receive now more than ever. However, people who owe court-ordered debt can and do have up to 25 percent of their earnings garnished by the Franchise Tax Board.²⁵

As you know, advocates, including some of the signatories here, are asking the State to reconsider the propriety of many of the fines and fees collected by the FTB.²⁶ In this letter, however, we simply ask that you suspend bank levies and wage garnishments on state and local debt during this unprecedented health and economic crisis. Additionally, when bank levies resume, we ask that the FTB follow the limits established by SB 616 so Californians are not left without sufficient funds to pay for critical basic necessities like rent and food.

The Controller has the discretion to suspend collections.

In his March 2020 Executive Order, the Governor declared that the Franchise Tax Board “shall use their administrative powers where appropriate to provide” specific COVID-19 related relief.²⁷

The Controller has the power and duty to “superintend the fiscal concerns of the state.”²⁸ As such, the Controller is granted statutory “discretion” to collect—or not collect—amounts that are owed to state agencies, local agencies, and courts.²⁹ Further, the FTB can decline to collect if “the debt is uncollectible” or the amount of the debt does not justify collection.³⁰

These are extraordinary times, and they call for extraordinary measures. We ask that you exercise your authority as Controller to suspend all FTB collection measures for debts owed to state and local

²² CAL. CIV. PROC. CODE § 704.220; S. 616, 2019-2020 Leg., Reg. Sess. (Cal. 2020) (enacted).

²³ Jessica Williams, *Enforcement of Money Judgments: Here’s How the New Debtor Exemptions Impact You*, DAILY J., <https://www.dailyjournal.com/mcle/696-enforcement-of-money-judgments-how-the-new-debtor-exemptions-impact-you> (last visited Mar. 16, 2021).

²⁴ CAL. CIV. PROC. CODE § 704.220; S. 616, 2019-2020 Leg., Reg. Sess. (Cal. 2020) (enacted).

²⁵ *Help with Withholding Orders*, STATE CAL. FRANCHISE TAX BD., [https://www.ftb.ca.gov/pay/collections/withholding-orders/help-with-withholding-orders.html#:~:text=Wage%20garnishments%20\(Earnings%20withholding%20orders,balance%20is%20paid%20in%20full](https://www.ftb.ca.gov/pay/collections/withholding-orders/help-with-withholding-orders.html#:~:text=Wage%20garnishments%20(Earnings%20withholding%20orders,balance%20is%20paid%20in%20full) (last visited Mar. 12, 2021).

²⁶ S. 190, 2017-2018 Leg., Reg. Sess. (Cal. 2017) (enacted); S. 1290, 2019-2020 Leg., Reg. Sess. (Cal. 2020) (enacted); A. 1869, 2019-2020 Leg., Reg. Sess. (Cal. 2020) (enacted); S. 586, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

²⁷ Exec. Order N-25-20 (Cal. 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>.

²⁸ CAL. GOV’T CODE § 12410.

²⁹ See *id.* §§ 12419.5, 12419.8; see also *id.* §§ 12419.10, 12419.12 (offsets shall only be taken “to the extent feasible”).

³⁰ *Id.* § 12433.

entities, including the suspension of wage garnishments and bank levies on all debts owed to state and local governments.

Sincerely,

Esteban Nuñez, Anti-Recidivism Coalition
Mica Doctoroff, ACLU-California
Rachel Hoerger, Bay Area Legal Aid
Marisabel Torres, Center for Responsible Lending
Julia Root, Center for Employment Opportunities
Katrina Logan, Community Legal Services in East Palo Alto
Asher Waite-Jones, East Bay Community Law Center
Jhumpa Bhattacharya, Insight Center for Community Economic Development
Lynn Berkley-Baskin, Justice2Jobs Coalition
Elisa Della-Piana, Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Wade Askew, Legal Services of Northern California
Michael Best, National Consumer Law Center (on behalf of its low-income clients)
Chione Flegal, PolicyLink
Faride Perez, Root and Rebound
Stephanie Campos-Bui, UC Berkeley School of Law, Policy Advocacy Clinic
Stacey Tutt, UC Irvine School of Law, Consumer Law Clinic on behalf of our clients
Rebecca Miller, Western Center on Law and Poverty

cc:

The Honorable Nancy Skinner, California State Senate
The Honorable Anna M. Caballero, California State Senate
The Honorable Maria Elena Durazo, California State Senate
The Honorable Steven Bradford, California State Senate
The Honorable Governor Gavin Newsom
The Honorable David Chiu, California State Assembly
The Honorable Wendy Carrillo, California State Assembly
The Honorable Cristina Garcia, California State Assembly
The Honorable Senate President pro Tempore Toni Atkins
The Honorable Assembly Speaker Anthony Rendon