

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Agenda Number:**  
**Prepared on:** 11/22/02  
**Department Name:** Probation  
**Department No.:** 022  
**Agenda Date:** 1/21/03  
**Placement:** Administrative  
**Estimate Time:** 10 minutes  
**Continued Item:** NO  
**If Yes, date from:**

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**TO:** Board of Supervisors

**FROM:** Susan J. Gionfriddo, Chief Probation Officer  
Bernice James, Treasurer Tax Collector

**STAFF CONTACT:** Patti Ball, Project Manager Probation Collections x 3727  
Jean Silva, Probation Business Manager x 3654

**SUBJECT:** Offender Accountability-Franchise Tax Board Court Ordered Debt MOU

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## **Recommendation(s):**

That the Board of Supervisors: (1) approve and execute the attached MOU with the Franchise Tax Board Court Ordered Debt Collection Program and (2) approve and execute the Addendum to said MOU and (3) adopt the attached resolution discharging accountability for uncollectible Probation department accounts receivable returned by the Franchise Tax Board, and (4) designate the one-time unanticipated revenue received from delinquent accounts for probation capital projects and collections enhancements within the existing Probation Department Designation account (9799) .

## **Alignment with Board Strategic Plan:**

This recommendation is aligned with: Goal I- Efficient Government: An Efficient Government Able to Anticipate and Respond Effectively to the Needs of the Community and Goal III-Organizational Effectiveness: A Strong, Professionally Managed County Organization.

## **Executive Summary and Discussion:**

In an effort to reduce the amount of court-ordered debt owed in the State, the California Legislature allowed the Franchise Tax Board (FTB), to collect court-ordered debts from contracting agencies. The FTB's Court-Ordered Debt (COD) Collections program is authorized under Section 19280 of the California Revenue and Taxation Code. The FTB COD collects on referred accounts as though they are final delinquent personal income tax debts. The FTB has access to more than 220 million income records and wage information on all California employees. The FTB can administratively order any person having control over funds belonging to a debtor to withhold those funds from the debtor. Levy actions can include: 1) an order to withhold on bank accounts such as checking, savings, IRA, and Keogh; 2) an earnings withholding order to an employer,

or 3) a continuous order to withhold miscellaneous payor for commissions, rents and royalties. The FTB also has the authority to seize both real and personal property, such as vacant land, cash, safe deposit boxes, vehicles and boats.

For over two years, the Probation Department with the concurrence of the Court and the Treasurer Tax Collector, has been trying to get accepted into the FTB COD program. We have discussed these plans and received support from the Project Reporting Committee and the Legislative Program Committee. Unfortunately, we have had to wait for the Franchise Tax Board to get funding, overcome their capacity issues and for legislation to repeal their sunset date. Thankfully, these issues have now been resolved. We are now ready to execute the Memorandum of Understanding with the State of California Franchise Tax Board Court Ordered Debt Collections Program.

In addition to the standard MOU, we are also requesting that you approve and execute the attached Addendum to the MOU. The FTB COD MOU is an agreement normally entered into by courts, hence the wording of some sections specifies court, not county. The Addendum specifies the County in these instances. The MOU may not be altered without the approval of their counsel, hence the FTB recommended an addendum to clarify the county rather than the court. Upon initial review Risk Management noted that the MOU does not indemnify the County for costs or liabilities arising from the FTB COD's collection activities. The MOU does indemnify the FTB COD should the County refer an account that is not due and payable. Although we requested mutual indemnification clauses, the FTB COD is unable to alter the MOU. Further research revealed that 21 other counties have contracted with the FTB COD without mutual indemnification clauses. Risk Management has reviewed the MOU, considered all the mitigating factors and considers this an acceptable risk. The Probation Department believes that the benefits of inclusion in the FTB COD program outweigh any potential risks from the lack of a mutual indemnification clause.

Currently, the Treasurer Tax Collector provides efficient collections of over \$ 1,370,000 annually on accounts referred by the Probation Department. We feel that inclusion in the FTB COD program will increase the effectiveness of county in-house collection effort by reducing collection workloads to more manageable levels. The Probation Department, with the concurrence of the Treasurer, Courts and Auditor, would like to refer delinquent accounts, to the FTB COD for a last attempt at collection prior to write-off. The Probation delinquent accounts to be referred to the FTB COD are fees from offenders whose probation has expired. We concur that unpaid accounts returned from the Franchise Tax Board are uncollectible, and that the likelihood of collection does not warrant any further expense involved. This is consistent with the criteria for the discharge of accountability for accounts receivable as specified in Government Code Section 25257 through 25259. Government Code section 25259.5 authorizes the Board to designate the Auditor Controller to discharge the departments from accountability on behalf of the Board by resolution. The attached resolution designates the Auditor Controller to exercise these powers on behalf of the Board, and allows the Auditor to discharge the Probation and Treasurer Tax Collector from accountability for unpaid accounts upon return from the FTB COD. The Treasurer will maintain the supporting documentation of accounts returned from the FTB COD and subsequently written-off for five years.

**Mandates and Service Levels:** No change in programs or service levels.

**Fiscal and Facilities Impacts:**

Although we intend to have the FTB COD make one more attempt to locate offenders and to hold them accountable for their court-ordered debt, the collectibility of most the debts is unlikely, as we are referring delinquent accounts belonging to convicted felons who are no longer on probation. We recommend that your board designate this one-time revenue to fund one time expenditures such as collections enhancements and probation capital projects, such as the Santa Maria Juvenile Hall Kitchen. Although it is difficult to anticipate revenue from such an unpredictable source, we estimate that this program will receive \$50,000 per year for the next five years, which is consistent with the Probation Department Capital Plan.

**Special Instructions:**

**Concurrence:** Auditor-Controller  
Risk Management

**Attachments:** Memorandum of Understanding with the Franchise Tax Board  
Addendum to Memorandum or Understanding  
Resolution authorizing and designating the Auditor to discharge accountability for Probation Department accounts receivables  
Joint formal request for inclusion letter dated November 6, 2001 from Santa Barbara Superior Court and the Probation Department to the Franchise Tax Board

ADDENDUM TO MEMORANDUM OF UNDERSTANDING  
BETWEEN THE FRANCHISE TAX BOARD AND  
THE COUNTY OF SANTA BARBARA

THIS DOCUMENT HEREBY CLARIFIES the intent of the parties in the Memorandum of Understanding (MOU) between the Franchise Tax Board and the County of Santa Barbara . The clarifications are not substantive enough to require modification to the MOU. However, in the interest of full disclosure as to the intent of the parties, the clarifications are documented with underlined or strikethrough text as follows:

**Section 4. GENERAL AUTHORITY AND OPERATING PROVISIONS**

**A. Definitions:**

(1) **“Delinquent Amount”** is the amount of court-ordered fine, state or local penalty, forfeiture, restitution fine, or restitution order, or any other amounts imposed by a municipal or superior court of the State of California, or combination thereof, which has not been paid 90 days after payment of the amount first becomes delinquent.

**B. Amounts Subject to Referral:** Any delinquent fine, state or local penalty, forfeiture restitution fine or restitution order, or any other amounts imposed by a municipal or superior court of the State of California, or combination thereof, ordered as a result of a criminal offense, including all offenses involving a violation of the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, and imposed by a superior, municipal or justice court of the State of California upon a person or any entity, and which in aggregate, total \$250 or more per such person or entity is eligible for referral by COUNTY to the FTB for collections. Accounts referred to the FTB shall be treated as final and due and payable to the State of California.

**Section 5. DISTRIBUTION OF RECOVERED AMOUNTS**

**B. State Controller Distribution:**

After payment of the cost of administration, amounts shall be transferred to the court or county from which the account originated. 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 COUNTY regarding transfers, except as to the deduction for cost of administration.

~~The participating courts within~~ Santa Barbara County shall design an administrative structure which provides for the transfer of collected revenue ~~for each court.~~

**Section 9. SPECIAL TERMS AND CONDITIONS**

- B. Determination Of Type Of Accounts** For Referral: Each participating Court or County shall determine the types of accounts that they will refer to the FTB.
  
- D. Expanded Referrals:** If during the term of this Agreement, statutory authority is extended to the FTB to collect other fees due the Courts or the County not expressly specified in the present Agreement, the parties, by mutual consent, may amend said agreement to include the collection of those fees and the Contract Administrator, as previously defined, is expressly extended such authority to enter into such amendment. Except as so authorized, no changes to this Agreement shall be valid and affected unless made in the form of a written amendment approved in writing and formally executed by authorized officials of COUNTY and FTB.

These clarifications are mutually agreed to by the agencies.

Date:

FRANCHISE TAX BOARD  
STATE OF CALIFORNIA

COUNTY OF  
SANTA BARBARA

BY: \_\_\_\_\_

\_\_\_\_\_  
Chair  
BOARD OF SUPERVISORS

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Clerk of the Board of Supervisors

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE  
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

IN THE MATTER OF AUTHORIZING AND )  
DESIGNATING THE AUDITOR CONTROLLER ) RESOLUTION NO. \_\_\_\_\_  
TO DISCHARGE ACCOUNTABILITY FOR )  
PROBATION ACCOUNTS RECEIVABLES )

**WHEREAS**, Government Code Section 25257 permits any department, officer, or employee of a county charged by law with the collection of any county fee, fine, assessment or penalty, to apply to the Board of Supervisors for a discharge of accountability for the collection thereof if the amount is too small to justify the cost of collection or the likelihood of collection does not warrant the expense involved, and

**WHEREAS**, Government Code Section 25259.5 authorizes the Board to designate the County Auditor to exercise these powers by resolution, and

**WHEREAS**, unpaid accounts returned from the Franchise Tax Board Court Ordered Debt Collections Program are unlikely to be paid, or to justify the expense of further collections resources,

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Santa Barbara does hereby:

- A. Authorize and designate the Auditor Controller to exercise the powers set forth in Government Code Section 25257 through 25259 for Probation Department accounts receivables.
- B. Authorize and designate the Auditor Controller to discharge the Probation Department and the Treasurer Tax Collector from accountability for unpaid accounts returned from the Franchise Tax Board Court Ordered Debt Collections Program upon receipt.
- C. Request the Treasurer Tax Collector to retain the supporting documentation of accounts discharged subsequent to return from the Franchise Tax Board Court Ordered Debt Collections Program for five years.

**PASSED, APPROVED AND ADOPTED** by the Board of Supervisors of the Count of Santa Barbara, State of California, this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 2003, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

\_\_\_\_\_  
Chair, Board of Supervisors

MICHAEL F. BROWN  
CLERK OF THE BOARD

APPROVED AS TO FORM  
JOHN FORNER  
RISK MANAGEMENT

\_\_\_\_\_  
APPROVED AS TO FORM  
STEPHEN SHANE STARK  
COUNTY COUNSEL

\_\_\_\_\_  
APPROVED AS TO FORM  
ROBERT W. GEIS  
AUDITOR-CONTROLLER