



March 18, 2022

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

Dear Ms. Yee,

Our organizations write to ask the Franchise Tax Board (FTB) to immediately suspend all income tax intercepts **through July 31, 2022**, for non-tax debts owed to state and local governments. The impacts of the COVID-19 public health emergency and resultant economic crises that led to the FTB suspending tax intercepts in 2020 and 2021 have not dissipated. This difficulty is particularly prevalent among Black and brown Californians and low-income households who are in most need of the Earned Income Tax Credit (EITC) and child tax credits that the state has expanded to address poverty and income inequality, but who also face

disproportionate rates of tax intercepts. Tax intercepts are already causing increased harm this year as COVID protections for renters, utility consumers, and student loan borrowers are all set to expire. At the same time, the state coffers are flush with cash, as budget surplus estimates surpass tens of billions of dollars.

The FTB should immediately suspend income tax intercepts for debts owed to state and local governments, as it did in 2020 and 2021.

In 2020, the FTB provided relief to millions of Californians by placing a moratorium on the collection of all debts owed to government agencies. And last year, the FTB instituted a moratorium on tax refund intercepts through July 31, 2021.¹ 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 were able to keep these much-needed funds.

In February, the U.S. Department of Education announced that individuals with overdue student loans would not have their tax refunds withheld by the Treasury Offset Program.² Additionally, states like Illinois announced in early January that low-to-moderate-income working families would not have unpaid fines deducted from their state income tax refunds.³ Today, with millions of families continuing to suffer substantial hardships due to COVID-19, the FTB should take similar action.

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

Although we have entered a new phase of the COVID-19 pandemic, its social and economic impacts are still devastating many Californians. Over 8.5 million Californians have tested positive for COVID-19, and over 85,000 have died.⁴ Millions of people have filed for unemployment during the last two years, and California continues to experience high unemployment levels due to the pandemic.⁵

Of course the devastation caused by the COVID-19 pandemic and resulting economic downturn is not evenly spread. Working-class neighborhoods of color have been the hardest hit by COVID.⁶ Black and brown workers, individuals, and families face disproportionate rates of layoffs, unemployment, and financial loss.⁷ The jobs most impacted by layoffs and furloughs have been disproportionately held by people making less than \$40,000 per year.⁸ Women of color in low-income households have suffered the worst job losses.⁹ Job sectors hit the hardest have included food services, accommodations, arts and entertainment, and personal services.¹⁰ Unemployment rates have skyrocketed, reaching 16.4 percent at their height in April 2020.¹¹ For women in households making less than \$30,000 specifically, that rate rose to 29 percent.¹² In the Bay Area, 87 percent of renters who are behind on payments are people of color.¹³

The pandemic has laid bare the ways in which the rules and practices of our state's economy are rigged against women and Black and brown communities. These communities are the same ones disproportionately targeted by police and disproportionately penalized by the criminal legal system - and as a result, they are disproportionately burdened by unjust, unsustainable, and regressive fines and fees. And as a result, these communities are also the ones most impacted by the FTB's tax intercepts. An investigation into Illinois's tax intercept program showed that 80

percent of tax intercepts in Chicago were from zip codes with a median income below the City's median, and 90 percent were from residents living in predominantly non-white neighborhoods.¹⁴

This year's tax season corresponds with the rollback of many of the protections and financial supports that helped these households weather COVID's economic crises. Without a moratorium, some families will have their state tax refunds seized to pay parking tickets and court-ordered debts that are, in some cases, decades old. That means those refunds - which are often state tax credits that are designed to buoy low-income households - will not be available to pay outstanding balances for rent, utilities, student loans, and credit card payments that are now under increased pressures as financial supports are ending, sending people over a financial cliff.

For example:

Housing: With California's limited eviction protections set to expire on March 31, hundreds of thousands of renters whom COVID-19 and its ongoing economic fallout have hit the hardest are now at imminent risk of eviction and homelessness. The National Equity Atlas (NEA) estimates that 721,000 renter households in California, including 659,000 children, owe their landlords an estimated \$3.3 billion in back rent.¹⁵ A recent analysis conducted by NEA found that those who fell into debt because of the pandemic have faced multiple barriers to securing rental assistance from California's Emergency Rental Assistance Program, including lack of access for people with disabilities and those whose primary language is not English, a complex application process, and long waits for review and payment.¹⁶ Latinx renters represent nearly 50 percent of severely cost-burdened renter households, but they make up only 36 percent of applicants to the statewide aid program and 37 percent of those who've been approved for assistance.¹⁷

Utilities: The Public Utility Commission authorized a moratorium on disconnections and late payment fees for utility customers during the pandemic. However, the gas and electricity moratorium ended in June 2021, and the phone moratorium ended last month.¹⁸ With increased costs due to inflation, rising fuel costs, and disruptions to the global supply chain, gas, and electricity rates have nearly doubled and are expected to continue to increase.¹⁹

Unemployment: The supplemental federal unemployment benefits authorized by the CARES Act ended on September 4, 2021. California has a high unemployment rate compared to the national average. The national unemployment rate peaked at 14.7 percent in April 2020 before coming down to 8.4 percent in August 2020.²⁰ However, California's unemployment rate reached 15.9 percent in April 2020 and was still 11.9 percent by August 2020.²¹ As of December 2021, California has one of the highest unemployment rates in the nation.²²

Federal Child Tax Credit: After Congress failed to act, the federal Child Tax Credit expired in December 2021. That program provided monthly payments of up to \$250 per child aged 6 to 17 and up to \$300 per child aged under 6. Research indicates that as a result the monthly child poverty rate increased from 12.1 percent in December 2021 to 17 percent in January 2022, representing 3.7 million more children in poverty.²³ Latinx and Black children experienced the most significant percentage-point increases in poverty (7.1 and 5.9 percentage points, respectively).²⁴

Federal student loans: Throughout the pandemic, the U.S. Department of Education has been implementing a student loan payment pause that has included a suspension of loan

payments, a 0% interest rate, and no collection on defaulted loans.²⁵ But this pause will expire on May 1, 2022.

Intercepting state tax refunds, particularly the state EITC and child tax credits, amplifies the financial crisis of households who have suffered the most during COVID-19 and undermines the anti-poverty goals of the state’s tax policies.

California has been a national leader in passing and expanding tax credits designed to combat poverty, including the state’s Earned Income Tax Credit and Child Tax Credit. In a recent proclamation designating CalEITC awareness week, Governor Newsom chronicled the expansion of the state’s EITC and CTC initiatives, heralding them as “the largest anti-poverty cash assistance program in the country and one of the most effective ways we can help lift working families and their children out of poverty.”²⁶

Interception of tax credits intended to address poverty also impacts families’ willingness to file tax returns and apply for tax credits. When families know that the government will use their tax credits to pay off government debt, they are less willing to file tax returns or apply for the credits. According to the IRS, in 2018, California ranked 49th in participation in the federal earned income tax program, and enrollment in the state version of a tax credit is believed to be even less robust.²⁷

According to data from the FTB, the expected annual volume of taxpayers who will have their refunds offset is one million people, with losses totaling \$374 million. Taxpayers with an Annual Gross Income of less than \$30,000 and claiming EITC/CTC represent 46 percent of the one million taxpayers who will have their credits offset and 36 percent of the \$374 million that will be offset. The average amount per offset for this population is about \$300. Under current law, filers could lose their entire refund if their outstanding referred debts are greater than their tax refund.

We could not agree more about the importance of the EITC and CTC as critical poverty-fighting measures that build up family reserves and promote economic stability. It is counterproductive and cruel to tear these funds out of families’ hands to pay off old traffic and parking tickets, criminal fees, and public benefit overpayments. This harshness is even more true at this moment when these same low-income families are also losing the complement of supports and protections outlined above that were helping them make ends meet. And it is all the more concerning that the administration would allow this to happen when the state predicts tens of billions of dollars in budget surplus.²⁸

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.²⁹ The Controller has the power and duty to “superintend the fiscal concerns of the state”³⁰ and is granted statutory “discretion” to collect—or not collect—amounts owed to state agencies, local agencies, and courts.³¹ Further, the FTB can decline to collect if “the debt is uncollectible” or the amount of the debt does not justify the collection.³²

The extraordinary times that led to the FTB's suspension of tax intercepts in 2020 and 2021 are still here, especially for low-income Black and brown Californians who will bear the brunt of this collection. We ask that you exercise your authority as Controller to suspend **through July 31, 2022**, all FTB tax refund intercepts for non-tax debts owed to state and local entities.

Sincerely,

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- ¹ State of California, Franchise Tax Board, “State Suspends Certain Debt Collection Activities,” (Feb. 22, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-02-state-suspends-certain-debt-collection-activities.html>
- ² Federal Student Aid, “COVID-19 Relief: Loans in Default,” <https://studentaid.gov/announcements-events/covid-19/default> (last accessed Mar. 10, 2022); Greg Iacurci, “Education Department suspends seizure of tax refunds, Social Security for overdue student loans until November,” (CNBC, Feb. 15, 2022), <https://www.cnbc.com/2022/02/15/education-department-wont-seize-tax-refunds-for-overdue-student-loans.html>.
- ³ Illinois State Comptroller, “Comptroller Mendoza Extends COVID Break for Struggling Taxpayers,” (Jan. 6, 2022), <https://illinoiscomptroller.gov/news/press-releases/comptroller-mendoza-extends-covid-break-for-struggling-taxpayers/>
- ⁴ California All, Tracking COVID-19 in California, <https://covid19.ca.gov/state-dashboard/> (last accessed March 4, 2022).
- ⁵ California Employment Development Department, Unemployment Insurance Data Dashboard, <https://edd.ca.gov/newsroom.htm#UIDataDashboard> (last accessed March 12, 2021).
- ⁶ Bay Area Equity Atlas, “Which Bay Area communities are hardest hit by the Covid-19 pandemic?” (Dec. 2020), https://bayareaequityatlas.org/research/COVID_ZIPs.
- ⁷ Institute for the Future (ITF) for the California Future of Work Commission, The Future of Work in California (Mar. 2021), <https://www.labor.ca.gov/wp-content/uploads/sites/338/2021/02/ca-future-of-work-report.pdf>; see also Aaron Klein and 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>.
- ⁸ ITF for the California Future of Work Commission, The Future of Work in California (March 2021).
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ Bay Area Equity Analysis, Fact Sheet: Preventing Eviction and Indebtedness in the Bay Area, https://bayareaequityatlas.org/research/baea_evictionrisk_library.
- ¹⁴ Simon Davis-Cohen, “Chicago Announces Change to State Tax Refund Intercept Program Following Investigation, (Type Media, Mar. 16, 2021), <https://www.typeinvestigations.org/blog/2021/03/16/chicago-announces-change-to-state-tax-refund-intercept-program-following-investigation/>.
- ¹⁵ National Equity Atlas Rent Debt Dashboard, <https://nationalequityatlas.org/rent-debt> (last accessed on Mar. 4, 2022).
- ¹⁶ National Equity Atlas, “State of Waiting: California’s Rental Assistance Program One Month Before Expiration, (Mar. 7, 2022), <https://nationalequityatlas.org/CARentalAssistance>.
- ¹⁷ *Id.*
- ¹⁸ Public Utilities Commission Coronavirus (COVID-19) Information, <https://www.cpuc.ca.gov/news-and-updates/newsroom/covid-19> (last accessed on Mar. 4, 2022).
- ¹⁹ Will Wade and Francesca Maglione, “Electric Bills Double for U.S. Families with Fuel Costs Surging,” (Bloomberg, Mar. 7 2022), <https://www.bloomberg.com/news/articles/2022-03-07/electric-bills-double-for-u-s-families-with-fuel-costs-surging>.
- ²⁰ Grace Gedy, “California unemployment debt: How to dig out of a \$20 billion hole?” (CalMatters, Mar. 4, 2022), <https://calmatters.org/economy/2022/03/california-unemployment-debt/>.
- ²¹ *Id.*
- ²² U.S. Bureau of Labor Statistics, Unemployment Rates for States <https://www.bls.gov/web/laus/laumstrk.htm> (last accessed Mar. 10, 2022).
- ²³ Center on Poverty & Social Policy, “3.7 million more children in poverty in Jan 2022 without monthly Child Tax Credit,” (Feb. 2022), <https://www.povertycenter.columbia.edu/news-internal/monthly-poverty-january-2022>.
- ²⁴ *Id.*
- ²⁵ Federal Student Aid, “COVID-19 Emergency Relief and Federal Student Aid, <https://studentaid.gov/announcements-events/covid-19> (last accessed Mar. 10, 2022).
- ²⁶ Executive Department, State of California, Proclamation re: Earned Income Tax Credit, <https://www.gov.ca.gov/wp-content/uploads/2022/01/2022-CalEITC-Awareness-Week.pdf>.

²⁷ Income & Revenue Service, “EITC Participation Rate by States Tax Years 2011 through 2018,” <https://www.etc.irs.gov/etc-central/participation-rate/etc-participation-rate-by-states>.

²⁸ Brian Uhler, 2021-22 “Big Three” Revenue Outlook Update: February 2022, <https://lao.ca.gov/LAOEconTax/Article/Detail/725>.

²⁹ 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>

³⁰ Cal. Gov’t Code § 12410.

³¹ *See id.* §§ 12419.5, 12419.8; see also *id.* §§ 12419.10, 12419.12 (offsets shall only be taken “to the extent feasible”).

³² *Id.* § 12433.