

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064

Reason for this Transmittal

- State Law or Regulation Change
- Federal Law or Regulation Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

June 13, 2005

ERRATA

CSS LETTER: 04-27

ALL IV-D DIRECTORS
 ALL COUNTY ADMINISTRATIVE OFFICERS
 ALL BOARDS OF SUPERVISORS

SUBJECT: FINANCIAL INSTITUTION DATA MATCH AND BANK LEVY PROGRAM -
 ERRATA

This letter transmits corrected pages 4 and 5 of CSS Letter 04-27. Please replace original pages 4 and 5 with the attached corrected version.

It has come to the attention of the Department that Judicial Council forms EJ 170 (Notice of Opposition) and EJ 175 (Notice of Hearing on Claim of Exemption) are not the proper forms for local child support agencies (LCSAs) to use when opposing an Financial Institution Data Match (FIDM) Claim of Exemption. Instead, LCSAs should use form FL-677 (Notice of Opposition and Notice of Motion on Claim of Exemption).

Although FL-677 is designed for use by governmental agencies, it is not perfectly suited to the FIDM bank levy process because item 6 references Code of Civil Procedure (CCP) Section 703.070 which does not apply to FIDM. As a temporary remedy, LCSAs should check box 5c and add the following explanatory language:

CCP 703.070 is not applicable to an exemption claim pursuant to Revenue and Taxation Code section 19271.6 or Family Code section 17453.

The Department is working with the Judicial Council to modify FL-677 by adding a "check box" prior to item 6, thus making that item optional. We will notify you when the form has been modified.

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If you have any questions or concerns regarding this matter, please contact Lesley Hull, Chief of the Case Management Policy Section, at (916) 464-2018. If you have additional policy questions, please email the Policy Branch at policy.branch@dcss.ca.gov.

Sincerely,

o/s/Sandra O. Poole

SANDRA O. POOLE
Deputy Director
Child Support Services Division

Attachment

- FTB staff will be available to the LCSAs for the purpose of providing information on FIDM and bank levy cases.

LCSA Claim of Exemption Process:

Pursuant to Revenue and Taxation Code 19271.6(j)(3): “The sole basis for a Claim of Exemption under this subdivision shall be the financial hardship for the obligor and the obligor’s dependents.”

To initiate the Claim of Exemption process, the obligor can contact the LCSA who acts as the levying officer for levies made pursuant to Revenue and Taxation Code 19271.6(j)(5). Obligor must be informed by the LCSA that assistance with the Claim of Exemption form is available through the local Family Law Facilitator Office. The LCSA may also assist obligors with completing and filing the Claim of Exemption with the court.

The LCSA process is as follows:

- The LCSA must, at the obligor’s request, provide a Claim of Exemption form (EJ 160) and Financial Statement (EJ 165).
- The Claim of Exemption is filed with the LCSA.
- The Claim of Exemption shall be accepted by the LCSA only if filed in a timely manner as follows:
 - ❖ The Claim of Exemption shall be considered filed timely if the monies levied have not yet been disbursed.
 - ❖ The Claim of Exemption shall be considered not filed timely if the monies levied have already been disbursed.
 - ❖ The LCSA may wait one business day from the receipt of a Claim of Exemption to notify the obligor if the claim was received timely. The one-day delay allows the LCSA to verify whether or not the monies levied have been disbursed, and to stop a scheduled disbursement if necessary.
- The LCSA is required to notify FTB within two business days after receipt of a timely filed Claim of Exemption.
- FTB will notify the financial institution(s) to place a hold on the account for 45 days or longer, if requested.
- If the LCSA does not oppose the Claim of Exemption, the LCSA must contact FTB to release the hold on the account.
- If the LCSA opposes the Claim of Exemption, the LCSA must file the obligor’s Claim of Exemption along with a Notice of Opposition and Notice of Motion on Claim of Exemption (FL-677) with the court within 10 days of receiving a Claim of Exemption from the obligor. LCSAs should check box 5c on the FL-677 and add the following explanatory language: **CCP 703.070 is not applicable to an exemption claim pursuant to Revenue and Taxation Code section 19271.6 or Family Code section 17453.**
- The court will make a final determination whether to allow the Claim of Exemption and, if so, in what amount.

- The LCSA will contact FTB within two business days of a court order resolving the claim. If the court grants a Claim of Exemption in full, the hold on the account is lifted and no monies will be taken from the account or paid to the obligee. If the court grants the Claim of Exemption in part, some monies will be taken.

Appeals:

If the obligor appeals the court's decision, the LCSA must notify the FTB of the appeal. The hold on the obligor's account must be maintained until a final decision is made on the appeal.

Once a court order resolving the claim is issued, the LCSA will contact FTB within two business days and request a modification or release of the exempt order to withhold based on the court's decision. If the appeal of the determination has been waived, the time for the appeal has expired, or the determination is considered final by the court, monies from the account will be seized and paid to the obligee.

The Claim of Exemption and the FTB hardship process are outside the scope of the Complaint Resolution/State Hearing process.

AB 1752 "Pilot" Program

Fifty-one compliant cases were manually levied under AB 1752 before implementation of the new program was delayed in July 2004. The Department treated these cases as a pilot program. Impacted LCSAs and the FTB tracked the cases during August, September and October 2004 to learn how the new program actually worked and how clients responded to it. The results of this small pilot reveal minimal workload impact on the LCSAs. No obligors contacted FTB to claim financial hardship and none submitted a Claim of Exemption. Three accounts were levied with a total of \$8,197.33 seized. Although this initial experience is helpful, we are aware that these results may not be representative of the entire population of compliant obligors impacted by this new process.

If you have any questions or concerns regarding this matter, please contact Lesley Hull, Chief of the Case Management Policy Section, at (916) 464-2018.

Sincerely,

Original signed by Sandra O. Poole

SANDRA O. POOLE
Deputy Director
Child Support Services Division

Attachments