

Amend Revenue and Taxation Code Sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to allow a taxpayer to file a claim for reimbursement of bank charges and third party check charges incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE under the various special taxes and fees programs. (Housekeeping)

Source: Honorable Michelle Steel

Existing Law. Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or order to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

Under Revenue and Taxation Code Section 7096 of the Sales and Use Tax Law, effective January 1, 2012, if the BOE erroneously issues a levy or notice to withhold, erroneous processing action, or erroneous collection action, and that error resulted in bank charges or third party check charges incurred by a taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. Bank and third party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those actually paid by the taxpayer and not waived or reimbursed by the financial institution.

Identical provisions are also contained in the other BOE-administered special tax and fee laws, except that they don't expressly provide that a taxpayer may claim reimbursement for bank and third party check charges due to an "erroneous processing action or erroneous collection action" by the BOE.

Occasionally, an erroneous BOE action has resulted in the imposition of bank or third party check charges and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. Occasionally, due to a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was credited erroneously by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the special tax and fee laws contain no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

This Proposal. This proposal would conform the claim for reimbursement of bank charges provisions in the Sales and Use Tax Law with the other tax and fee programs administered by the BOE by expressly providing that, in addition to reimbursement of bank or third party check charges incurred by a taxpayer as

the directly result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE. The other tax and fee laws to which these provisions would be extended include: Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

It is only fair and equitable to reimburse taxpayers for bank and third party check charges when those charges are a direct result of a BOE error, and due to no fault of the taxpayer. This proposed change is consistent with the Sales and Use Tax Law, and the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the Franchise Tax Board (FTB). The FTB sponsored AB 1767 (Ch. 349, Stats. 2005), to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

Section 9274 of the Revenue and Taxation Code is amended to read:

9274. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing

action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 30459.4 of the Revenue and Taxation Code is amended to read:

30459.4. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 32474 of the Revenue and Taxation Code is amended to read:

32474. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those

paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 40214 of the Revenue and Taxation Code is amended to read:

40214. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies

the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 41174 of the Revenue and Taxation Code is amended to read:

41174. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 43525 of the Revenue and Taxation Code is amended to read:

43525. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by

the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 45870 of the Revenue and Taxation Code is amended to read:

45870. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 46625 of the Revenue and Taxation Code is amended to read:

46625. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees that are incurred by the feepayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with either a levy or instructions in a notice to withhold, and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Bank charges include only those charges that are paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement pursuant to this section shall file a claim with the board that shall be in the form as may be prescribed by the board. The board shall not grant a claim unless it determines that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action resulted from board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation that was sufficient to establish the feepayer's position. The requirement of this paragraph may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action that is asserted to be erroneous. The board shall respond to a claim filed pursuant to this section within 30 days of receipt. If the board denies a claim, the taxpayer shall be notified in writing of the reason or reasons for denial.

Section 50156.14 of the Revenue and Taxation Code is amended to read:

50156.14. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid to the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a

claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 55335 of the Revenue and Taxation Code is amended to read:

55335. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 60633.1 of the Revenue and Taxation Code is amended to read:

60633.1. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party' s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.