

Amend Section 7096 of the Revenue and Taxation Code to allow reimbursement of any reasonable third party check charges imposed on a taxpayer due to an erroneous levy.

Source: Taxpayers' Rights Advocate's Office

Under current law, Revenue and Taxation Code Section 7096 provides that a taxpayer may file a claim with the Board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the Board. Bank charges include a financial institution'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. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution. However, the current law contains no provisions for reimbursement of other check charge fees imposed on the taxpayer.

Taxpayers are routinely reimbursed for bank charges related to erroneous levies, but not for related third party charges, such as bounced check charges imposed by daycare centers, retailers, or utility companies. While the amounts involved are relatively minor (approximately \$40 each for the 10 or so cases each year), the Board has disallowed third party reimbursements because those charges are not covered by Section 7096.

This proposal would add reasonable third party check charges to the amount that the Board is authorized to reimburse a taxpayer from charges they incur due to an erroneous levy or notice to withhold by the Board. It is fair and equitable to reimburse taxpayers for third party charges and this proposed change is well within the intent of the original legislation that authorized the Board to reimburse taxpayers for Board errors. If approved by the Board, this proposal would also include the appropriate amendments to the Special Taxes programs administered by the Board.

Section 7096 of the Revenue and Taxation Code is amended to read:

7096 (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 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. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board, which shall be in such 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 was caused by board error.

(2) Prior to the levy or notice to withhold, 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 levy or notice to withhold. 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 noticed in writing of the reason or reasons for the denial of the claim.