

Business Taxpayers'  
**BILL OF RIGHTS**  
**2001-02**  
**ANNUAL REPORT**

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First District

DEAN ANDAL  
Stockton  
Second District

CLAUDE PARRISH  
Torrance  
Third District

JOHN CHIANG  
Los Angeles  
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KATHLEEN CONNELL  
Sacramento  
State Controller

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JAMES E. SPEED  
Sacramento  
Executive Director

 STATE BOARD OF EQUALIZATION

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## TAXPAYERS' RIGHTS ADVOCATE OFFICE

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## *Letter to Executive Director*

October 2002

Mr. James E. Speed  
Executive Director

Dear Mr. Speed:

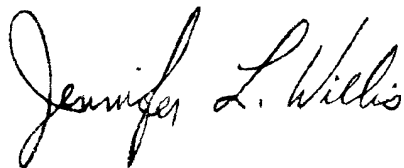
The Taxpayers' Rights Advocate (TRAO) staff and I are pleased to present the 2001/02 Business Taxpayers' Bill of Rights Annual Report for the Board's and your consideration. This report highlights our accomplishments over the past year, current issues in the process of solution development, and emerging issues we recommend for consideration in the coming year.

Problem resolution continues to be a primary focus of the TRAO. Since 1990, the number of new business contacts has increased significantly and in some years more than doubled. As anticipated last year due to the down turn in the economy, the statistics have increased considerably.

Public education to increase voluntary tax compliance and avoid potential problems is another TRAO focus. We have expanded our education and outreach with the Advocate Offices of the Franchise Tax Board, Employment Development Department, and the Internal Revenue Service in seminars for enrolled agents and CPAs. In addition, will continue meetings with the district and headquarters staff to provide further education of the TRAO's roles and responsibilities and how they can make referrals to our office.

We look forward to continuing to work with staff and the public as we identify trends and issues, develop viable solutions, and strive to better serve our customers.

Respectfully submitted,



Jennifer L. Willis

Taxpayers' Rights Advocate

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# TAXPAYERS' RIGHTS ADVOCATE'S OFFICE

In January 1989, the original Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes. Currently, approximately 973,000 taxpayers are provided protection under this law. Effective January 1993, the Special Taxes Bill of Rights was established, expanding Bill of Rights statutory authority to the special taxes programs administered by the Board of Equalization (Board), currently impacting approximately 148,000 tax and fee payers. Since these programs primarily impact business owners, they will be referred to generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees. The Morgan Property Taxpayers' Bill of Rights was added in January 1994, governing the assessment, audit and collection of property taxes, with the goal of ensuring taxpayers receive fair and uniform treatment under the property taxation laws.

The Taxpayers' Rights Advocate Office (TRAO):

- facilitates resolution of taxpayer complaints or problems;
- monitors various Board tax and fee programs for compliance with the Taxpayers' Bill of Rights;
- recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;
- participates on various task forces, committees and public forums;
- holds mandated Taxpayer Bill of Rights hearings to provide the public with an opportunity to express their concerns, suggestions and comments to the Board Members.

The TRAO generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there appear to be rights violations in either the audit or compliance areas. Taxpayers also call to convey their frustration, seeking assurance or confirmation that staff action is lawful and just.

When a customer or Board employee alleges discrimination or harassment, the TRAO staff works with the Equal Employment Opportunity Office, Internal Security and Investigations Division (ISAD), and program managers to resolve the complaint. Allegations of misconduct or threats by taxpayers or Board staff are referred to ISAD for investigation. Working together with program management, these offices support the Board's commitment to a discrimination/harassment-free taxpayer environment by investigating complaints and ensuring that Board staff are properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment toward Board staff are appropriately addressed.

In cases where the law, policy, or procedures do not allow any change to the staff action, but a change appears justified, the TRAO is alerted to a potential area that may need clarification or modification. Several of the past suggestions for *Taxpayer Information Bulletin* articles, recommendations for policy or procedural changes, and legislative proposals have resulted from these types of contacts with taxpayers.

The TRAO provides assistance to taxpayers and Board staff to facilitate better communication between both parties and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff.

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## ACCOMPLISHMENTS

*The primary function of the TRAO is to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes, and to identify changes in policies, procedures and statutes to improve and/or ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights (TBOR) hearings, and issues identified by the TRAO, suggestions are presented to the program staff for evaluation. With the cooperation of Board staff, the following are changes that were accomplished this past year:*

- **Change in Fraud Standard of Proof** — At a TBOR hearing a representative raised the issue regarding the standard of proving fraud, suggesting that the standard of proof should be clear and convincing evidence, not preponderance of the evidence. As a result of a federal court decision concluding that California law requires civil tax fraud to be proved by clear and convincing evidence, the Board has amended Regulation 1703 to state that the standard of proof for civil tax fraud is clear and convincing evidence.
- **Improved Processing Time for Reimbursement of Bank Fees** — The TRAO reviews and approves reimbursement of bank fees where the Board's operations have caused erroneous levies to be issued. Once TRAO staff approves the reimbursement of bank fees, a payment request is submitted to the Accounting Section in the Administration Department. In the past after the Accounting Section received TRAO's request, they prepared a claim to the state Controller for a warrant to be issued. This process took approximately three to four weeks to complete. The Board felt that the taxpayer would be better served if the reimbursements were accelerated. As a result, new processes have been implemented and the reimbursements now take approximately one week for processing.
- **Taxpayers Notified Regarding Payment Plan: Relief of Finality Penalty** — When a taxpayer enters into a formal payment plan, one benefit is that the finality penalty will be waived if the payment plan is followed until the liability is paid in full. The TRAO has handled cases where taxpayers were late on payments, but were never notified of any problems until the conclusion of the payment plan, when they were told that the finality penalty would not be relieved. Recently, the Sales and Use Tax Department (SUTD) made changes to the existing form BOE-407-T, Installment Payment Agreement — Notice of Termination letter which informs the taxpayer that finality penalty may not be relieved unless the taxpayer adheres to the payment agreement. CPPM Chapter 7 has been updated with the current procedure.
- **Modified Lien Release Timeframe When Liability Paid by Personal Check** — In last year's *TRAO Annual Report*, Current Issues, the Board's policy regarding "Lien Release Timeframe" was discussed. With return processing improvements and implementation of the Integrated Revenue Information System (IRIS), the lien releases that used to take 60 days can now be issued in 30 days. As a result, the Compliance Policy and Procedures Manual (CPPM) section 763.040, Payments by Personal Check — Release of Lien, now provides for the revision of the time from 60 days to 30 days for the release of lien to be furnished.

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- ***Modified Reply to Request for Release of Security Letter*** — Last year's *TRAO Annual Report*, included an issue regarding the content of the BOE-930, Security Notification letter, which was not consistent with the modified Revenue and Taxation Code (RTC) section (§) 6701. As a result of discussions with TRAO and SUTD, the letter was updated with language consistent with RTC §6701. In addition, standard letters are now routinely reviewed through the clearance process, including review by the Customer and Taxpayer Services Division and TRAO, to ensure that they are consistent with current law and policy and understandable plain language.
  - ***Changed Taxpayer Notification After Bankruptcy is Dismissed*** — A taxpayer contacted the TRAO regarding a levy that was placed on his bank account. The taxpayer's issue was lack of notification prior to collection action. The taxpayer had recently been dismissed out of bankruptcy. The TRAO discussed the issue with SUTD and agreed that CPPM Chapter 7 should be clarified regarding this procedure. Section 754.110, Notification to Proceed with Collection — Legal Cases has been added to CPPM. It clarifies wording and adds the policy and procedure to either send a balance statement or attempt a telephone call before summary collection action after an account is removed from legal status.
  - ***Included TBOR and TRAO Information and Procedures in CPPM*** — Information about the TBOR and TRAO were previously included in two Operations Memorandums, which were not readily available or accessible to all Board staff or to the public. In coordination with SUTD, a new section was added to the CPPM which updated and clarified the various Taxpayers' Bill of Rights law sections, the roles and responsibilities of the TRAO, and when to contact or make referrals to the TRAO.

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## CURRENT ISSUES

*The following issues are in the process of being reviewed with program management to develop solutions.*

- **Implement Property Searches for Liens on Discharged Liabilities** — In last year's *TRAO Annual Report* the TRAO identified several cases involving bankruptcies, where a lien was filed. The Legal Division determined that liens filed on liabilities discharged from a bankruptcy are valid and enforceable but restricted to pre-petitioned property. Currently, if a taxpayer has a certified property search conducted and provides it to the Special Procedures Section; the lien will be released if it attaches only to post-petition property. The cost to the taxpayer to obtain this property search is considerable, especially for those taxpayers who have no real property (pre- or post-petition). In order to provide better customer service, on a case-by-case basis, TRAO proposed and SUTD agreed to the feasibility of conducting property searches in-house to ensure that the lien attaches to pre-petitioned property only. SUTD has ordered the additional software required to conduct the property searches. Upon receipt of the software, staff will be able to readily determine whether the lien attaches to pre- or post-petition property and issue appropriate lien releases.
- **Relief from Penalty Requests** — Existing statute requires the assessment of penalties for taxpayers who fail to comply with the statutory requirements to remit taxes by Electronic Fund Transfer (EFT), file a return timely, and remit taxes timely. In cases where the taxpayer believes that the failure was the result of circumstances beyond their control, a request for relief of penalty may be made through the Return

Analysis Section (RAS) of the Return Analysis and Allocation Division. RAS staff reviews and considers the approval or denial of these taxpayer requests based on established criteria in accordance with the statutes. If relief is not granted, the taxpayer may submit additional information and request to have the decision reconsidered by management. To appeal beyond this level, the taxpayer must pay the penalty, and file a claim for refund, and go through the legal appeals process. The TRAO recommended modification of this process to allow for further appeal without requiring the taxpayer to pay the penalty and file for a claim for refund. Due to the recent reorganization, RAS now reports to a different department within the Board, accordingly, clarification of the procedures is in process.

- **Collection Withheld While in Appeal** — Taxpayers have contacted TRAO when they have paid all the taxes, filed a claim for refund, and were in the appeal process. The then current procedures require them to continue to make payments on the remaining interest and penalty. After discussion with SUTD, it was agreed that a stay of collection would be granted while in the appeal process. The CPPM will be updated to reflect this change in procedures.
- **Corrective Letter (Lien) Procedures** — TRAO has received contacts from concerned taxpayers regarding the filing of liens. When it is determined that a lien was filed in error the lien is released. However, the taxpayers' credit history is directly affected by the lien action. There appears to be some inconsistency over responsibility and procedures for assisting the taxpayer to correct the error on their credit



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report. TRAO recommends development of written policy and system changes that clarifies the responsibilities of District and Centralized Collection staff (collection staff) and Special Procedures Section staff on this issue. In addition, the corrective letter which Special Procedures Section generates, should instruct the taxpayer that they should share this letter with the major credit agencies and file it with the County Recorder's Office.

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## EMERGING ISSUES

*As a result of taxpayer contacts and review of trends, policies and procedures within the Board, the TRAO recommends consideration of the following issues:*

- **Statute of Limitations — Vehicles and Vessels** — Cases have come to the TRAO where the taxpayer has received a notice that they owe taxes along with penalty and interest from a purchase of a vehicle or vessel made up to eight years prior. After this much time has elapsed, many taxpayers are unable to provide documentation to verify that they are exempt from the tax, or were not aware that they owed the tax. The TRAO would like to research the feasibility of reducing the statute of limitation on vehicles and vessels to three versus the current eight years.
- **Statute of Limitations — Unregistered Businesses** — TRAO has received contacts from anonymous taxpayers and representatives of anonymous taxpayers who have been in business for a period of time but who have not been collecting or remitting taxes properly. These contacts have suggested they would voluntarily come forward to register if the statute of limitation was three versus eight years of potential liability. Voluntary compliance is the cornerstone of the Board's collection program and some of these taxpayers are part of the underground economy. SUTD suggested this legislative change, however no author was identified. TRAO recommends the Board reconsider this legislative change and establish criteria and procedures if successful.
- **Centralize Updates for Accountant, Attorney and Representatives** — Taxpayer representatives periodically contact the TRAO regarding lack of notification to the representative. In addition, the repre-

sentatives do not know whom to contact when changes are required on their client's account. It was suggested that the Board have one centralized location to contact for these updates to the taxpayer's account or develop a systemized method to link account changes. TRAO would like to determine if this is a practical suggestion.

- **Liens that Affect Third Parties** — Normally the Board requires full payment of a third party in exchange for a release of lien, where the third party is associated with the tax debtor through common ownership of a property encumbered by the Board's tax lien. The demand is made without regard to the interest held or previously held by the tax debtor. The TRAO along with the Offer in Compromise Section (OIC) feel a policy should be developed that will consider the debtor's contribution to equity or lack thereof in contemplation of issuing a partial release of lien. Include in the lien policy special consideration for Innocent Spouses and ex-spouses who are not on the Board's lien but are affected by it. In this area, the policy should be consistent with Franchise Tax Board (FTB) and Internal Revenue Service (IRS). The TRAO and OIC Section have jointly developed an issue paper and are in the process of discussing the alternatives with SUTD and Legal.

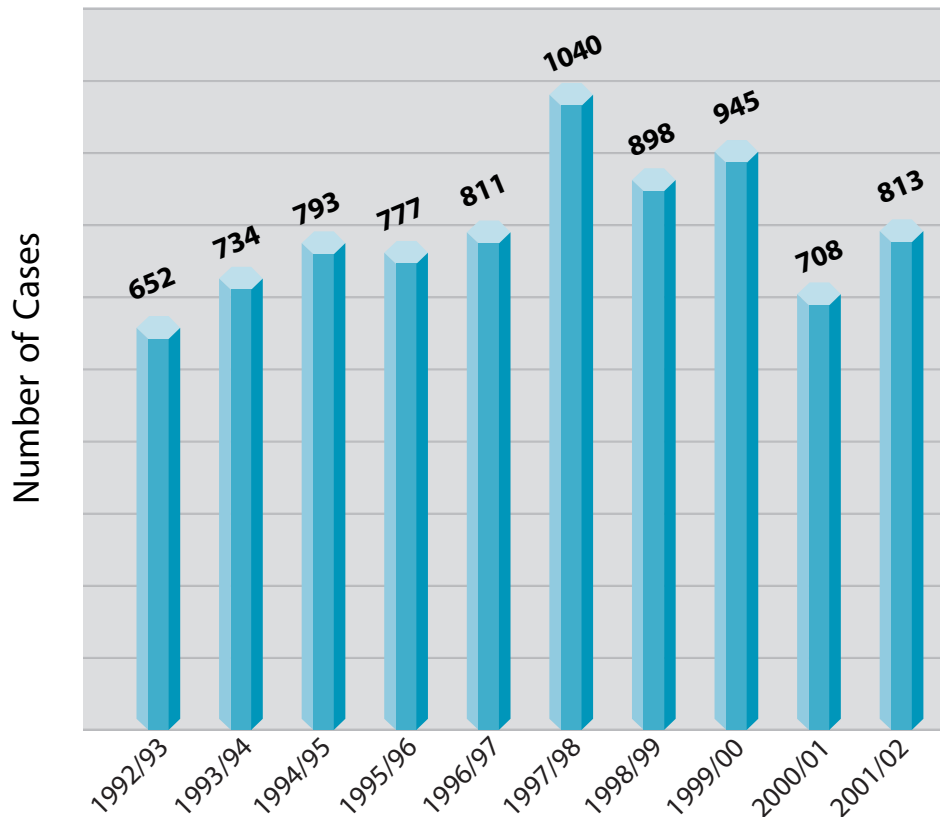
# TAXPAYER CONTACTS WITH TRA OFFICE

## Historical Caseload

During Fiscal Year 2001/02, the TRA0 handled 813 new Business Taxes cases. Business Taxes contacts have shown a relatively consistent growth pattern in the past ten years. This year we have seen an upward trend in contacts as the economy has declined. Historically a declining economy brings increased collection activities, as taxpayers are unable to meet their tax obligations.

Appendixes 1 and 2 provide a breakdown of contacts by district and headquarters offices. Cases were assigned to a specific district or headquarters office if the taxpayer contacted

the TRA0 due to a specific action taken by that office. Taxpayers who wanted information and guidance regarding a Board process or procedure were assigned to the TRA0 as the office of origin. When reviewing these appendices, it should be noted that there are many contributing factors that may cause certain districts to reflect a higher number of cases than other districts. These factors may include the number of taxpayers within the district, the type and size of business operations, geographic proximity to Sacramento, and district policy regarding referrals to the TRA0.



## Taxpayer Inquiries Cover a Wide Range of Issues

Of the cases received, 60 percent involved sales tax compliance-related issues, 19 percent involved sales tax audit-related issues, and 21 percent involved other issues, such as consumer use tax, special taxes and fees and FTB appeal matters.

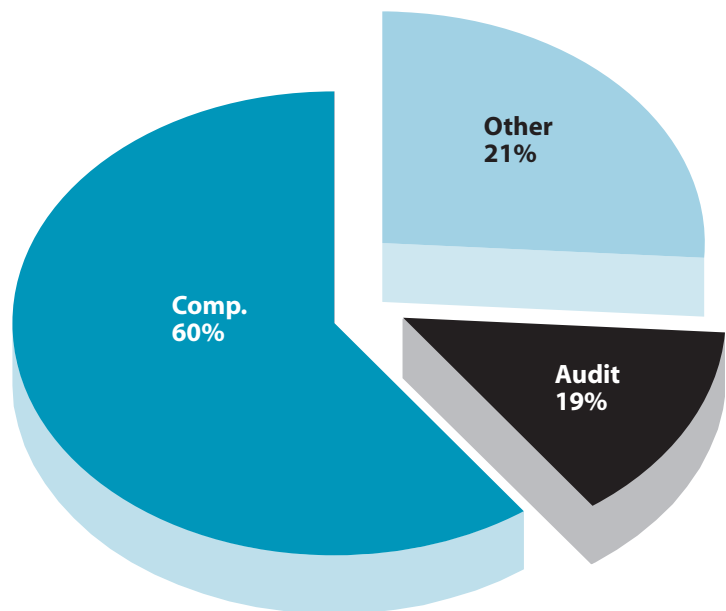
During the 2001/02 fiscal year, we tracked the reasons that taxpayers contacted our office and allowed for up to three reasons per contact in our statistics.

The most common reasons taxpayers contacted our office was to obtain information and guidance on a particular process, or to determine if an action taken by the Board staff was appropriate and in compliance with law and procedures. The remaining issues in descending order were: Lien, Question Liability, Levy, Audit Procedures, TRAO Intervention Requested, Penalty, Payment Plan, Refund, Account Maintenance, Tax Collection, Policy/Procedure, Security, Offers in Compromise, Appeals/Equalization, Interest, Consumer Complaint, Return, Late Protest, Ownership/Dual/ Successor, Petition, Assessment, Revocation, Bankruptcy, Innocent Spouse, Settlement, Reimbursement Levy, Earnings Withholding Order, Suggestion, Legal Issue, and Special Districts.

Customer service issues are segregated into *four* broad categories: *communication problems*, *Board delay*, *staff courtesy* and *education*. Communication issues include: misinformation, refusal to allow the taxpayer to talk to a supervisor, failure to answer specific taxpayer questions, not receiving a communication or notice; delays by the Board in responding to inquiries, issuing refunds or resolving the taxpayer's case; complaints about staff courtesy; and education in regard to the tax law or Board policy and proce-

dures. This fiscal year, approximately seven percent of the total TRAO contacts had customer service issues, the majority being education issues. The TRAO feels that these statistics reflect positively on the Board's efforts to become more customer focused and responsive to the needs of the public and to provide clear, timely, and courteous treatment to taxpayers.

The customer service statistics were captured solely based on the taxpayers' statements or impression of the situation; therefore, these statistics are not necessarily verified problems but reflect the taxpayers' perceptions of the situation. For example, if a taxpayer states



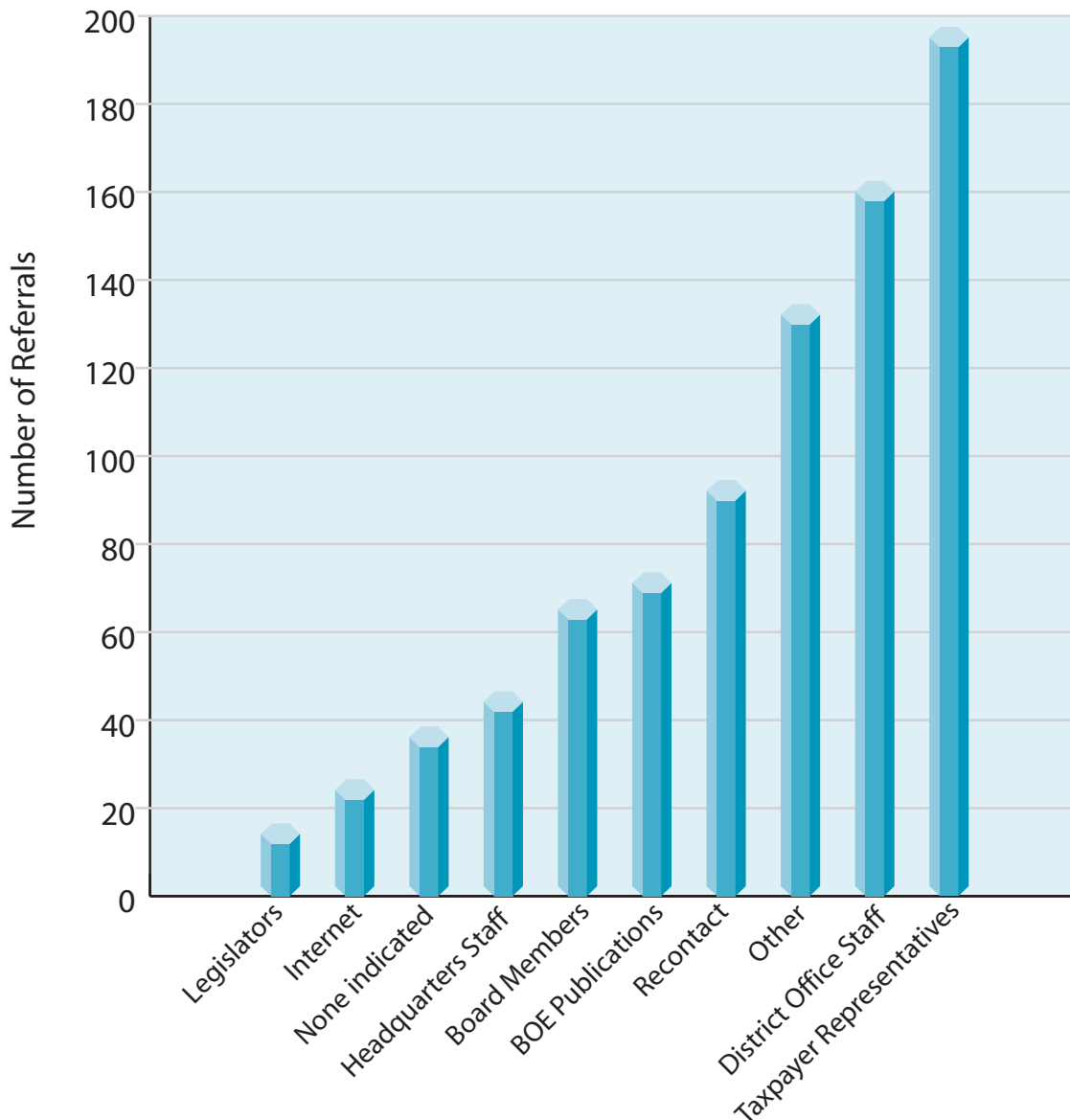
that collection staff made a rude comment, a "staff courtesy" complaint would be recorded. However, oftentimes the taxpayer's contentions did not match staff's recollection of the situation or were portrayed in a different perspective.

## How Taxpayers Were Referred to the Advocate Office

In an effort to improve our service to the public, our office attempts to identify the source of referrals. Of those accounts that identified a referral source, the majority were taxpayers' representatives which reflected approximately a 128 percent increase over last year. The TRA0 attributes these increases

to the efforts we have made in taxpayer outreach in both written publications and oral presentations.

The following chart gives a breakdown of how taxpayers were referred to our office based on those accounts that identified a referral source.



APPENDIX 1

TAXPAYERS' RIGHTS ADVOCATE'S OFFICE CASE SUMMARY  
(FY 2001/02)

Entity Working Case	Cases by Issue Type		Total Cases	Confirmed Staff Case Handling		Case Handling Changed		Satisfied with Outcome		Referred To			
	Audit	Compliance		Other	Yes	No	Yes	No	Yes	No	District	HQ	Other
Norwalk (AA)	4	11	3	18	3	9	4	7	11	0	4	5	2
Torrance (AB)	6	7	1	14	6	1	1	12	10	2	8	7	1
Van Nuys (AC)	7	30	8	45	12	9	12	19	30	1	15	12	6
Industry (AP)	2	15	8	25	9	2	7	14	12	1	12	6	2
Ventura (AR)	6	22	6	34	14	3	3	19	23	3	13	10	2
Culver City (AS)	3	21	6	30	15	4	6	18	19	5	13	9	3
San Francisco (BH)	6	19	3	28	9	9	9	13	18	2	18	7	1
Oakland (CH)	3	15	4	22	12	2	8	6	14	1	12	5	0
Santa Ana (EA)	13	31	4	48	15	6	14	12	32	2	21	9	3
Riverside (EH)	10	20	11	41	17	5	15	10	27	5	20	7	2
San Diego (FH)	4	10	4	18	12	2	5	8	11	4	9	2	2
San Jose (GH)	3	16	3	22	10	4	7	8	14	1	15	2	1
Santa Rosa (JH)	3	29	5	37	17	4	11	16	24	1	21	6	1
Sacramento (KH)	2	35	9	46	25	4	15	19	29	4	21	9	1
Out-of-State (OH)	4	2	8	14	5	3	2	5	6	1	2	3	2
Appeals Section	15	5	8	28	10	2	6	8	17	3	2	10	1
Board Member's Offices	1	3	1	5	2	0	1	0	2	0	1	0	1
Centralized Collection	6	34	1	41	25	3	19	7	25	7	1	29	0
Consumer Use Tax	0	20	9	29	4	3	2	13	20	2	3	17	2
Environmental Fees	0	6	6	12	6	0	6	1	8	1	1	6	0
Excise Taxes Division	4	3	5	12	6	1	3	3	6	2	0	7	0
Franchise Tax Board	2	5	2	9	0	0	1	0	5	1	0	3	0
Fuels Tax Division	1	12	7	20	12	2	5	9	12	1	0	15	0
HQ—General	10	4	4	18	6	0	0	1	1	0	0	1	0
Offer In Compromise	0	9	2	11	4	1	2	3	7	1	2	2	1
Petition Section	7	2	2	11	7	1	4	2	8	1	1	5	1
Refund Section	12	2	4	18	13	1	9	5	10	3	1	10	0
Return Analysis	0	11	2	13	10	0	2	8	6	4	1	5	0
Special Procedures	0	7	1	8	1	0	3	5	4	0	1	5	0
State Controller's Office	0	1	0	1	0	0	0	0	0	0	0	0	0
Taxpayer's Rights Adv.	22	82	31	135	21	3	3	15	78	6	15	18	5
Total	156	489	168	813	308	84	185	266	489	65	230	232	40

Note: The columns "Confirmed Staff Case Handling," "Case Handling Changed," "Satisfied with Outcome" and "Referred To" will not always equal the total cases since they are not applicable in all cases.

APPENDIX 2

TAXPAYER CONTACTS BY BUSINESS TAXES OFFICE

