

Memorandum

To : Ms. Cynthia Bridges
Executive Director (MIC 73)

Date: August 23, 2012

From : Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department (MIC 43)



Subject : Board Meeting September 12-14, 2012
Item N: Administrative Agenda
Proposed Revisions to Compliance Policy and Procedures Manual
Chapter 1, *General* and Chapter 7, *Collections*

In accordance with the established procedures for audit and compliance manual revisions, I am submitting the following proposed revisions to Compliance Policy and Procedures Manual (CPPM):

- Chapter 1, *General*
- Section 757.065, *United States Coast Guard Liens*
- Section 771.000, et seq., *Interagency Offsets*

The proposed revisions, which incorporate current policies and procedures, have been reviewed and approved by SUTD management, provided to Board Members, and posted at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties. No comments were received from interested parties with regard to these revisions.

The revised sections and exhibit are attached for your reference. We request your approval to forward them to the Board Proceedings Division for placement on the next Administrative Agenda as a consent item. If you have any questions, please let me know or contact Ms. Susanne Buehler at 324-1825.

SB:llw
Attachment

Approved:

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the September 13, 2012 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division


Ms. Cynthia Bridges
Executive Director

Sections are being revised to incorporate and update current compliance policies and procedures. Additional sections are being revised for clarity and language consistency.

CPPM
Section

Summary of Revisions – CPPM Chapter 1, *General*

105.020	Deleted reference to obsolete Operations Memo 1088. Updates to Special Taxes and Fees listings.
110.030 thru 110.100	General updates to Special Taxes and Fees provisions.
120.030	Deleted reference to obsolete Business Taxes General Bulletins. The 2 nd and 3 rd paragraphs under Verbal Inquiries were rewritten to emphasize the availability of information on the BOE website. Updated the text to include recent amendments to <u>Regulation 1705</u> regarding reliance on written advice issued by the BOE to trade associations and franchisors on behalf of their members or franchisees.
130.042	Deleted this section because the “searching service” is no longer performed.
135.075	Incorporated provisions from <u>Operations Memo 1041</u> .
150.010	Deleted 4 th paragraph as it is a repeat of the text in CPPM 120.030.
150.040	Updated text to include recent amendments to <u>Regulation 1705</u> .
Throughout	Non-substantive revisions were made for clarity and language consistency.

GENERAL

MISSION AND PHILOSOPHY

105.003

The mission of the State Board of Equalization (BOE) is to serve the public through fair, effective, and efficient tax administration.

The BOE is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. This publication of the BOE's compliance policies and procedures demonstrates BOE's commitment to 1) providing assistance and information to the public and 2) administering a fair and firm enforcement program to ensure that taxes are reported and paid properly.

PURPOSE OF COMPLIANCE MANUAL

105.005

The information in this manual will assist compliance staff in the equitable and uniform administration of the business tax programs administered by the BOE. The manual incorporates processes, procedures, and techniques that have evolved over a period of years and that have proven to be ~~sound and practical~~ effective.

HISTORY

105.010

The State Board of Equalization was created under the California Constitution of 1879 as successor to an agency of the same name but of different composition. As successor, the BOE inherited the duty of maintaining a uniform level of property assessment between counties. The state Constitution added the duty of assessing inter-county railroad property and utilities. The BOE is the oldest board in existence in California and is the only elected board in California State Government. Since 1879, the BOE has been given many additional duties - some by the Legislature, others by the voters. As one of the two major revenue agencies for the state, it has a staff of more than 4,200 employees and collects approximately one-third of the state's revenue.

The five members that comprise the Board at the BOE are responsible to the people. One member is elected from each of four equalization districts. The fifth member of the Board is the State Controller, one of whose functions is to serve as an ex-officio member of the Board. A map showing of the equalization districts is contained in the Introduction to the Business Taxes Law Guide. Pursuant to Government Code 15623, with the exception of the State Controller, Each member of the Board has the duty to investigate the administration of the laws within the district from which he or she is elected and for which the BOE, as

a whole, has statewide responsibility. ~~The fifth member of the Board is the State Controller, one of whose functions is to serve as an ex-officio member of the Board.~~

ORGANIZATION

105.020

The Executive Director is the chief administrative officer of the BOE. The Executive Director is assisted by the Deputy Directors of the Sales and Use Tax, Property and Special Taxes, and Administration Departments. For detailed information about the functions and duties of the deputy directors and their departments, see State Board of Equalization Administrative Manual (BEAM), Part 1, *Organization and Functions*. Exhibit 1 at the end of this chapter contains a list of the tax programs administered by the Sales and Use Tax (SUTD) and the Property and Special Taxes Departments (PSTD).

In addition to collecting sales and use tax on behalf of the state, the BOE contracts with counties and cities to collect the tax due under the Bradley-Burns Uniform Local Sales and Use Tax Law. The BOE also contracts to collect tax for districts authorized by law to impose a transactions and use tax. These taxes are reported and paid on the same returns used to report state sales and use tax.

The BOE also contracts with, or is required to collect, special taxes or fees for the following agencies:

1. ~~Integrated Waste Management Board~~ Department of Resources Recycling and Recovery to collect the Integrated Waste Management Fee, the California Tire Recycling Fee, and the Electronic Waste Recycling Fee.
2. Air Resources Board to collect a portion of the California Tire Fee.
- ~~2.3.~~ State Lands Commission to collect the Ballast Water Management Marine Invasive Species Fee.
- ~~3.4.~~ Department of Public Health to collect the Childhood Lead and Occupational Lead Poisoning Prevention Fees.
- ~~4.5.~~ Department of Toxic Substances Control to collect the Hazardous Substances Tax Waste and Environmental Fees.
- ~~5.6.~~ California Energy Commission for the collection of the Energy Resources Surcharge.
- ~~6.7.~~ California Public Utilities Commission to collect the Natural Gas Surcharge.
8. State Water Resources Control Board to collect the Underground Storage Tank Maintenance Fee and the Water Rights Fee.

GENERAL

9. Department of Forestry and Fire Protection to collect the State Responsibility Area Fire Prevention Benefit Fee.
10. California Technology Agency to collect the Emergency Telephone Users Surcharge.
11. Department of Fish and Game to collect the Oil Spill Response, Prevention and Administration Fees.

See CPPM 110.000 for a description of the tax and fee programs administered by the BOE.

BUSINESS TAXES

105.030

Business taxes are administered by both SUTD and PSTD. To enhance the public convenience and efficient administration of sales and use taxes, the BOE's four equalization districts are divided into ~~14~~13 administrative districts, each under the direction of a district administrator who reports directly to the Chief of Field Operations in headquarters. Each district administrator oversees the operation of the district office and its branch offices (see CPPM 105.032).

An Out-of-State District is located in Sacramento, making a total of ~~15~~14 administrative districts. The Out-of-State District has branch offices in New York City, Chicago and Houston to service accounts that conduct business in California or incur tax liability in this state, but are headquartered outside California (see CPPM 105.032).

PSTD is headquartered ~~primarily~~ in Sacramento and includes the ~~Excise Taxes, Environmental Fees, and Fuel Taxes~~ Special Taxes and Fees Divisions and the Motor Carrier Office. PSTD is responsible for administering all of the remaining business taxes programs. In addition to its headquarters staff, the ~~Fuel Taxes Division~~ Motor Carrier Office has a ~~small field unit staff~~ that inspects motor carriers at border stations throughout the state and the Special Taxes and Fees Division also maintains an ~~office~~ staff in Houston to audit ~~fuel~~ companies that incur a tax liability in this state. PSTD staff is occasionally assisted by district office staff.

The duties of SUTD and PSTD include both compliance and audit functions. The function of the field auditing staff is to audit the records of taxpayers to determine the accuracy of self-assessed taxes and fees and recommend, when necessary, amounts to be assessed or refunded. The compliance function is detailed in CPPM 120.000.

COMPLIANCE POLICY AND PROCEDURES MANUAL

SUTD and PSTD are assisted by the Legal Department through the Investigations and Special Operations Division when a taxpayer is suspected of criminal fraud. The Investigations Division has units in both Northern and Southern California. The Special Operations Branch is located in headquarters. ~~If a taxpayer is suspected of engaging in efforts to defraud the state, Sales and Use Tax Department and Special Taxes Department staff should follow the procedures detailed in Operations Memo 1088, *Criminal Tax Evasion Cases*.~~

GENERAL

TRANSACTIONS(SALES) AND USE TAX

110.025

This law authorizes districts, with voter approval, to adopt an ordinance(s) imposing a transactions and use tax or taxes. "District" means any city, county, city and county, or other governmental entity authorized to impose transactions and use taxes pursuant to Part 1.6, Division 2 of the RTC. Each district desiring to have a transactions and use tax must contract with the BOE to administer the Transactions and Use Tax Law.

Unless the principal act of the district provides for a different rate, the rates of the transactions and use taxes are fixed at one-quarter, one-half, or three-quarters of one percent of the selling price of tangible personal property sold at retail in the district, or purchased outside the district for use in the district (unless the sale is subject to a transactions and use tax at the place of purchase). The combined rate of all transactions and use taxes imposed in any county shall not exceed two percent.

~~This law authorizes districts, with voter approval, to adopt an ordinance which imposes a transactions (sales) and use tax. Tax rates may be in one eighth to one half percent increments but the total rate of all districts in a locality may not exceed one and one half percent of the selling price of tangible personal property sold at retail in the locality, or purchased outside the locality for use within the locality (unless the sale is subject to a transactions (sales) and use tax at the place of purchase). Each district desiring to have a transactions (sales) and use tax must contract with the Board to administer the Transactions and Use Tax Law.~~

While many districts are encompassed by county boundaries, there are two districts that encompass multiple county jurisdictions: BART (Bay Area) and SMART (Sonoma/Marin). Retailers operating in either of these multi-jurisdictional districts must collect the district tax for all the participating counties. For example, a retailer that operates only a single location in Alameda county and who does not have a physical presence in San Francisco, Contra Costa or San Mateo counties, must collect the BART district tax when the retailer has merchandise delivered to a purchaser in any of those counties. The retailer is not required to collect any other district tax(es) imposed within those counties, if the retailer is not engaged in business there.

MOTOR VEHICLE FUEL LICENSE TAX AND

THE MOTOR VEHICLE FUEL TAX

110.030

The Motor Vehicle Fuel Tax is imposed upon suppliers, refiners, position holders, enterers and blenders. The tax applies to the removal of motor vehicle fuel (gasoline) from a terminal or refinery (at the rack), the entry of motor vehicle fuel into this state if not by bulk transfer, and the removal or sale of previously untaxed blended fuel by the blender. Until December 31, 2001, the Motor Vehicle Fuel License Tax is imposed for the privilege of distributing motor vehicle fuel (gasoline, etc.). See the chart in CPPM 110.037 at <http://www.boe.ca.gov/sptaxprog/sptdrates.htm> for the current tax rate for applicable to each gallon

COMPLIANCE POLICY AND PROCEDURES MANUAL

~~of fuel distributed. All fuel refined, manufactured, produced, blended, blended or compounded in this state, or imported into this state and no longer in the possession of the distributor, is presumed under the law to have been distributed.~~

Persons who have paid the ~~license~~ motor vehicle fuel tax, either directly or to a vendor shall be reimbursed the amount of the tax paid if the gasoline was used in an exempt manner under RTC sections 8101 through 8101.7. To receive this reimbursement, the claimant must file a claim with the State Controller.

Aircraft jet fuel dealers who make taxable sales or taxable use of aircraft jet fuel must be registered and ~~pay two cents (\$0.02) license~~ remit tax for each gallon of aircraft jet fuel sold or used. For more information on exempt sales or use, refer to ~~section 7374 of the Motor Vehicle Fuel License Tax Law, Chapter 2.5, Aircraft Jet Fuel Tax, sections 7385 to 7398.~~ Effective January 1, 2002, the Motor Vehicle Fuel License Tax was replaced with the Motor Vehicle Fuel Tax.

~~The Motor Vehicle Fuel Tax shifts the imposition of the tax from the distribution of the fuel to the removal of motor vehicle fuel from a refinery or terminal rack. The tax is paid by refiners, position holders, enterers, and blenders. The application of tax to motor vehicle fuel is the same as the Diesel Fuel Tax.~~

DIESEL FUEL TAX

110.033

The Diesel Fuel Tax is imposed upon suppliers (refiners, position holders, enterers and blenders). The tax applies to the removal of diesel fuel from a terminal or a refinery at the rack, the entry of diesel fuel into this state if not by bulk transfer, and the removal or sale of previously untaxed blended fuel by the blender.

Diesel fuel is any liquid that is suitable for use in a diesel-powered vehicle and, pursuant to RTC section 60023, also includes biodiesel, biomass-based diesel, virgin and used vegetable oils, and animal fats.

~~In addition, the Interstate Users Tax (Component b) is imposed on persons who use diesel fuel in the operation of a qualified motor vehicle in this state and who operate the vehicle within and without this state or the United States. Interstate users must obtain a fuel trip permit or an International Fuel Tax~~

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Agreement (IFTA) license to assure the proper payment of diesel fuel tax for gallons of diesel fuel used on the public highways of California.

~~Exempted from the tax is diesel fuel for purposes other than operating motor vehicles upon public highways of the state.~~ Diesel fuel used for purposes other than operating a diesel-powered motor vehicle upon public highways in California is not subject to application of the diesel fuel tax. In addition, A-a partial exemption applies to diesel fuel used in certain bus operations described in section 60039 of the Diesel Fuel Tax Law section 60039. Fuel usage that qualifies for the partial exemption is subject to a tax of one cent per gallon. Diesel fuel is colored with red dye for off-highway and other exempt uses.

The Interstate Users Tax (Component b) is imposed on persons who use diesel fuel in the operation of a qualified motor vehicle in this state and who operate the vehicle within and without this state or the United States. Interstate users must obtain a fuel trip permit or an International Fuel Tax Agreement (IFTA) license to assure the proper payment of diesel fuel tax for gallons of diesel fuel used on the public highways of California.

Note on Diesel Fuel Tax – Component b: RTC section 60116 establishes the interstate user component of the Diesel Fuel Tax. The rate of Component b may vary from year-to-year. The rate is established each year on January 1 and is based on the average retail sales price per gallon of diesel in California multiplied by a percentage equal to the combined state and local sales tax rate.

USE FUEL TAX

110.035

An excise tax is imposed on alternative fuels (liquefied petroleum gases (LPG), liquid natural gas (LNG), compressed natural gas (CNG), alcohol fuels, kerosene, and distillate) used to propel a motor vehicle on highways except fuel that is subject to the tax imposed by Part 2 or Part 31 of the Revenue and Taxation Code (gasoline or diesel tax). The tax is imposed upon the user of the fuel. Any vendor who sells and delivers the fuel into a vehicle's fuel tank shall, at the time of sale, collect the tax from the user. The vendor then becomes liable for the tax.

See the chart in CPPM 110.037 at <http://www.boe.ca.gov/sptaxprog/sptdrates.htm> for the current tax rate for each gallon of fuel.

COMPLIANCE POLICY AND PROCEDURES MANUAL

The user must file a return and account for his or her fuel sales and usage even though he or she has paid all of the tax to the vendor and has no liability. A user of fuel cannot claim a deduction for tax paid to a vendor unless he or she has actually paid the bill.

~~The full and partial exemptions for Use Fuel Tax are the same as for the Diesel Fuel Tax. Users of fuel who own or operate vehicles propelled by LPG, LNG or CNG have the option of paying the applicable use fuel tax directly to the vendor, or to the state if the user has bulk storage, or paying an annual flat rate fuel tax to this the Board BOE. Payment of the annual flat rate tax entitles the user to purchase LPG, LNG or CNG without payment of the use fuel tax to the vendor or state, regardless of the type of conversion system installed on the vehicle.~~

The full and partial exemptions under the Use Fuel Tax Law are the same as for the Diesel Fuel Tax Law. Additionally, some users are exempt from obtaining permits and filing returns. Interstate users of use fuel may obtain a fuel trip permit. or may obtain a four day use fuel tax permit (see CPPM Chapter 2).

FUEL TAX ENFORCEMENT

110.036

~~A sound enforcement program is essential to effective diesel or use fuel tax administration. Since such a program results in the apprehension of those who have not complied with permit or license requirements, it helps protect the tax base and ensures that those who comply with the law do not suffer a competitive disadvantage.~~

~~Special Taxes' enhanced truck stop program is a major means of enforcing the Diesel Fuel Tax. (See CPPM 110.033) The program may thwart the importation and unlawful use of untaxed diesel fuel, encourages voluntary compliance, and deters tax evasion. A truck check is also a valuable tool for collecting liabilities and clearing delinquencies under all Board programs. Furthermore, examination of bills of lading provides leads to sales and use tax evasion and to sales of contraband cigarette and tobacco products or untaxed alcoholic beverages.~~

~~Under the enhanced truck stop program, Business Taxes Representatives (BTR) are stationed at permanent and temporary truck stops set up by the CHP. In addition to registration, reinstatement, and routine collection duties, these BTR's duties include seizure, sale, and assessment of criminal penalties. The BOE's Motor Carrier Office maintains a staff presence at various CHP and agricultural inspection facilities on the major California interstate highways. Staff at these locations monitors vehicles passing through the facilities to ensure that interstate users of fuel are properly licensed for fuel tax reporting purpose or have valid California fuel tax trip permits. Tax and penalties are assessed to interstate users who do not have proper licenses or permits. Outstanding tax liabilities, penalties, and any tax returns that are due from revoked California-based accounts are collected before the truck is permitted to proceed to its destination. Trucks may be seized, impounded, and sold if compliance is not obtained.~~

GENERAL

In addition to fuel tax enforcement, staff identifies loads and inspects bills of lading for cargo that may be subject to California use tax or, in the case of Christmas trees, is destined for sale by California retailers. Trucks carrying petroleum products are occasionally stopped to confirm that untaxed fuel is not entering California. Leads are developed for these programs and other BOE-administered tax and fee programs.

BOE staff is not authorized to take fuel samples from fuel tanks. To prevent the use of dyed diesel fuel on California highways, the BOE contracts with the Air Resources Board to conduct random roadside inspections. Those users found to be in violation of the Diesel Fuel Tax Law are assessed diesel fuel tax and penalty.

FUEL TAX SPECIAL TAXES AND FEES RATES

110.037

The special tax or fee rate and the year it was introduced or changed is provided on the Board's web site at http://www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm.

Effective Date and Rate (per gallon)			
Fuel	1-1-92	1-1-93	1-1-94
Gasoline	\$0.16	\$0.17	\$0.18
Alcohol	\$0.08	\$0.085	\$0.09
LNG & LPG	\$0.06	\$0.06	\$0.06
CNG	\$0.07	\$0.07	\$0.07
Diesel	\$0.16	\$0.17	\$0.18
Diesel Component b	See Note		

There has been no change in fuel tax rates since 1994.

Note on Diesel Fuel Tax— Component b: RTC section 60116, effective October 3, 1997, establishes the interstate user component of the Diesel Fuel Tax. The rate of Component b may vary from year to year. The rate is established each year on January 1 and is based on the average retail sales price per gallon of diesel in California multiplied by a percentage equal to the combined state and local sales tax rate. The current rate of Component b is available from the Fuel Taxes Division or can be accessed through the IFTA website: www.IFTACH.org.

TAX ON INSURERS

110.038

The insurance tax is levied against insurance companies in lieu of all other taxes except license fees and real estate taxes. The tax is based on the gross amount of premiums for insurance sold in California or, in the case of ocean marine insurance, on underwriting profits.

GENERAL

CIGARETTE AND TOBACCO PRODUCTS TAX

110.040

Two types of excise taxes are collected on cigarettes and tobacco products distributed in California: 1) the cigarette tax, and 2) the cigarette and tobacco products surtax. A cigarette distributor is a person who sells cigarettes upon which the tax liability has not yet accrued. Cigarette distributors are subject to both taxes, which they pay by purchasing tax stamps from the BOE and affixing them to each package of cigarettes before distribution.

Tobacco products, not including cigarettes, are subject only to the cigarette and tobacco products surtax. Tobacco products include all forms of cigars, smoking tobacco, chewing tobacco, and snuff, as well as other products containing at least 50 percent tobacco. The surtax rate is determined annually by the BOE.

~~A tax for each cigarette is imposed upon cigarette distributors. A distributor is a person who sells cigarettes upon which the tax liability has not yet accrued. The tax is prepaid by the distributor through the use of stamps, which must be affixed to each pack of cigarettes before its distribution. The Bank of America holds the current contract to supply stamps to the distributors.~~

~~A tax is imposed upon distributors of tobacco products, based on the wholesale cost of the products, at a rate determined annually. If you need the current rates or have other questions, contact the Excise Taxes Division.~~

CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003

110.042

The Cigarette and Tobacco Products Licensing Act imposed licensing requirements upon all retailers, wholesalers, distributors, manufacturers, and importers of cigarette and tobacco products. The Act, intended to decrease tax evasion on the sale of cigarettes and tobacco products in California, also included provisions for new recordkeeping requirements, inspection and seizure of any untaxed cigarettes and/or tobacco products, and imposed civil and criminal penalties for violations.

ALCOHOLIC BEVERAGE TAX

110.045

The tax imposed upon beer, wine, and distilled spirits varies with the type of beverage and alcoholic content. Issuance of a license to any manufacturer, wine grower, distilled spirits manufacturer's agent, rectifier, wine-rectifier blender, wholesaler, importer, or customs broker, on-sale general brew pub, or industrial alcohol dealer by the Department of Alcoholic Beverage Control (ABC) constitutes registration with the ~~Board~~BOE insofar as the Alcoholic Beverage Tax Law requirements are concerned.

~~When a liquor license has been applied for that requires a supporting surety bond, ABC furnishes the Board notifies the BOE. with a notice that a license has been applied for requiring a supporting surety bond. The BOE's Excise Special Taxes and Fees Division then requests a bond or other acceptable security~~

in the required amount. The ABC also notifies the ~~Board~~BOE of alcoholic beverage license surrenders or transfers.

HAZARDOUS SUBSTANCES TAX/WASTE AND ENVIRONMENTAL FEES

110.050

DISPOSAL FEE

The Disposal Fee is imposed on persons who dispose of or submit for disposal hazardous waste in California. The fee is collected by the operator of the disposal facility where the waste is submitted for disposal. The facility operator reports and pays the fees on a monthly basis, based upon tons of waste disposed.

GENERATOR FEE

The Generator Fee is imposed upon persons who generate hazardous waste in California and it applies to persons who generate certain types of hazardous waste outside this state if the waste is shipped into California. The Generator Fee is a site-specific fee. ~~It is~~ based upon the amount of waste generated at a specific generating site and is reported on a yearly basis. Accounts meeting certain criteria may be required to file prepayment returns.

FACILITY FEE

The Facility Fee is imposed on persons who have been issued a Hazardous Waste Facility Permit or who have been granted interim status to operate a hazardous waste facility. Facility permits, issued by the California Department of Toxic Substances Control (DTSC) are required of persons who treat, store, or dispose of hazardous waste on-site. The fee is ~~reported~~ assessed on an annual basis, with two prepayments of 50% each.

ACTIVITY FEE

Activity Fees are imposed on persons who have filed various applications with the ~~California Department of Toxic Substances Control (DTSC)~~, including applications for permits and variances. These fees are billed based upon information provided to the ~~Board~~BOE by the DTSC.

ENVIRONMENTAL FEE

GENERAL

The Environmental Fee is a fee imposed upon all corporations-businesses and organizations identified by a standard classification code that consists of corporations in industry groups that use, generate, or store, hazardous materials or that conduct activities related to hazardous-those materials. The fee ~~is based~~ applies to corporations, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and sole proprietorships that have upon the number of 50 or more employees who are employed more than 500 hours in California during a calendar year. DTSC has determined that all of these organizations are subject to the fee unless specifically exempt. The fee is based on the number of qualifying employees and is reported-assessed on an annual basis.

In addition to the above fees, the Occupational Lead Poisoning Prevention and the Childhood Lead Poisoning Prevention fees are administered under provisions of the Hazardous Substances Tax Law, but are separately imposed. ~~(See CPPM s 110.052-110.053)~~

OCCUPATIONAL LEAD POISONING PREVENTION FEE

110.052

The Occupational Lead Poisoning Prevention Fee is imposed on persons who operate in industries identified as having a potential for causing occupational lead poisoning. The fee is ~~reported-assessed~~ on an annual basis.

CHILDHOOD LEAD POISONING PREVENTION FEE

110.053

The Childhood Lead Poisoning Prevention Fee is imposed on distributors of motor vehicle fuel, distributors of architectural coatings, and on facilities releasing lead into the ambient air. The fees are ~~due-assessed~~ annually.

UNDERGROUND STORAGE TANK MAINTENANCE FEE

110.054

The Underground Storage Tank Maintenance Fee is imposed upon underground storage tank owners. The fee is reported on a quarterly basis and ~~the rate per~~ is imposed upon each gallon of fuel placed into the underground tank.

COMPLIANCE POLICY AND PROCEDURES MANUAL

\$0.006	Effective January 1, 1991
\$0.007	Effective January 1, 1995
\$0.009	Effective January 1, 1996
\$0.012	Effective January 1, 1997

INTEGRATED WASTE MANAGEMENT FEE 110.055

A fee is imposed upon solid waste disposal facility operators such as municipal and private landfill operators. The fee is based on tons of solid waste disposed and is reported on a quarterly basis.

CALIFORNIA TIRE FEE 110.065

The ~~Tire Recycling Fee~~ is imposed upon every person who purchases a new tire, including new tires provided as part of the sale or lease of a new or used motor vehicle, new or used construction equipment, or new or used farm equipment. ~~The current fee is set at \$1.75 per tire, effective January 1, 2001. The prior rate was 25 cents per tire. The seller is required to collect the \$1.00 per tire fee and remit it on a quarterly basis. The seller is allowed to retain three per cent~~ 1.5 percent of the fee, ~~effective January 1, 2001 (ten percent prior to 1/1/01) for reimbursement of related collection costs. Operative January 1, 2015, the California Tire Fee will be reduced and the retail seller can retain three percent for reimbursement of related collection costs.~~

OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES 110.070

OIL SPILL RESPONSE FEE

Every operator of a refinery must pay a fee for each barrel of crude oil received at a refinery within the state. Every owner of petroleum products must pay a fee for each barrel of petroleum products received at a marine terminal from outside this state. The fee is collected by the marine terminal operator from the owner of the petroleum products. Every operator of a pipeline must pay a fee ~~of \$0.25~~ for each barrel of petroleum products transported into this state by means of a pipeline operating across, under or through marine waters of this state. The size of this fund is to be maintained at a specified level. Any amount over this level will be refunded to the fee payers. Collection of the fee is suspended whenever sufficient funding exists.

GENERAL

OIL SPILL PREVENTION AND ADMINISTRATION FEE

Every owner of crude oil or petroleum products must pay a fee of ~~\$0.04~~ for each barrel of crude oil received at a marine terminal from within or outside the state and for every barrel of petroleum products received from outside the state. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum products. Every operator of a pipeline shall pay a fee for each barrel of crude oil originating from a production facility in marine waters and transported in this state by means of a pipeline operating across, under or through marine waters of this state.

~~BALLAST WATER MANAGEMENT~~MARINE INVASIVE SPECIES FEE **110.075**

The ~~Ballast Water Management~~Marine Invasive Species Fee Collection Law ~~is imposed~~ imposes a fee upon the owner or operator of any vessel that enters a California port with ballast water loaded from outside the Exclusive Economic Zone (EEZ). The fee, also known as the Ballast Water Management Fee, is imposed for each voyage and is billed based on information provided to the ~~Board~~BOE by the Marine Exchanges and other sources.

NATURAL GAS SURCHARGE **110.080**

The Natural Gas Surcharge Program imposes a surcharge on all natural gas consumed in California. The surcharge applies to all consumption, except natural gas used to generate power for sale, resold to end users, used for oil recovery, utilized in co-generation technology, or produced in California and transported on a proprietary pipeline. All public utility gas corporations operating in this state, and all persons consuming natural gas in this state, where the natural gas that has been transported by an interstate pipeline, must register for this program. Returns are due quarterly.

ELECTRONIC WASTE RECYLING FEE **110.090**

The Electronic Waste Recycling (eWaste) Fee is imposed on the retail sale or lease of certain electronic products that have been identified by the Department of Toxic Substances Control (DTSC) as covered electronic devices (CEDs). Products covered by the fee include a variety of video display devices. To remit the fee, a retailer of CEDs must register with the BOE. A retailer may retain 3 percent of the eWaste fee it collects as reimbursement for costs associated with the collection of the fee.

WATER RIGHTS FEE **110.100**

The Water Rights Fee applies to owners of water rights and is collected annually. The fee is based upon a schedule of fees adopted by the State Water Resources Control Board.

FIRE PREVENTION FEE

110.110

The Fire Prevention Fee (FPF) is assessed on habitable structures located within State Responsibility Areas (SRA). Property owners will be assessed an amount on each habitable structure located within the SRA. The Department of Forestry and Fire Protection (CALFIRE) is responsible for providing the BOE with a list of persons who are liable for the FPF and the amount of the fee(s) to be assessed. The FPF is assessed annually and the amount is subject to annual adjustment using prescribed methods.

ADVICE TO TAXPAYERS

120.030

The importance of giving complete and correct advice to taxpayers cannot be over emphasized. Incomplete information or misinformation given to a taxpayer by a BOE employee has a disastrous effect upon good public relations. In addition, RTC section 6596 for sales and use tax and similar sections for taxes administered by PSTD may relieve the taxpayer of tax, interest, or penalty when failure to report or pay is due to reliance on written advice from the BOE(see CPPM 150.040). Authorizing statutes for the sales and use tax and for special taxes are summarized in Exhibit 2, Table 1 – Reliance on Written Advice. The compliance employee must be sure that all answers given to the public are correct. The entire case must be carefully examined before a conclusion is reached. Snap answers, or answers based upon incomplete information, are inexcusable. In addition, it is never appropriate for a BOE employee to offer any legal advice, other than interpretation of the tax laws administered by the BOE.

~~Any officially published regulation, publication, or informational release of the BOE intended for public distribution of the Board may be furnished to the taxpayer. (See CPPM 135.075.) Business Taxes General Bulletins which may be released to the public are marked with the symbol (PR) immediately following the bulletin number. Bulletins issued prior to December 30, 1963, which are published in the Business Taxes Law Guide, may also be distributed. Operations Memos which that do not have a "confidential" status notation under the title, "OPERATIONS MEMO" are available on BOE's website may also be furnished to the public. Operations memos that have a confidential status notation must have all confidential information redacted before being given released to the public. Staff should contact the Board's Disclosure Officer in the Internal Security and Audit Division for a redacted copy.~~

ANNOTATIONS

Annotations should not be used as the basis for advice given to taxpayers, as they do not have the force and effect of law. Annotations are synopses of past advice provided by the BOE's legal staff and may be revised at any time. For research purposes, it can be helpful to review the backup letter summarized by

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the annotation. Both the annotations and the backup letters are available on BOE's website. If a copy of an annotation is provided to any person, it must be accompanied by the following statement:

"Annotations are summaries of the conclusions reached in selected legal rulings of counsel. Annotations are intended to provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance. Annotations do not have the force or effect of law and may be revised at any time. Following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, and penalty except: (1) when the advice was written in direct response to a request for advice from the specific taxpayer seeking to rely on the advice; or (2) the annotation or legal ruling of counsel is provided to the taxpayer within the body of a written communication in direct response to a written inquiry from that taxpayer and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel."

Questions pertaining to other agencies or to the laws they administer should be referred to that agency.

WRITTEN ADVICE

Written advice by the ~~Board~~BOE to a taxpayer in response to a taxpayer's specific written inquiry or an inquiry from the taxpayer's representative seeking relief from liability may constitute written advice that the taxpayer can be relied-rely on for relief from liability under RTC section 6596 relief for similar statutes in the BOE's other tax programs. To be considered a specific written inquiry, representatives must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.

In responding to accountants, attorneys, or other taxpayer representatives, ~~where~~when the name of the taxpayer is not divulged in the correspondence, the writer will ask ~~that~~ the representative to divulge provide the name and permit number of the taxpayer to enable the ~~Board~~BOE to maintain appropriate records with respect to the information provided. The taxpayer's name and permit number will be referenced in the ~~Board~~BOE's response.

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~~Tax advice to trade associations, taxpayer representatives failing to identify their clients, and/or taxpayers whose questions are vague or general in nature must include the following statement:~~

~~The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under section 6596.~~

~~If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. It is important that staff summarize those new facts in their written response, particularly if the discussion with the taxpayer or representative is by phone. the taxpayer should be encouraged to write again and setting forth the specific facts. Staff is encouraged not to make presumptions/assumptions. However, should it become necessary to do so, they should be clearly identified as such in the letter.~~

A trade or industry association or franchisor may request advice on behalf of its member(s) or franchisee(s) if the association or franchisor identifies and includes the specific member or franchisee name for whom the advice is requested. For an identified trade or industry association member or franchisee to receive relief from liability based on the written advice to the association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

~~Written advice may only be relied upon by the taxpayer to which-whom it was originally issued or a legal or statutory successor to that taxpayer. ~~Written advice that may serve for relief under section 6596 must include the following statement:~~If staff is confident that all of the facts of the issue are present, a statement substantially similar to the following must be included in the response to the taxpayer:~~

~~“The opinion expressed in this letter may only be relied upon for relief under section 6596 of the Sales and Use Tax Law by (state taxpayer’s name). Any person seeking relief under this section will be required to furnish a copy of the original written inquiry to the Board and a copy of this written advice. Provided that the facts discussed below are accurate and verifiable by audit, the taxpayer may rely on this response for purposes of Revenue and Taxation Code section 6596. (See Cal. Code Regs., tit. 18, § 1705, subd. (b) [describing the circumstances under which relief from liability is available for reasonable reliance on written advice given by the BOE].)”~~

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When there is doubt that all the facts have been presented by the taxpayer and staff must make substantial assumptions, the following may be used:

“Before discussing your questions in more detail below, I note that the facts you provided are not sufficiently complete. Therefore, I have made assumptions throughout this opinion letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions I have made are incorrect, the opinions expressed in this letter may not be reliable. Provided that the facts in this letter (both summarized and assumed) are accurate and verifiable by audit, the taxpayer may rely on this response for purposes of Revenue and Taxation Code 6596. (See Cal. Code Regs., tit. 18, § 1705, subd. (b) [describing the circumstances under which relief from liability is available for reasonable reliance on written advice given by the BOE].)”

Each tax program must reference the applicable statute or provision for written advice. Written advice that meets the above criteria will qualify for relief of liability under section 6596 or other applicable statutes even when the information is provided by e-mail. For more information on relief of liability under RTC 6596-relief, see CPPM 150.040.

VERBAL INQUIRIES

For verbal inquiries, if there is any doubt as to the correct answer, the person should be requested to present the problem in writing stating all of the facts, or the matter should be referred to the next level of supervision. Furthermore, BOE staff will encourage taxpayers to write regarding specific tax questions. Taxpayers who verbally request tax information are to be advised that, although an answer to their question is being provided, they may also wish to put their question in writing so that they may receive a written response for their records (see CPPM 150.000).

Staff should consider whether the caller would benefit from receiving additional information, such as Tax Information Bulletins or BOE publications. If so, staff should refer callers to the BOE’s website at www.boe.ca.gov, where they can download many of the BOE’s forms and publications.

When providing tax advice over the telephone to an identified taxpayer, staff should prepare a Form BOE-11, *Report of Telephone Call*, or provide a record of the call using the TAR comment screen on IRIS or an appropriate comments screen on ACMS. The report of the telephone call should state the question(s)

asked by the taxpayer, the answer(s) given, and any regulations or other documents furnished to the caller.

~~Staff, particularly those whose duties do not require providing telephone advice such as in the Taxpayer Information Section or the SUTD Public Information and Administration Section, must consider whether written documentation should be provided when telephone advice is provided to a taxpayer. Unless the taxpayer identifies his or herself and provides a proper seller's permit number in hardcopy, no documentation is required. When tax advice is given over the telephone to an identified taxpayer, staff should prepare a Form BOE-11 (Report of Telephone Call) or provide a record of the call using the TAR comment screen on IRIS or an appropriate comments screen on ACMS. The report of the telephone call should state the question(s) asked by the taxpayer, the answer given, and any regulations furnished. This is particularly true when such advice pertains to specific exemptions.~~

~~District administrators and Headquarters headquarters supervisors are requested to establish a review mechanism to ensure that BOE-11's (or the comment screens ~~on~~ in IRIS or ACMS) are being used and to review the staff responses for completeness and accuracy prior to filing the ~~form~~ BOE-11 in the taxpayer's file. If a response is incorrect or incomplete, the taxpayer must be contacted immediately and given correct information and a note made on the BOE-11 of the follow up contact.~~

~~If a BOE-11 is used and there is no ~~D~~district file folder, an online comment should be entered and the BOE-11 sent to the ~~Headquarters file~~ Taxpayer Records Section or retained by the appropriate Special Taxes Division. The use of such forms and comments should be periodically re-emphasized by supervisors.~~

VERIFICATION OF RESALE CERTIFICATES AND PERMITS

130.041

~~The ~~Board~~ BOE has an obligation to assist taxpayers in verifying the validity of resale certificates. Although responsibility for answering these inquiries is primarily that of the district office staff, taxpayers may also use the ~~Board~~ BOE's website to verify ~~on~~ the account number written on a resale certificate. The website address is www.boe.ca.gov and taxpayers may click on the Verify a Sellers' Permit/License hyperlink Verification menu item. Staff must be aware of the restrictions, detailed in CPPM 135.074, on providing certain information ~~on~~ about individuals ~~as detailed in CPPM 135.074~~.~~

~~Sellers seeking to verify resale certificates in person or by phone should provide the ~~district~~ BOE staff with the name of the business, its location, and the purchaser's seller's permit account number. With this information, ~~the district staff~~ can ~~then~~ verify the account status and inform the seller whether the account is active or closed out. ~~In the absence of providing this information, the inquiry should be considered a~~~~

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~~searching service request and forwarded to the Headquarters Account Analysis and Control Section (see below).~~

~~If a district receives a long list of accounts for which resale certificates are to be verified, the district should refer the list to the Headquarters Account Analysis and Control Section for verification. The verified information will then be mailed directly to the requesting seller unless otherwise instructed by the district.~~

~~Districts also may assist purchasers in verifying that persons with whom they are dealing have the required permits to collect California sales and use taxes. When the requester cannot provide the district with the sales tax permit number, the request should generally be considered a searching service request.~~

SEARCHING SERVICE

130.042

~~Alphabetical searching service is furnished only by the Headquarters Account Analysis and Control Section. No charge is made for verification of resale certificates and permits. The fee for other requests, such as those received from attorneys and collection agencies, is \$3.00 per search. These customers are billed quarterly. The release of information regarding individuals and confidential accounts is restricted (see CPPM 135.074, 145.100, 145.200).~~

~~The Account Analysis and Control Section's searching service may disclose the following information regarding partnerships, corporations, LLPs, and LLCs, but not sole proprietorships and husband and wife co-ownerships designated with a code M: Owner's name including "et al" names (excluding a.k.a.'s, corporate officers and limited partners as they don't appear on the permit), Firm name (dba), Business address, Mailing address (if different from business address), Account number, Business code, Starting date, Whether the account is active or closed and, if closed, the closing date.~~

INTERDISTRICT COOPERATION

130.050

~~All compliance employees, regardless of where they may be located, are working for the same organization. It is immaterial where an assignment originates or in what area a taxpayer incurred the tax liability. The responsibility for doing a conscientious job is not limited by district or program boundaries. Even though the assignment originated in another district or program, there will be no difference in the way the case is worked or in the amount of effort expended. Refer to CPPM Section 721.000 Chapter 7, Collections, for detailed information about interdistrict assignments.~~

SMALL CLAIMS COURT ACTIONS**135.045**

Occasionally, the BOE is named as a defendant in action filed in small claims court (a division of a municipal or justice court). Jurisdiction to resolve tax questions rests with the superior courts. The following procedures should be followed by field offices and headquarters units that receive communications from a small claims court concerning an action brought against the BOE with respect to sales and use or use fuel taxes.

If the action involves the validity of a determination, auditing errors, claims for refund, etc., the following action should be taken:

1. Notify the Audit Determination and Refund Section (ADRS) immediately by telephone.
2. The original correspondence received from the court should be forwarded to ADRS after a copy has been made for the district or unit file.
3. ADRS will provide a letter to the court which documents the BOE's jurisdictional objections to the action.
4. If this letter is not accepted in lieu of a formal appearance on behalf of the BOE, ADRS will advise the district administrator or the unit supervisor, who will make arrangements to have someone appear for the BOE, since attorneys are not allowed in small claims court actions.
5. ADRS will provide the person making the appearance with a letter detailing the legal basis for the jurisdictional objections to the action. The letter should be read to the presiding judge.
6. The person representing the BOE should also be prepared to explain the provisions of the tax law applicable to the case at hand.

If the action involves a matter other than those shown above (e.g., reimbursement for accounting fees, claim for damages, etc.) the Special Operations Branch (SOB) should be substituted for ADRS in steps a. through f. shown above.

All actions involving special taxes programs should immediately be referred to the appropriate division, which will perform similar functions to those referenced above.

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PUBLIC RECORDS ACT

135.075

In contrast to the IPA, the Public Records Act (PRA) (Government Code §section 6250, et.seq.) provides that “public records” include **any** writing containing information relating to the conduct of the public business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided.

The BOE is prohibited from withholding “working law.” Records that disclose the BOE’s practices in applying its regulations to the cases coming before the Board are working law. This is a matter of interest to the public and to persons coming before the Board regardless of the precedential effect of the records.

State Board of Equalization v. Superior Court (1992) 10 Cal. App. 4th 1177 holds that memoranda between the legal staff and other departments of the BOE that are relied on by those departments to make determinations about the applicability of statutes or regulations to certain tax situations are working law and must be disclosed to the public. The BOE’s past practice of asserting attorney-client privilege to withhold release of internal legal memoranda does not apply to these documents. Once confidential taxpayer information has been redacted, advice letters to taxpayers must also be released upon request.

Regulations 8000-8016 set forth the procedures to be followed to obtain copies of BOE public records. A copy of these regulations is available from BOE offices free of charge or through the BOE’s website at www.boe.ca.gov.

“Public records” subject to disclosure include:

1. Annotations and their backup opinions, with confidential taxpayer information redacted.
2. Staff memoranda and letters, including policy memoranda issued to Districts with confidential taxpayer information redacted.
3. Business Taxes law guides, regulations, Current Legal Digests, and Business Taxes General Bulletins.
4. Decision and recommendations (D&Rs) resulting from appeals conferences with confidential taxpayer information redacted.
5. Manuals and guidelines with the exception of those the disclosure of which would compromise the BOE’s administration of tax programs.

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6. Memorandum Opinions.
7. Newsletters and pamphlets.
8. Operations Memoranda with the exception of confidential information contained in the memoranda.
9. Rulemaking files.
10. Public records of settlement agreements with a reduction of tax in excess of \$500.
11. Training materials.

The PRA does not allow nondisclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as a taxpayer's name, account number, and other identifying information should be redacted and the remainder of the document should then be released.

However, if the requestor discloses that he or she knows the name of the taxpayer for whom the requested D&R or opinion has been prepared, the information may not be released, even if the document has been properly redacted. An exception to this rule exists where the requestor provides a written document signed by the taxpayer that designates the requestor as the taxpayer's authorized representative, which grants him or her power of attorney to act on behalf of the taxpayer.

In general, requests for public records should be in writing and should be addressed to the BOE's Executive Director or Disclosure Officer. Requests should be as specific as possible in identifying the specific records. If the requestor is seeking records from a specific office, that office should be identified. Copies of law sections, regulations, annotations, non-confidential operations memoranda, or other publicly available materials such as pamphlets or newsletters may be requested orally or may be available on the BOE's website. Requests may be made in person at BOE offices or may be made by telephone using the BOE's Customer Service number, 1-800-400-7115.

~~A request to inspect or obtain public records must provide a sufficiently specific description so as to allow the Board to identify the requested records.~~ Requests received by District offices or headquarters sections must be forwarded to the BOE's Disclosure Officer for review and processing. By law, all requests must be acknowledged within 10 working days of receipt of the request.

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Additional information about the PRA may be found in ~~Operations Memo 1041, Release of Sales and Use Tax Information to the Public,~~ and the Board of Equalization Administrative Manual BEAM sections 7223 and 7223.1.

~~CALIFORNIA CONFIDENTIAL ADDRESS PROGRAM (CAL CAP)~~

SAFE-AT-HOME -PROGRAM

145.020

~~The California Confidential Address Program (Cal CAP) was enacted by Government Code section 6205. Under Government Code section 6205, This the Safe-at-Home program addresses confidentiality for victims of domestic violence, stalking, sexual assault, and others, such as reproductive healthcare doctors, nurses, volunteers, and patients. The law, effective July 1, 1999, will remain in effect until January 1, 2005, and then is repealed unless extended by statute. The Cal CAP Safe-at-Home program is administered by the Secretary of State's (SOS) office. Participants in the Cal CAP Safe-at-Home program designate the SOS as agent for service of process and receipt of mail. SOS provides the participant an identification card certifying participation.~~

~~Participants in the Cal CAP Safe-at-Home program require special administrative procedures as detailed in CPPM 205.035. If an account has been flagged as confidential, a red the word, "CONFIDENTIAL," will show on the Registration Sscreen.~~

FORMAT AND CONTENTS

150.010

~~Letters to taxpayers, organizations and the general public will be on letterhead of the BOE and will contain the signature, typewritten name, and working title of the authorized signer. (See Operations Memo 984.) The interoffice memorandum form should not be used.~~

~~Government Code section 7525 requires state agencies to place telephone numbers on official stationary used in communications with the public. This requirement includes data processing printed forms in addition to manually prepared forms, letters and E-mails. Therefore, the Business Taxes Systems Coordinator and the Document Design and Control Management Unit should each be notified by memorandum whenever changes are made in district or branch office telephone numbers or addresses. The notices should be given as soon as firm information is available and should include the effective date of the change so data processing originated information and preprinted forms, envelopes, and phone listings may be corrected.~~

~~All Board BOE correspondence must serve as a complete source of the questions asked, the facts presented and the answer given. Accordingly, all letters by the When Board BOE staff in response to tax question(s) obtained through personal contact with the from a taxpayer, after receipt of the all letters to~~

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~~the taxpayer written subsequent to receipt of the taxpayer's letter will be included in referenced in the response and will be identified as to source.~~

~~In responding to accountants, attorneys, or other taxpayer representatives in situations where the representative has not divulged the name of the taxpayer, the writer will ask that the representative divulge the name of the taxpayer to enable the Board to maintain appropriate records with respect to the information provided. Tax advice to trade associations, taxpayer representatives failing to identify their clients or taxpayers whose questions are vague or general in nature, should include a statement indicating that the answer given is intended to provide general information regarding the application of the tax. Where individual taxpayers are identified, but background information is incomplete, the taxpayer should be encouraged to write again, setting forth the specific facts. The staff is encouraged not to make presumptions, however, should it become necessary to do so, they should be clearly identified as such in the letter.~~

When correspondence may cause recipients to contact a Board Member, the Board Member should be copied. An example of such correspondence would be a letter sent to an entire class of taxpayers. (Always send a cc to the Executive Director when sending a cc to Board Members.)

MODIFICATION/RESCISSION OF PRIOR ADVICE

150.025

Where an opinion has been issued, and it is subsequently determined that the tax advice as applied to the facts given is incomplete or incorrect, appropriate modification or rescission letters should be sent to the taxpayer.

Written advice may also be invalidated by statutory or constitutional law, a change in the BOE's regulations, or a final decision of a court, rendering the BOE's earlier written advice no longer valid.

~~Tax advice may only be relied upon by the taxpayer to whom it was originally issued. Accordingly, whenever a change in legal ownership occurs, successors relying on this prior advice in the continuing operation of the business would not be entitled to relief based upon reasonable reliance on written advice from the Board.~~

GUIDELINES FOR RELIEF - RELIANCE ON WRITTEN ADVICE

150.040

RTC section 6596 provides statutory authority for the BOE to relieve taxpayers of sales and use tax and any penalty or interest added where the BOE finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the BOE. Relief is provided only where

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there has been written advice by the BOE in response to a request, in writing, from a specifically identified taxpayer who, in turn, described fully the specific facts and circumstances of the activity or transaction for which advice was requested.

In addition, Sales and Use Tax Regulation 1705, *Relief from Liability*, provides that a prior audit report of a person requesting relief will be considered written advice from the BOE if the issue in question was addressed in the audit report. Generally, a field waiver will not provide relief under this section.

Many of the Special Taxes programs contain statutes with provisions similar to RTC section 6596. These provisions are listed in Exhibit 2, Table 1, *Reliance on Written Advice*. Therefore, Special Taxes staff should also use the guidelines in this section.

PERIODS OPEN TO RELIEF REQUESTS

RTC sections providing relief do not specifically limit requests for relief to periods after an RTC section's effective date. Accordingly, relief may be granted to taxpayers under this section, regardless of when the advice was given, provided the taxpayer has not exhausted all administrative remedies.

The taxpayer will be required to demonstrate that all of the conditions set forth in RTC section 6596 or similar sections for other business taxes programs have been met. ~~Any taxpayer seeking relief from sales and use tax under RTC section 6596 or from other taxes, fees, or surcharges under similar provisions should be informed that they must furnish a copy of their original written inquiry to the Board, along with a copy of the Board's written advice.~~ If the taxpayer is making the claim based on an audit report, the report must be provided along with appropriate supporting audit working papers. Documentation furnished should also include a statement under penalty of perjury, setting forth the facts on which the claim for relief is based. Only the person making the original tax inquiry is entitled to rely on the written advice received from the BOE. (See CPPM 120.030 regarding reliance by franchisees or members of a trade or industry association on written advice provided by the BOE, when requested by trade associations or franchisors who specifically identify the franchisees or members in the request for advice.)

If any of these conditions are not met, the taxpayer should be informed that his or her request cannot be accepted as a valid claim/petition under section 6596. Taxpayers, whose claims/petitions are not accepted, should be informed of the Board's appeals procedures.

Petitions for redetermination, late protests, or claims for refund received in district offices, under section 6596 or similar provisions, should be forwarded to the appropriate headquarters unit or Special Taxes Division. ~~District personnel should comment as they deem appropriate. While the Board has not~~

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~~authorized the staff~~ is not authorized to make adjustments or credits under RTC section 6596 or similar provisions, district personnel are encouraged to submit recommendations regarding the acceptability of the documentation provided by taxpayers. Limited authority to grant relief under section 6596 ~~was~~ is delegated by the Board to the Deputy Director, Sales and Use Tax Department, or a designee ~~pursuant to a Statement of Action adopted on September 30, 1992.~~ For more information on section 6596 relief see CPPM 120.030.

SECTION 7096, CLAIMS FOR REIMBURSEMENT OF BANK CHARGES BY TAXPAYER

155.025

Under RTC section 7096, a taxpayer may file a claim with the BOE for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the BOE. Bank charges include a financial institution's customary charge for overdrafts that are a direct consequence of the erroneous levy. The charges subject to reimbursement are those paid by the taxpayer and not waived or reimbursed by the financial institution. Each claimant applying for reimbursement shall file a claim with the BOE.

The BOE will grant a claim if:

1. The erroneous levy or notice to withhold was caused by BOE error, and
2. Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the BOE and provided the BOE with any requested information or documentation sufficient to establish the taxpayer's position. (This provision may be waived by the BOE for reasonable cause.)

In the context of RTC section 7096, "BOE error" can include an action taken by the BOE that would not (or should not) have been taken if all the facts of the case were known. In addition, the requirements of RTC section 7096 are fulfilled if the levy causes funds to be captured that do not belong to the taxpayer and are not subject to community property laws.

An example of reasonable cause to waive the taxpayer's duties to respond to BOE contacts would be in the case of a levy that captured funds from a third party's bank account. The third party would not have received any contacts from the BOE.

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 BOE shall respond to the claim. If the BOE denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

A procedure has been established to process these claims for reimbursement of bank charges. District offices or headquarters units receiving claims for reimbursement should forward the following to the Taxpayers' Rights Advocate:

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1. The original claim filed by the taxpayer.
2. A copy of the notice of charge from the taxpayer's bank.
3. A statement explaining the facts that led to the filing of the claim and a recommendation whether the claim should be paid.

The Taxpayers' Rights Advocate will evaluate the claim and notify the taxpayer of its decision. If the claim is approved, it will be forwarded to the Accounting Section of the Financial Management Division for payment and the claimant will receive a check from the State Controller approximately two weeks later.

Because the statute requires a response within 30 days, district offices should forward claims as soon as they are received.

Since reimbursements under this section are paid out of the BOE's general operating fund and tax liabilities involve other government funds, offsetting transfers between these funds are not routinely possible. Therefore, payment of tax liabilities and reimbursement of bank charges must be handled separately. Requests to internally credit reimbursement of bank charges toward any outstanding tax liability of the taxpayer will not be granted.

TAXPAYERS' RIGHTS ADVOCATE

156.000

THE TAXPAYERS' RIGHTS ADVOCATE OFFICE

156.005

~~The Taxpayers' Rights Advocate's (TRA) Office facilitates resolution of taxpayer issues and concerns; monitors various Board tax and fee programs for compliance with the Taxpayers' Bills of Rights; recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers; and participates on various task forces, committees and public forums. During the year, mandated Taxpayers' Bill of Rights public hearings are held to provide an opportunity for the elected Board Members to hear concerns, suggestions and comments from the public.~~
The responsibilities of the Taxpayers' Rights Advocate are specifically delineated in the law. Consistent with the Taxpayers' Bills of Rights, the Advocate:

1. Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by BOE employees.

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2. Monitors various BOE tax and fee programs for compliance with the Taxpayers' Bill of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers.
3. Ensures taxpayer educational materials are clear and understandable.
- 1.4. Coordinates statutory Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members; provides follow-up reports to the Board Members when requested.

The TRA Office 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 are apparent rights violations in the audit, compliance, or property tax areas. The TRA Office facilitates communication between taxpayers and BOE and county staff to eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so that they can be better prepared to discuss their issues with staff and achieve a resolution.

The TRA Office functions as an independent third party and reviews the issues in each case before making a recommendation or taking action. The goal of the TRA Office is to facilitate communication and understanding between the taxpayer and the local office and to work cooperatively with both the taxpayer and the staff to resolve the problem.

Generally, the TRA Office will become involved in a case when any of the following events occur:

1. A taxpayer contacts the TRA directly,
2. BOE management or the program staff refers a taxpayer to the TRA Office,
3. The Governor's Office, a Legislator's Office, or a Board Member's Office refers a taxpayer to the TRA Office, or
4. A case requires the TRA's involvement due to statutory situations.

STAFF REFERRALS TO THE TAXPAYERS' RIGHTS ADVOCATE OFFICE

156.010

The procedures discussed here are intended to provide guidelines for referring taxpayers to the TRA. It should be stressed that it is not intended to create new procedures or rules for handling audit or compliance cases or for dealing with taxpayers. Staff should continue to always treat taxpayers in a

COMPLIANCE POLICY AND PROCEDURES MANUAL

professional and courteous manner, as intended by the Taxpayers' Bill of Rights. It must be emphasized that if the staff has dealt with the taxpayer in an open and objective manner, listened to the circumstances of the situation, discussed options such as appeal rights, payment agreements, or offers in compromise, and shared information with the taxpayer, their role as a professional has been fulfilled.

Undoubtedly, some issues will arise where differences between the taxpayer and the staff cannot be resolved. If appropriate, the issue(s) should be referred to a supervisor for review as the basic responsibility for settling disputes rests with district and/or headquarters staff. If, after supervisory review, the taxpayer asks for review by the TRA Office, the case should be referred accordingly.

Problems that can be resolved via normal inquiries to headquarters should not be referred to the TRA Office. (For example: If a taxpayer asks for an explanation of how payments have been applied to a billing on their account, this should be handled by an inquiry from the field office to the SOB if the information is not available in the district.) Typical items that should be resolved in the district would be the negotiation of installment payment proposals, requests for administratively extending reasonable time limits for reinstatement on revoked accounts when circumstances warrant, and answering questions regarding legal issues or audit procedures. Referrals to the TRA Office should be primarily to facilitate solutions to issues that may be outside the staff's line authority, or issues that raise questions concerning the adequacy, equity, or fairness of established policies and/or procedures.

If the staff believes that a course of action cannot be agreed to and the issue(s) remain unresolved, or they feel the taxpayer does not understand the situation, they should bring it to the attention of their immediate supervisor to see if further discussion with the taxpayer would be beneficial. A discussion with the taxpayer could then be held to allow a full explanation of the staff's position and assure that the taxpayer's desired resolution is fully considered.

This procedure will ensure that there is ample opportunity to draw on the experience of supervisors and managers to satisfactorily resolve taxpayer issues and give employees direction for future encounters. An independent decision made within the district or headquarters staff based on facts and policy, and taking into consideration the unique circumstances of each case is desired and encouraged. If necessary, the case should be referred through other levels of management for review and recommendation prior to referral to the TRA Office.

If the case cannot be resolved in the local office or headquarters, it should then be referred to the TRA Office. Taxpayers should be advised that the TRA Office will make an independent and impartial review in

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light of the law and established policies and procedures, and that solutions will be recommended as the circumstances and facts merit.

TAXPAYERS' RIGHTS ADVOCATE OFFICE PROCEDURES

156.015

The TRA facilitates resolution of taxpayer problems and ensures that taxpayers' rights, privacy and property are protected during the assessment and collection of taxes. Consequently, the TRA has a responsibility to investigate all issues and requests for assistance. Some cases may be referred to the Internal Security and Audit Division, the program department, or the Legal Division Department, Legislative Division when it is determined that the issue may fall under their operational responsibility.

Frequently, taxpayers will call the TRA Office prior to attempting to resolve the issue through normal channels. The TRA Office staff will communicate and guide the taxpayer back to normal channels, such as contacting the local office to resolve any issues with the understanding that if their issue is not resolved the taxpayer should contact the TRA Office.

When referrals or calls from taxpayers are received, the TRA Office staff will generally review the taxpayer's master file and the BOE systems for information concerning the taxpayer's case. When contacting the district, the TRA Office staff will first contact the first-line supervisor and may also contact the District Administrator and the appropriate District Principal so they will be aware of the referral and can determine the best way to handle the inquiry with their staff. For ~~H~~headquarters sections, the ~~section~~first-line supervisor will generally be the initial contact of the TRA Office staff, but the section supervisor or the Chief of the division may also be contacted.

Typical information requested by the TRA Office includes:

1. Date of discussion(s).
2. Names of all parties present during discussion.
3. Issues discussed.
4. Taxpayer's desired resolution.
5. Staff's position and full explanation of action taken.
6. Copies of case notes.
7. Other relevant information.

COMPLIANCE POLICY AND PROCEDURES MANUAL

After review of all information, the TRA Office will discuss its recommendation with the program staff and the taxpayer to facilitate resolution.

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EXHIBIT 1

Tax Programs Administered by the Board

Tax Program	Revenue and Tax Code Sections	Other Relevant Tax Code Sections	Administered by: Department
Sales and Use Tax	6001-7176		SUTD ¹
Bradley-Burns Uniform Local Sales and Use Tax	7200-7212		SUTD
Transactions and Use Tax	7251-7279.6		SUTD
Motor Vehicle Fuel Tax	7301-8526		PSTD ²
Use Fuel Tax	8601-9433		PSTD
Insurance Tax	12001-13170		PSTD
Cigarette and Tobacco Products Tax	30001-30482		PSTD
Cigarette and Tobacco Products Licensing Act of 2003	30471-30482	Business and Professions Code 22970-22991	PSTD
Alcoholic Beverages Tax	32001-32557		PSTD
Energy Resources Surcharge	40001-40216		PSTD
Emergency Telephone Users Surcharge	41001-41176		PSTD
Hazardous Substances Tax	43001-43651	Sections of the Health and Safety Code	PSTD
Childhood Lead Poisoning Prevention Fee	43001-43651	Health and Safety Code 105175-105197	PSTD
Occupational Lead Poisoning Prevention Fee	43001-43651	Health and Safety Code 105175-105197	PSTD
Integrated Waste	45001-45984	Public	PSTD

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Management Fee		Resources Code 48000-48008	
Oil Spill Response, Prevention, and Administration Fees	46001-46751	Government Code 8670.40- 8670.48	PSTD
Underground Storage Tank Maintenance Fee	50101-50162	Health and Safety Code 25299.10- 25299.51	PSTD
Natural Gas Surcharge	55001-55381	Public Utilities Code 890-900	PSTD
Tire Recycling Fee	55001-55381	Public Resources Code 42860-42895	PSTD
Marine Invasive Species Fee	55001-55381	Public Resources Code 71200-71271	PSTD
Diesel Fuel Tax	60001-60708		PSTD
Electronic Waste Recycling Fee	55001-55381	Health and Safety Code 25214.9- 25214.10.2	PSTD
Water Rights Fee	55001-55381	Water Code 1525 -1552	PSTD
<u>Fire Prevention Fee</u>	<u>55001-55381</u>	<u>Public resources Code 4210-4228</u>	<u>PSTD</u>

¹Sales and Use Tax Department

²Property and Special Taxes Department – Special Taxes and Fees Division

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EXHIBIT 2

Authorizing Statutes

The following tables list those statutes of BOE-administered tax programs that authorize the taxpayer to rely on written advice provided by the BOE, and authorize the BOE to examine taxpayer records and issue liens and withholds. These tables are intended as a reference only. Staff should read the actual code sections and regulations to ensure familiarity with the specific nature and scope of the authority provided under the law.

Table 1 - Reliance on Written Advice

Tax Program	Authorizing Revenue and Tax Code Sections	Regulation
Sales and Use Tax	6596	1705
Bradley-Burns Uniform Local Sales and Use Tax	6596	1705
Transactions and Use Tax	6596	1705
Motor Vehicle Fuel Tax	7657.1,	1124, 4902
Use Fuel Tax	8879	1335, 4902
Insurance Tax		
Cigarette and Tobacco Products Tax	30284	4105, 4902
Alcoholic Beverages Tax	32257	2570, 4902
Energy Resources Surcharge	40104	2303, 4902
Emergency Telephone Users Surcharge	41098	2432, & 4902
Hazardous Substances Tax	43159	3021, 4902
Childhood Lead Poisoning Prevention Fee	43159	3021, 4902
Occupational Lead Poisoning Prevention Fee	43159	3021, 4902
Integrated Waste Management Fee	45157	3302, 4902
Oil Spill Response, Prevention, and Administration Fees	46158	2250, & 4902

COMPLIANCE POLICY AND PROCEDURES MANUAL

Underground Storage Tank Maintenance Fee	50112.5	1248, 4 4902
Natural Gas Surcharge	55045	3502, <u>4902</u>
Tire Recycling Fee	55045	3502, 4902
Marine Invasive Species Fee	55045	3502, <u>4902</u>
Diesel Fuel Tax	60210	1422, <u>4902</u>
Electronic Waste Recycling Fee	55045	3502, <u>4902</u>
Water Rights Fee	55045	3502, 4902
Timber Yield Tax Law	38454	
<u>Fire Prevention Fee</u>	<u>55045</u>	<u>3502</u>

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

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EXHIBIT 2 (cont.)

Authorizing Statutes

Table 2 - Authority for Examining Taxpayer Records

Tax Program	Authorizing Statute Sections	Regulation
Sales and Use Tax	RTC 7053, 7054	1698
Bradley-Burns Uniform Local Sales and Use Tax	RTC 7053, 7054	1698
Transactions and Use Tax	RTC 7053, 7054	1698
Motor Vehicle Fuel Tax	RTC 8253 & 8301-8304	1177-1178, <u>4901</u>
Use Fuel Tax	RTC 9254	1332, <u>4901</u>
Insurance Tax	No separate provision	
Cigarette and Tobacco Products Tax	RTC 30454	4026-4028, <u>4901</u>
Cigarette and Tobacco Products Licensing Act of 2003	Business and Professions Code 22980	
Alcoholic Beverages Tax	RTC 32453, 32551	2500, <u>4901</u>
Energy Resources Surcharge	RTC 40172-40175	2343-2346, <u>4901</u>
Emergency Telephone Users Surcharge	RTC 41056, 41073, 41129-41130	2431, <u>4901</u>
Hazardous Substances Tax	RTC 43502	3020, 4901
Childhood Lead Poisoning Prevention Fee	RTC 43502	3020, 4901
Occupational Lead Poisoning Prevention Fee	RTC 43502	3020, 4091
Integrated Waste Management Fee	RTC 45852	3301, 4901
Oil Spill Response, Prevention, and Administration Fees	RTC 46603	2255, <u>4901</u>
Underground Storage Tank Maintenance Fee	RTC 50153	1271, <u>4901</u>

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Natural Gas Surcharge	RTC 55302	3501, 4901
Tire Recycling Fee	RTC 55302	3501, 4901
Marine Invasive Species Fee	RTC 55302	3501, 4901
Diesel Fuel Tax	RTC 60604-60606	1470, <u>4901</u>
Electronic Waste Recycling Fee	RTC 55302	3501, 4901
Water Rights Fee	RTC 55302	3501, 4901
<u>Fire Prevention Fee</u>	<u>RTC 55302</u>	<u>3501</u>

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

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EXHIBIT 2 (cont.)

Authorizing Statutes

Table 3 - Authorization To Issue A Notice to Withhold And A Notice of Levy

Tax Program	Authorizing Revenue and Tax Code Sections
Sales and Use Tax	6702, 6703
Bradley-Burns Uniform Local Sales and Use Tax	6702, 6703
Transactions and Use Tax	6702, 6703
Motor Vehicle Fuel Tax ¹	7851, 7855
Use Fuel Tax	8954, 8957
Insurance Tax	
Cigarette and Tobacco Products Tax	30313, 30315
Cigarette and Tobacco Products Licensing Act of 2003	55203, 55205
Alcoholic Beverages Tax	32383, 32387
Energy Resources Surcharge	40153, 40155
Emergency Telephone Users Surcharge	41122, 41123.5
Hazardous Substances Tax	43443, 43444.2
Childhood Lead Poisoning Prevention Fee	43443, 43444.2
Occupational Lead Poisoning Prevention Fee	43443, 43444.2
Integrated Waste Management Fee	45603, 45605
Oil Spill Response, Prevention, and Administration Fees	46404, 46406
Underground Storage Tank Maintenance Fee	50134, 50136
Natural Gas Surcharge	55203, 55205
Tire Recycling Fee	55203, 55205
Marine Invasive Species Fee	55203, 55205
Diesel Fuel Tax	60404, 60407

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Electronic Waste Recycling Fee	55203_-55205
Water Rights Fee	55203_-55205
<u>Fire Prevention Fee</u>	<u>55203, 55205</u>

¹Collections are handled by the State Controller

~~Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.~~

UNITED STATES COAST GUARDS LIENS

757.065

Liens filed with the United States Coast Guard (USCG) must be timely and meet the provisions contained in U.S. Code Title 46, section 31343. Based upon this section, the Notice of Claim of Lien expires three years after the date the state tax lien was established, which is reflected on the Notice of State Tax Lien in the column identified as the "Assessment" date. USCG Documentation Center will return BOE requests unrecorded if the assessment date is over three years old.

~~Under this section, the BOE is required to include a signed declaration that contains the taxpayer's name and account number, vessel name and documentation number, and the lien holder or mortgagee's names and addresses. Section 31343 also requires the BOE to mail copies of the signed declaration to all outstanding lien holders or mortgagees of a vessel.~~

Staff must determine the names and mailing addresses of all lien holders and mortgagees of a vessel before requesting a USCG lien. These names and addresses should be entered in ACMS comments. Lien holder and mortgagee information is obtained by reviewing the USCG vessel abstract on file for all vessel use tax accounts. For sales tax accounts, collection staff should contact the Centralized Collection Section (CCS) for instructions on how to order the abstracts, or related documents, from the USCG. If mailing address information on the abstract is incomplete or missing, staff should order a copy of the lien/mortgage document from the USCG. If no lien holder or mortgagee exists, staff should make a note in ACMS comments.

When requesting a USCG lien, staff will use Form BOE-426-CG, *Notice of State Tax Lien for U.S. Coast Guard* because it contains the declaration required under U.S. Code Title 46, ~~as stated above.~~ Under this section, the BOE is required to include a signed declaration that contains the taxpayer's name and account number, vessel name and documentation number, and the lien holder or mortgagee's names and addresses. The declaration and lien must be signed by the same person. Section 31343 also requires the BOE to mail copies of the signed declaration and ~~SPS staff must mail a copy of the lien document to each lien holder and mortgagee that has been identified in the earlier email and in ACMS comments.~~ Staff must also enter ACMS comments when the copies have been sent.

INTERAGENCY OFFSETS

771.000

GENERAL

771.010

The Government Code authorizes any state agency to request payment from any other state agency that owes money to a person or entity when that person or entity owes a liability to a state agency. This procedure is called "offsetting."

Government Code section 12419.4 provides that the state has a lien for any taxes due the State from any person or entity, upon any and all personal property belonging to such person or entity and held by the State or amount owed to such person or entity by the State. The lien shall apply to all such property held or such amount owed by an agency of the State while such person or entity owes any taxes to that agency or another agency of the State. This lien does not apply to salary or wages owing to officers or employees of the State.

In order to enforce the lien, the Board of Equalization (BOE) must send written notification to the agency holding money for refund ~~and include~~ the taxpayer's name, person, identify the amount due, and request that payment be sent to the BOE to be "offset" against the person's liability.

Compliance staff should consider requesting offsets for all final amounts owed by a taxpayer that are greater than 90 days old, pursuant to the conditions outlined in CPPM 771.020. The "offset" procedure is used only as a "last resort" when all other collection avenues have been unsuccessful. When selecting accounts for referral to the Franchise Tax Board (FTB) for offset, extreme care and good judgment must be exercised to avoid the possibility of collection in the field and, in addition, having the liability offset from the taxpayer's personal or corporate income tax refund.

FRANCHISE TAX BOARD (FTB) OFFSET REQUESTS

771.015

If a tax or fee payer owes a liability to the BOE, staff may request an ~~an~~ FTB offset through FTB as part of the FTB Interagency Intercept Collections (IIC) Program. In conjunction with the State Controller's Office (SCO), the IIC program intercepts state payments that are due to individuals, including FTB personal income tax refunds, Unclaimed Property Division claim payments, and California State Lottery winnings, on a personal or corporate income tax refund owed to a taxpayer against that liability. FTB handles offset requests on a first-come, first-serve basis. Other agencies may be competing for the same funds; therefore, the window of opportunity to request an offset is very short.

~~Personal Income Tax System (PITS) Offset Against Individuals~~

The FTB offset request for individual or partnership accounts is made using the ACMS system. ~~The account must have a valid social security number and a final liability of at least \$50.00.~~ The responsible collector working the account initiates an offset request using the "FTB Offset Request" Fast Path button in ACMS. The Fast Path button allows responsible collectors to update offset request information at any time. ~~The Special Procedures Section Operations Branch (SPSSOB) electronically submits offset request~~ notifies FTB of any changes (add/delete/change) to the offset request by submitting a diskette to FTB on a weekly basis twice a month.

~~Business Entity Tax System (BETS) Offset Against Corporations/LLCs~~

The FTB offset request function for corporate and LLC accounts is not currently available in ACMS. ~~However, district and headquarters collectors do not need to initiate a~~Actions on these types of accounts because they are handled by SPSSOB.

FTB provides SPSSOB with a list of all cCorporate and LLC accounts scheduled to receive FTB refunds. Upon receiving this list, SPSSOB identifies each offset item by searching IRIS to locate all pertinent BOE account numbers and notifies the appropriate district or unit regarding the offset. These requests are a priority, and the responsible collector must respond promptly with a recommendation to either accept or deny the offset when SPSSOB directs an offset request to him or her. SPSSOB faxes the offset request memo back to FTB either the same day or, at the latest, the following business day after receiving it from FTB. **Compliance Policy and Procedures Manual July 2009**

SELECTION OF ACCOUNTS FOR FTB OFFSET 771.020

Accounts selected for offset must meet the following conditions:

1. Taxpayer is a sole proprietor or individual partner and the social security number is available, or
- ~~2.~~ Taxpayer is a corporation or LLC and the corporate/LLC number issued by the Secretary of State's office is available, or
Taxpayer is a corporate officer or LLC member against whom a dual liability has been established.
- ~~3.~~ There is a final liability which exceeds \$250.00. Billing is final and delinquent.
- ~~4.~~ All other avenues of collection have been unsuccessful.
- ~~5.~~ There is a documented record of at least three collection letters sent to the debtor. Balance exceeds \$50.00.
- ~~6.~~ Taxpayer is not on an installment payment arrangement or, if on a plan, is not performing as agreed, and the installment payment agreement termination letter has been sent.
- ~~7.~~ Taxpayer is not in bankruptcy or has received a discharge from bankruptcy. A petition in bankruptcy carries with it an automatic stay, so the offset of the liability is withheld until the debtor receives a discharge or the automatic stay is lifted. The refund to be offset must be for a tax period subsequent to the bankruptcy filing date.
- ~~8.~~ The refund is community property or sole property of the individual. (Staff should look for the dissolution of a marriage or that the couple is not living apart. If the couple is living apart, the income of each spouse is separate property.)
- ~~9.~~ The request for offset is made on the correct entity. (The person did not give another person's social security number; there was not an erroneous trace — father and son or person with same name; or the billing was made against the wrong person.) If an erroneous offset occurs, it is the BOE's responsibility to issue the refund. This is the reason why it is so important to withdraw an offset when the account is paid in full or it becomes apparent that it will be paid in full without the offset.
7. If the taxpayer is on an installment payment agreement (IPA), an offset should still be requested for final liabilities greater than 90 days old. IPA forms (BOE 407 series) include language to notify the taxpayer of the BOE's ability to initiate an offset against their property held by another state agency.

If an offset occurs, the taxpayer will receive a letter of notification and staff must be prepared to handle calls from the affected taxpayer. Taxpayers should be told to telephone the FTB only if the taxpayer has a tax problem involving the FTB. If the liability is paid in full or it becomes apparent that it will be paid in full without the offset, or if conditions for offset are no longer met, the FTB offset should be promptly removed.

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD) OFFSET REQUESTS 771.030

The Employment Development Department (EDD) offset request for all entities is not available in ACMS. Offset requests for these entities are processed manually through SPSSOB. EDD provides SPSSOB with a list of all entities scheduled to receive EDD refunds. SPSSOB identifies each item by searching IRIS to locate all pertinent BOE account numbers and notifies the appropriate district or unit regarding the offset. As in the case of FTB, EDD also handles the offset requests on a first-come, first-served

basis; ~~other agencies may be competing for the same funds; and~~ the window of opportunity to request an offset is very short. Once SPSSOB notifies the responsible collector in the district offices or Headquarters units, they must make the determination to accept or deny the offset. The responsible collector will respond to SPSSOB as a priority in order to process the offset request and forward it to EDD. The offset request must be done on the same day or, at the latest, the following business day in order for the BOE to receive the offset funds. *Collections July 2009*

ALCOHOLIC BEVERAGE CONTROL (ABC) OFFSET REQUESTS _____ 771.040

Business and Professions Code section 23959 states, "if an application [for an alcoholic beverage license] is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars (\$100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes due from the applicant under ...the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant."

~~Alcoholic Beverage Control (ABC)~~ periodically transmits a "Refund Schedule for Sales Tax" to the Board of Equalization that lists the applicant's name, address, and amount of funds available for offset. These transmittals from ABC do not arrive on any particular schedule, but they do have a deadline of 14 days from the date of the notice to request offset of the funds. These refunds typically occur because an ABC license applicant, after paying the fee for a license, has withdrawn their application and ABC is refunding the fee paid. SPSSOB staff conducts the same search and notification process for ABC offset requests as for the other types of offset requests.

DEPARTMENT OF HEALTH CARE SERVICES (DHCS) OFFSET REQUESTS _____ 771.050

~~The Department of Health Services (DHCS)~~, which administers the Medi-Cal program, annually distributes over \$4 billion to California health providers. Among their clients are physicians, dentists, chiropractors, optometrists, pharmacies, hospitals, ambulance services, and retailers of hearing aids, prosthetic devices, wheel chairs, etc.

Confirmation of provider participation can be acquired from the DHCS Provider Enrollment DivisionSection, at (916) 323-1945. DHCS should be furnished with the Confirmation requires the provider's taxpayer's social security number or federal identification number, and most recent business address to confirm their participation in the program.

Requests for offset are made via a memo to SPSSOB who will request offset under the provisions of Government Code section 12419.5.

FUNDS DUE TAXPAYERS FROM OTHER STATE AGENCIES _____ 771.070

Although SPSSOB initiates the majority of offset requests, the district offices may find funds owed to a delinquent taxpayer by agencies that are not monitored by SPSSOB, such as bonds subject to refund posted with Contractors State License Board or the Bureau of Automotive Repair. ~~As noted previously, a~~ Upon receipt of a written request from the district office, SPSSOB staff may request an offset of funds from any state agency that owes a taxpayer a refund. *Compliance Policy and Procedures Manual July 2009*

**DISTRICT REQUESTS FOR OFFSET TO SPECIAL PROCEDURES
SECTION OPERATIONS BRANCH**

771.080

~~Notification from the district offices and Headquarters units to SPS requesting the offset of funds from another state agency are not required to be in any specific format but must contain complete information regarding the matter. At a minimum, the request must contain the:~~
District offices and Headquarters units requesting to offset funds from another agency are required to provide a memo to SOB with the following information:

1. Taxpayer's name, exactly as it appears in IRIS.
2. Taxpayer's mailing address.
3. Amount of the taxpayer's liability.
4. A summary of the account history.
5. Name and address of the agency that is holding funds available for offset.
6. Any documentation or information showing the taxpayer is to receive funds from the respective agency.

**SPECIAL PROCEDURES SECTION OPERATIONS BRANCH OFFSET NOTIFICATION
TO DISTRICT OFFICE**

771.090

~~For offset requests that are initiated by SPS, such as FTB BETS accounts, the district office(s) may be instructed by SPS to verify the identity of the person subject to the offset. SPS may request this verification by either phone or e-mail. If verification is requested by e-mail, the district office will receive an e-mail similar to the following:~~
SOB notifies the responsible collector in the district office or Headquarters unit via e-mail when an offset is available. SOB uses two standard sets of email notifications and ACMS comments; one set for ABC/EDD offsets and a separate set for FTB offsets.

Sample Email and ACMS Comments for ABC/EDD Offsets

Subject: ABC Fee- ABC/EDD Offset/Account Number/Taxpayer's Name

~~There is an ABC/EDD ABC fee offset available in the amount of \$(offset amount) on the above account. Please review the account and determine if the offset should be taken. An immediate response is necessary in order for the BOE to receive the funds, please respond by the end of the day. Failure to respond will result in the BOE forfeiting the offset funds. If you have any questions, please contact me at (phone number)the phone number listed below by reply email.~~

Once the responsible collector responds with a decision, Normally, SPSSOB enters comments in~~will also include ACMS comments similar to the following:~~

~~"Special Operations Procedures received notice from ABC/EDD of regarding an ABC fee offset available in the amount of \$(offset amount). The account was reviewed and Sent notice via e-mail to (name of responsible collector) to determine if offset should be requested. (Collector's NameName) replied via e-mail to accept/decline the offset."~~

Sample Email and ACMS Comments for FTB Offsets

Subject: FTB Offset/Account Number/Taxpayer's Name

There is an FTB offset available in the amount of \$(offset amount) on the above account. NOTE: Before we can offset this amount, the Pre-Intercept

Notice* requirement must be met. Also, 30 days must have passed from the Demand date for each period in which an offset is requested. Please review the account and determine if the offset should be taken. In order for the BOE to receive the funds, please respond by the end of the day. If you have any questions, please contact me at (phone number) or by reply email.

**Pre-Intercept Notice (see below) is generally the last blurb found on the Demand billing: The Franchise Tax Board (FTB) administers the Interagency Intercept Collection Program in conjunction with the State Controller's Office. FTB is authorized to redirect a refund owed to a tax or fee payer to the Board of Equalization (BOE) to offset the tax or fee payer's liability under California Government Code section 12419.5. If you have any questions or objections to the liability on this notice, contact the BOE office indicated above within 30 days from the date of this notice and a BOE representative will review and discuss your account with you. You have 30 days from the date of this notice to either remit payment in full, contact the BOE, or provide documentation to the BOE to show the liability is not due. Failure to respond within 30 days from the date of this notice will result in the BOE forwarding your account to FTB to proceed with intercept collections.*

Once the responsible collector responds with a decision, SOB enters comments in ACMS similar to the following:

Special Operations received notice from FTB of an offset available in the amount of \$(offset amount). E-mailed (Collector's Name) regarding the Pre-Intercept Notice requirement, the 30-day waiting period from the Demand date, and whether the offset should be accepted/declined. The account was reviewed and (Collector's Name) replied via e-mail to accept/decline the offset.

STATE CONTROLLER'S OFFICE — UNCLAIMED PROPERTY 771.095

~~The State Controller's Office publishes a list of unclaimed property on its website as a tool to the public to search for properties that may belong to them. This listing is the result of dormant properties being escheated by banking institutions to the State and held in trust.~~

~~BOE staff should not attempt to reach these properties in order to satisfy taxpayer's delinquencies. These escheated properties may only be claimed by the person(s) who had legal rights to the property prior to its escheat.~~

~~The procedures set forth in this section for offset of funds should be used for requesting funds from those state agencies where we have reciprocal agreements, but may not be used for unclaimed properties or other funds.~~