

-----Original Message-----

From: Miller, Brian

Sent: Thursday, May 22, 2014 8:51 AM

To: Gilman, Todd; Simpson, Lauren

Cc: Campbell, Yating; Bone, Aaron; Stromberg, Venus

Subject: Comments: 2014 Taxpayers' Bill of Rights Hearings on May 22

The following email regarding the Taxpayers' Bill of Rights Hearings was sent to the Office of Public Affairs on 5/21/14:

-----Original Message-----

From: Gary Salamone [REDACTED]

Sent: Wednesday, May 21, 2014 6:24 PM

To: Miller, Brian

Subject: Re: News Release: 2014 Taxpayers' Bill of Rights Hearings in Sacramento May 22

Comments: 2014 Taxpayers' Bill of Rights Hearings on May 22

I will not be able to attend, but wanted to contribute an insight for consideration and implementation at the hearing and in its aftermath. The so-called Taxpayers' Bill of Rights is unconstitutional and not a genuine Taxpayers' Bill of Rights (1) if it does not specifically and automatically incorporate federal and state Constitutional guaranties/Bills of Rights; (2) if state-governmental employees are not trained to recognize, honor and apply the supreme law of the land and the higher law of California; (3) if those personnel subordinate those higher laws to mere state legislation or otherwise operate as if state laws must somehow confirm the authority of the federal and state Bills of Rights, for those higher laws to be at all enforceable in California; and (4) if those personnel do not concede, without a struggle and forcing taxpayers into court, the supremacy of those Bills of Rights (both the U.S. Bill of Rights and the California Declaration of

Rights) and respect the rights of California citizens in a manner and spirit consistent with the nation's claims of being a Constitutional republic. Thank you.

Gary P. Salamone/Editor-in-Chief

Continental Features/

Continental News Service

STATE BOARD OF EQUALIZATION



Appeal Name: Bus. Taxpayers Bill of Rights

Case ID: ITEM # F1

Date: 5/22/14 Exhibit No: 5.2

TP FTB DEPT (PUBLIC COMMENT)

MAY 15 2014

Received

From: Will Lewis [REDACTED]
Sent: Thursday, May 15, 2014 11:24 AM
To: Neal, Kathleen; Gilman, Todd
Subject: Items for Taxpayer Bill of Rights Hearing

Dear Ms. Neal and Mr. Gilman,

First, I wanted to thank Ms. Neal and the Taxpayers Rights' Advocate Office for their hard and valuable work on behalf of taxpayers and practitioners.

I wanted to submit an idea for changes and additions to the BOE's Compliance Policy and Procedures Manual (CCPM) in order to harmonize the CCPM more closely with the R&T Code and to provide more accurate guidance to BOE employees. I also want to submit a corresponding idea for an amendment to R&T Code section 7094.1, and that section's counterparts in sections 9272.1, 30459.2A, 32472.1, 40212.5, 41172.5, 43523.5, 45868.5, 46623.5, 50156.17, 55333.5, and 60632.1.

Issue

When taxpayers are entering installment payment agreements following a BOE levy and seizure of funds from bank accounts, the BOE is not always returning the seized funds back to the taxpayer in accordance with the law. If a taxpayer is in a position to enter into a installment payment agreement, then they often need the seized funds returned immediately in order to pay rent, meet payroll, and purchase inventory, among other necessary production of income expenses, as well as other necessary and conditional expenses.

Laws and Rules

The law on this issue is relatively straightforward:

(a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property **shall** be returned to the taxpayer if the board determines any one of the following:

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(R&T Code, sec. 7094.1 [emphasis added]; see also identical R&T code sections 9272.1, 30459.2A, 32472.1, 40212.5, 41172.5, 43523.5, 45868.5, 46623.5, 50156.17, 55333.5, and 60632.1.) The statutory language is clear, unless collection of the tax is in jeopardy or the agreement allows for the levy, the levied property must be returned to the taxpayer.

Code section 7094.1 is partially written into CCPM Chapter 7, section 753.257:

In some instances, the levy upon personal property will result in a contact by the taxpayer to make payment in full or to arrange a satisfactory installment payment agreement (full payment is the primary objective). The levy(s) must be released if the taxpayer enters into an installment payment agreement or pays the liability in full. The release notice is addressed to the officer who made the levy and accompanied by instructions to release the property to the taxpayer. The taxpayer is responsible for full payment of all expenses incurred in seizing the property and must reimburse the BOE or the levying officer for those expenses.

Section 753.257 is not crystal clear that the levied property must be returned to the taxpayer and that the BOE cannot keep the property unless the agreement allows for the levy or collection of the tax is in jeopardy.

Other law that will be referred to includes R&T Code sections 6832 and 6536-6539, and Civil Code section 1622.

Other sections of the CCPM manual that will be referred to include sections 764.020, and 777.020.



STATE BOARD OF EQUALIZATION

Appeal Name: Bus. Taxpayers Bill of Rights

Case ID: ITEM # 11

Date: 5/22/14 Exhibit No: 5.2

TP FTB DEPT PUBLIC COMMENT

Analysis and Suggestions

The statutory language of section 7094.1 is very clear that the BOE must return levied property to the taxpayer in the event that the taxpayer enters into an installment payment agreement, unless the collection of tax is in jeopardy or the agreement provides for the levy. I believe that CCPM section 753.257 could be easily amended to more forcefully state that the seized property, including bank accounts, money, etc., must be returned immediately.

Installment payment agreements and all of their terms are required to be in writing. (R&T Code, s. 6832(a); Civ. Code s. 1622.) It is my experience that sometimes the BOE is not allowing taxpayers to enter into installment payment agreements unless they agree to forfeit a portion of the levied property. It is also my experience that the BOE is not reducing those terms of the agreement to writing in form BOE-407 in violation of R&T Code section 6832(a) and Civil Code section 1622. I believe that section 777.020 of the CCPM could be easily amended to remind BOE employees that *all* terms of an installment payment plan must be reduced to writing.

It is my experience that when property seized pursuant to levy is not returned immediately following the taxpayer entering into an installment payment agreement that does not contain any terms allowing the levy, that BOE employees are justifying not returning the funds by simply stating for the first time that collection of the tax was in jeopardy so they did not have to return the funds. Section 7094.1(a) and its counterparts, state in relevant part: "Except in any case where the board finds collection of the tax to be in jeopardy." There is no corresponding definition in the R&T Code or in the CCPM, or in any other guidance what "jeopardy" for purposes of section 7094.1 means. Other R&T Code sections refer specifically to the jeopardy statutes; for example, section 7097(b) refers to code sections 6536-6539. The guidance that the CCPM gives to BOE employees in section 764.020 on making a jeopardy determination reads as if it would be very applicable to deciding whether to release property under Code section 7094.1. In order to decrease statute ambiguity, and to better protect the rights of taxpayers, I think that R&T Code section 7094.1(a) and its counterparts could be amended to read:

Except in any case where the board finds collection of the tax to be in jeopardy *as determined under under Article 4 (commencing with Section 6536) of Chapter 5*, if any property has been . . .

Conclusion

Thank you for taking the time to read this. Feel free to call or email with any questions. Additionally, I'd be happy to help write amendments to the CCPM if you need an extra hand.

Sincerely,

Will Lewis

William Davenport Lewis
Lewis & Associates Law Firm
338 S. Fremont, Ste. 324
San Mateo, CA 94401
(408) 459-8427
publication: www.glbperspective.com
LinkedIn: <http://www.linkedin.com/in/williamlewis47>
website: www.lewisllp.com

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