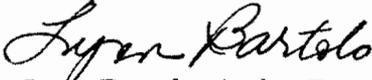


Memorandum

To : Mr. David Gau
Chief Deputy Director (MIC 101)

Date: February 4, 2016

From : 
Lynn Bartolo, Acting Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : **Board Meeting February 23-25, 2016**
Item N: Administrative Agenda
Proposed Revisions to Audit Manual (AM) Chapter 1, General Information, and
Compliance Policy and Procedures Manual (CPPM) Chapters 1, General, and 7, Collections

I am requesting approval to forward the attached revisions to the Board Proceedings Division to be placed as consent items on the Administrative Agenda at the February 2016 meeting. The following sections are being revised to incorporate current policies and procedures:

- AM Chapter 1, *General Information* section 0105.04
- CPPM Chapter 1, *General* sections 120.030, 150.010-150.040
- CPPM Chapter 7, *Collections* sections 770.000-770.035, 765.000-765.080

These revisions have been reviewed and approved by SUTD management, provided to Board Members, and posted on the Board's website at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties.

We received one comment from a member of the public regarding CPPM section 765.010, *Suspension of Alcoholic Beverage License for Failure to File or Pay Sales & Use Taxes*. As a result, the language in the section was modified to correspond to the language in Business and Professions Code section 24205. The Board's Legal Department reviewed and approved the changes. All other sections remain unchanged, and no other comments were received from Board Members or other interested parties.

If you have any questions, please let me know or contact Ms. Susanne Buehler at (916) 324-1825.

LB:rs

Attachment

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the February 23, 2016 Board Meeting

Joann Richmond

Joann Richmond, Chief
Board Proceedings Division

Approved



Mr. David Gau
Chief Deputy Director

cc: (all with attachment)
Mr. Wayne Mashihara (MIC 47)
Ms. Susanne Buehler (MIC 92)
Mr. Richard Parrott (MIC 57)
Mr. Kevin Hanks (MIC 49)
Mr. John Thiella (MIC 73)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Leila Hellmuth (MIC 43)

QUALIFIED ERRONEOUS ADVICE

0105.04

The erroneous advice must have been provided in writing, either in response to the taxpayer's written inquiry or in a prior audit, and must meet the criteria for qualified "written advice" set forth in Regulation 1705, *Relief from Liability*. ~~PSTD-Special Taxes and Fees~~ accounts have similar "written advice" criteria noted in Regulation 4902, *Relief from Liability*.

Staff should emphasize that taxpayers should obtain written advice with respect to the questions they may have regarding the application of tax to a particular type of transaction. The taxpayer should be given a copy of BOE-8, *Get It in Writing* or a reference to the BOE-8 link on the BOE website.

Tax Advice Provided in a Written Communication

Written advice by the BOE to a taxpayer in response to a taxpayer's specific written inquiry or from the taxpayer's representative seeking a written opinion will constitute written advice that can be relied upon for relief in accordance with RTC section 6596 and similar provisions for Special Taxes and Fees. To be considered a specific written inquiry, the taxpayer or the taxpayer's representative 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's representatives where the name of the taxpayer is not provided, BOE staff should ask that the representative provide the name and account number of the taxpayer in order for the BOE to provide a response that may be relied upon. This will also enable the BOE to maintain appropriate records with respect to the information provided. The taxpayer's name and account number will be referenced in the BOE's response.

Tax advice provided to trade/industry associations that do not identify their members, franchisors that do not identify their ~~members~~franchisees, taxpayer's representatives failing to identify their clients, and/or taxpayers whose written inquiries 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 Revenue and Taxation Code section 6596 insert appropriate RTC section.

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. The taxpayer's suppliers, customers, or other business associates are not protected under RTC section 6596, or similar provisions, by the written advice to the taxpayer. Written advice ~~that may be relied upon for relief under RTC section 6596~~ prepared by BOE staff, including email responses, must include the following statement if the written tax advice indicates any part of the transaction is exempt from tax:

Revenue and Taxation Code (RTC) section [insert appropriate RTC section] sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when relying on a written response to a written request for advice from the Board. Provided the facts and circumstances of the activity(ies) or transaction(s) discussed below are complete, accurate, and

Audit Manual Chapter 1, General Information

verifiable by audit, [state taxpayer's name] may generally rely on this response for purposes of ~~Revenue and Taxation Code (RTC) section 6596~~[insert appropriate RTC section]. If ~~you~~the taxpayer provides this letter to ~~your~~its customers, ~~or~~or vendors, or other third parties, those ~~customers or vendors must write to the Board of Equalization (BOE) and obtain their own written opinion in order for them to qualify for persons~~may not rely on the contents of this letter for the purpose of relief under RTC section 6596[insert appropriate RTC section]. ~~Any person~~It is the responsibility of a taxpayer seeking relief under ~~this section will be required to~~RTC section [insert appropriate RTC section] to furnish a copy of ~~such person's own~~the taxpayer's original written inquiry to the BOE, or that of its legal or statutory predecessor, ~~to the BOE~~ along with a copy of the written response received from the BOE.

If a taxpayer cannot locate its own copy of the original written inquiry and/or the BOE's written response and requests a copy from BOE records, staff will make a reasonable effort to locate and provide copies of the documents to the taxpayer.

If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. If staff is unable to obtain the additional facts from the taxpayer, the written response should contain clearly identified assumptions. When the assumptions made by staff are consistent with the facts of the transaction(s) in question, the written tax advice may be relied upon for relief under the appropriate RTC section ~~6596~~. Written advice to taxpayers that include staff's assumptions must also include the following statement:

Before discussing your questions in more detail below, please note the facts you provided are not sufficiently complete. Therefore, assumptions have been made in this letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions made are incorrect, the opinion expressed in this letter will not qualify for relief under Revenue and Taxation Code (RTC) section ~~6596~~[insert appropriate RTC section]. Provided both the summarized and assumed facts of this letter are accurate and verifiable by audit, [state taxpayer's name] may rely on this response for purposes of RTC section ~~6596~~[insert appropriate RTC section].

~~Written tax advice prepared by BOE staff, including email responses, must include one of the above statements regarding relief under RTC section 6596 if the written tax advice indicates any part of the transaction is exempt from tax.~~ Written tax advice indicating the transaction is subject to tax, rather than exempt from tax, need not include any of the above statements regarding relief under RTC section 6596, or similar statutes.

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~~may have serious consequences for the taxpayer and a negative impact upon the BOE's public relations. It may also create future disruptions to the taxpayer and unnecessary workload for BOE staff.~~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~~

In order for staff to be sure that all answers given to the public are correct, ~~they~~, they~~—The entire case~~ must ~~be~~ carefully examined all relevant facts before a conclusion is reached.~~—Snap answers, or answers based upon incomplete information, are inexcusable.~~ In addition, it is ~~never~~not appropriate for a BOE employee to offer any legal advice, other than interpretation of the tax laws administered by the BOE. Taxpayers who verbally request tax information are to be advised that, although information is being provided, the taxpayers may also wish to put such requests in writing to receive from the BOE a written response that may serve as basis for relief under RTC section 6596 and similar sections for taxes and fees administered by the Special Taxes and Fees Department (see CPPM section 150.015).

Any officially published regulation, publication, or informational release of the BOE intended for public distribution may be furnished to the taxpayer (see CPPM 135.075). Operations Memos that do not have a “confidential” status notation under the title, “OPERATIONS MEMO” are available on BOE’s website. Operations memos that have a confidential status notation must have all confidential information redacted before being released to the public.

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 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

CPPM Chapter 1, General

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 BOE to a taxpayer in response to a taxpayer’s specific written inquiry or an inquiry from the taxpayer’s representative seeking [clarification on the application of the tax or fee to a specific transaction](#)~~relief from liability~~ may constitute written advice that the taxpayer can rely on for relief from liability under RTC section 6596 ~~for similar statutes in the BOE’s other tax~~ [and fee](#) programs. [Written advice subject to these relief statutes may be in the form of email correspondence, as well as prior audit working papers. For detailed information regarding preparing correspondence that may be relied upon for relief from liability, see CPPM section 150.000 et seq.](#)~~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, when the name of the taxpayer is not divulged in the correspondence, the writer will ask the representative to provide the name and permit number of the taxpayer to enable the BOE to maintain appropriate records with respect to the information provided. The taxpayer’s name and permit number will be referenced in the BOE’s response.~~

~~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. Staff is encouraged not to make 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 whom it was originally issued or a legal or statutory successor to that taxpayer. 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:~~

~~“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].)”~~

CPPM Chapter 1, General

~~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, see CPPM 150.040~~

CORRESPONDENCE

150.000

ACKNOWLEDGEMENT

150.005

All incoming correspondence not subject to the Public Records Act (PRA) must be either responded to or acknowledged within 12 days of receipt. PRA requests must be responded to or acknowledged within 10 days, as required by law [\(see CPPM section 135.075\)](#). These guidelines also apply to incoming email. ~~(See CPPM 135.075.)~~ BEAM sections 7600-7660 provide uniform guidelines for correspondence acknowledgement. [Any custom letter \(i.e. not a BOE pre-formatted letter\) must be reviewed by a supervisor or designee before it is sent to a taxpayer. For letters requesting tax advice, see CPPM section 150.015.](#)

FORMAT AND CONTENTS

150.010

Letters to taxpayers, organizations and the general public will be on [BOE](#) letterhead ~~of the BOE~~ and will contain the signature, typewritten name, and working title of the authorized signer. 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~~-emails. Therefore, the Document [Intake and Management Unit \(MIC 58\)](#) should be notified by ~~memorandum~~ [sending an email to docmgmt@boe.ca.gov](#) whenever changes are made ~~in to~~ 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 BOE correspondence must serve as a complete source of the questions asked, the facts presented and the answer given. When BOE staff responds to tax question(s) from a taxpayer, all letters to the taxpayer written subsequent to receipt of the taxpayer's letter will be referenced in the response.

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.)

[GUIDELINES FOR RELIEF BASED ON REASONABLE RELIANCE ON BOE WRITTEN TAX AND FEE ADVICE](#)

[150.015](#)

[RTC section 6596 provides statutory authority for the BOE to relieve taxpayers of tax, penalty, and interest 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. Many of the tax and fee programs administered by the Special Taxes and Fees Department \(STFD\) contain statutes with provisions similar to RTC section 6596. These provisions are listed in Exhibit 2, Table 1, *Reliance on Written Advice*. When providing written advice, STFD staff should use the same disclaimer language in this section, but must cite the comparable statute for the tax or fee program for which they are providing written information.](#)

[In general, claims of reliance on erroneous written advice are submitted to the Board Members \(Board\) for approval. However, the Board delegated this authority for SUTD](#)

accounts to the SUTD Deputy Director in cases where the district office and the taxpayer are in full agreement that section 6596 relief applies. The guidelines in this manual apply only in cases where section 6596 relief falls within the limited authority delegated to the SUTD Deputy Director. When the district office does not recommend relief, the taxpayer's request for relief shall follow the normal appeals process (see publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*, available on the BOE website). For STFD accounts, relief requests must be submitted to the Board for approval.

Relief is provided only where there has been written advice by the BOE in response to a written request from a specifically identified taxpayer or the taxpayer's representative, that fully describes the specific facts and circumstances of the activity or transaction for which advice was requested. Emails sent in response to taxpayer inquiries received by email qualify as written tax advice, and must therefore follow the guidelines of this section.

In addition, Sales and Use Tax Regulation 1705, *Relief from Liability*, and Special Taxes Administration – Miscellaneous Regulation 4902, *Relief from Liability*, provide 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. For more information regarding tax advice provided in a prior audit, see Audit Manual section 0105.04, *Qualified Erroneous Advice*.

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. Additionally, if certain conditions are met, a prior audit may be relied upon by a person with shared accounting and common ownership with the audited taxpayer (see Regulation 1705(c) and Regulation 4902(c)). The taxpayer's suppliers, customers, or other business associates are not protected under RTC section 6596, or similar provisions, by the written advice to the taxpayer. Written advice prepared by BOE staff, including email responses, must include the following statement if the written advice indicates any part of the transaction is exempt from tax:

“Revenue and Taxation Code (RTC) section [insert appropriate RTC section] sets forth the circumstances under which a taxpayer may be relieved of liability for taxes when relying on a written response to a written request for advice from the Board. Provided the facts and circumstances of the activity(ies) or transaction(s) discussed below are complete, accurate, and verifiable by audit, [state taxpayer's name] may generally rely on this response for purposes of RTC section [insert appropriate RTC section]. If the taxpayer provides this letter to its customers, vendors, or other third parties, those persons may not rely on the contents of this letter for the purpose of relief under RTC section [insert appropriate RTC section]. It is the responsibility of a taxpayer seeking relief under RTC section [insert appropriate RTC section] to furnish a copy of the taxpayer's original written inquiry to the BOE, or that of its legal or statutory predecessor, along with a copy of the written response received from the BOE.”

If a taxpayer cannot locate its own copy of the original written inquiry and/or the BOE's written response and requests a copy from BOE records, staff will make a reasonable effort to locate and provide copies of the documents to the taxpayer.

If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. If staff is unable to obtain the additional facts from the taxpayer, the written response should contain clearly identified assumptions. When the assumptions made by staff are consistent with the facts of the transaction(s) in question, the written tax advice may serve for relief under the appropriate RTC section. Written advice to taxpayers that include staff's assumptions must also include the following statement:

“Before discussing your questions in more detail below, please note the facts you provided are not sufficiently complete. Therefore, assumptions have been made in this letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions made are incorrect, the opinion expressed in this letter will not qualify for relief under Revenue and Taxation Code (RTC) section [insert appropriate RTC section]. Provided both the summarized and assumed facts of this letter are accurate and verifiable by audit, [state taxpayer’s name] may rely on this response for purposes of RTC section [insert appropriate RTC section].”

When responding to accountants, attorneys, or other taxpayer’s representatives where the name of the taxpayer is not divulged, staff should ask that the representative provide the name and account number of the taxpayer in order for the BOE to provide a response that may be relied upon, and to maintain appropriate records with respect to the information provided. The taxpayer’s name and account number will be referenced in the BOE’s response.

Tax advice to trade/industry associations that do not identify their members, franchisors that do not identify their franchisees, taxpayer’s 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 Revenue and Taxation Code section [insert appropriate RTC section].”

Written tax advice indicating that the transaction is subject to tax, rather than exempt from tax, need not include any of the above statements regarding relief under the appropriate RTC section.

Whenever staff conducts classes or seminars for the public, they must provide information regarding written tax advice, and must emphasize that taxpayers can obtain written advice with respect to the questions they have regarding the application of tax to a particular type of transaction. Handouts provided to participants must include a copy of BOE-8, *Get it in Writing*, or reference a link to the publication on the BOE website.

REVIEW OF WRITTEN ADVICE

150.020

SUTD District ~~a~~Administrators and ~~h~~Headquarters ~~s~~Supervisors will review all letters involving tax questions to ensure that the information is correct and in the proper format. ~~The review with respect to letters which state a particular activity or~~

~~transaction is exempt from tax (exempt letter) will be completed~~ before the letters are mailed.

~~Copies of all correspondence should be initialed in the lower right hand corner after being reviewed.~~

Copies of all written responses confirming that transactions are exempt, along with the taxpayer's original written inquiry and any subsequent modification/rescission letters, will be forwarded to the Audit and Information Section (AIS) for final review of the accuracy of the written response. Any written response requiring adjustment will be returned to the originating party for modification or to rescind the written tax advice. Correspondence advising that a transaction is taxable should *not* be forwarded to AIS.

STFD staff will forward all responses to requests for written advice regarding specific application of special tax or fee laws to their supervisor and branch administrator for review. Final approval will come from the Division Chief before mailing. Copies of all documents will be forwarded to Program Policy and Administration Branch (PPAB) for inclusion in the PPAB taxpayer advice files, and scanned into the account central file on Documentum.

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. For SUTD, copies of the modification or rescission letter must be sent to AIS, and to Taxpayer Records Unit using Documentum procedures on eBOE. STFD will maintain copies of modification or rescission letters in the PPAB taxpayer advice files and in the account central file in Documentum.

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.

DISPOSITION OF CORRESPONDENCE

150.030

~~District administrators and headquarters supervisors will maintain records regarding the number of letters and E-mails received and for which a response was provided. This data, along with copies of all letters confirming transactions of an exempt nature or rescinding prior "exempt" correspondence should be accumulated monthly. This information, including the taxpayer's original inquiry, will then be forwarded to the SUTD Audit and Information Section (MIC: 44). That section will be responsible for a final review of the letter's accuracy. Any correspondence requiring adjustment will be returned to the originating party.~~

~~Special Taxes Division chiefs will maintain records and accumulate information as noted above and will be responsible for a final review of the letter's accuracy for letters written by Special Taxes staff. (See BEAM 7650.)~~

All written responses, regardless of whether the written tax advice provides that the transactions are exempt or subject to tax, should be filed in accordance with existing policy. In addition, SUTD District Administrators and Headquarters Section

Supervisors must report the number of written inquiries received and responded to using the SharePoint program on eBOE. This information must be reported by the 7th of the month following the end of each quarter. For example, written inquiries received and responded to in 4th quarter 2015, must be reported by January 7, 2016.

STFD Division Chiefs are responsible for maintaining a file of all original written requests regarding transactions/activities of an exempt nature. They are also responsible for ensuring all written responses are accurate. Additionally, all written responses confirming exemptions, along with any subsequent modifications/rescissions should be maintained as well.

GUIDELINES FOR RELIEF — RELIANCE ON WRITTEN ADVICE 150.040

~~RTC section 6596 provides the 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 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 section 6596.~~

~~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. However, a claim for refund cannot be based on a claim of erroneous advice under these relief statutes. These relief statutes only apply when there has been a failure to make a timely return or payment; thus a claim for refund cannot be based on erroneous written advice received *after* the return has been filed or payment has been made.

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~~ the relief statute have been met. Only the person making the original tax inquiry or a legal or statutory successor to that person is entitled to rely on the written advice received from the BOE. However, written advice received during a prior audit may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons. 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~~ Regulation

CPPM Chapter 1, General

[1705\(e\)](#) or [Regulation 4902\(e\)](#) 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~~[the appropriate RTC section](#). Taxpayers, whose claims/petitions are not accepted, should be informed of the ~~Board's~~[BOE's](#) appeals procedures.

Petitions for redetermination, late protests, or claims for refund received in district offices, ~~under section 6596 or similar provisions~~[under relief statutes](#), should be forwarded to the appropriate headquarters unit or Special Taxes [and Fees](#) ~~D~~division. While staff is not authorized to make adjustments or credits under ~~RTC section 6596 or similar provisions~~[relief statutes](#), district/[field](#) personnel are encouraged to submit recommendations regarding the acceptability of the documentation provided by taxpayers. ~~Limited authority to grant relief under section 6596 is delegated by the Board to the Deputy Director, Sales and Use Tax Department, or a designee. For more information on section 6596 relief see CPPM 120.030.~~

~~INSTALLMENT PAYMENT AGREEMENTS~~ PLANS

770.000

GENERAL

770.005

All collectors will collect amounts owed to the Board of Equalization (BOE) in a fair, efficient, and timely manner. When a collector contacts a tax or fee payer (taxpayer) for payment, he or she should request payment in full and should not solicit the taxpayer to request a payment plan. However, when payment in full is not feasible, accepting payments over time may be the best alternative. RTC section 6832¹ provides the BOE discretionary authority to allow an ~~installment P~~ payment A ~~agreement (IPA~~ payment plan) in cases of financial hardship. In such ~~a~~ cases, using an IPA ~~allowing a payment plan~~ may accommodate a taxpayer's economic realities while allowing the taxpayer to meet its obligation to the BOE.

Taxpayers may request a payment plan online via the BOE website or while in contact with a collector. When a payment plan is requested online and meets certain criteria, it may be approved automatically without any action by staff. When a payment plan is not automatically approved, C ~~ollectors~~ ollectors will review the account history and the taxpayer's financial situation to determine ~~the if a payment plan is~~ appropriate and if so, the duration and payment amount. ~~of the IPA.~~

~~When it is not in the best interest of the state, the BOE is not required to offer, or to accept, a taxpayer's proposal for an IPA. Taking payments over time is not in the state's best interest if the taxpayer's financial information indicates an ability to pay the liability in full. The terms of all IPAs should provide for payments commensurate with the ability of the taxpayer to pay. Weekly or monthly installment payments are required, unless there are extenuating circumstances that make it advantageous to accept payments on a less frequent basis.~~

~~If the taxpayer owns assets that he/she can liquidate, refinance, or borrow upon in order to pay the liability in full or in part, the taxpayer should do so. If the taxpayer refuses, the collector should proceed with collection action. If borrowing is not an option, the taxpayer should seek to make arrangements with other creditors for a payment deferral to facilitate paying the delinquent tax liability in full or in larger installments than otherwise possible.~~

~~If the account is closed out and a comprehensive review of a taxpayer's financial situation shows that the taxpayer (other than corporations and Limited Liability Company accounts) currently has no disposable income available to liquidate the balance owed to the BOE, the account, subject to supervisory approval, can be suspended for a period of 180 days by using the ACMS *Wait 180* state. This is advisable if the taxpayer or the taxpayer's spouse is looking for a new job, or if an expense such as a car loan is due to be paid in the near future. A separate follow up can be set for an earlier date if necessary.~~

~~INSTALLMENT PAYMENT AGREEMENT GUIDELINES~~ ONLINE PAYMENT PLANS

770.010

~~The BOE uses two types of IPAs: Streamlined and Standard. Both types of IPAs have different criteria for documentation and acceptance. For all IPAs, a taxpayer with an active seller's permit is required to file and fully pay all tax returns that become due~~

¹ RTC section 6832 refers to Sales and Use Tax Law; similar provisions exist for special taxes and fees.

~~and payable during the period the IPA is in effect. All IPAs will be set up and recorded in ACMS to comply with the notice requirements in RTC section 6832.5.~~

~~Streamlined Installment Payment Agreement (SIPA)~~

~~Under a SIPA, the taxpayer is not required to provide any financial documentation. The minimum monthly payment should be \$25.00. A SIPA may be offered to:~~

- ~~1. Taxpayers with active accounts where self-assessed liabilities or failure to file determinations, including the accruing interest on the tax balance, will be paid off within 12 months.~~
- ~~2. Taxpayers with either an active or closed out account if the liability is the result of a BOE-assessed determination and all of the liability, including the accruing interest on the tax balance, will be paid in full within 36 months. However, if the liability is the result of a determination for failure to file, the taxpayer is required to pay the liability in full within 12 months.~~

~~Collectors may consider offering a SIPA to a taxpayer if all of the following criteria are met:~~

- ~~1. The “final” liability is between \$500 and \$5000,~~
- ~~2. The taxpayer is not already subject to enforced collection action,~~
- ~~3. The taxpayer is not in bankruptcy or other legal status,~~
- ~~4. The taxpayer does not have a history of broken promises for failure to file or pay returns,~~
- ~~5. The taxpayer is not delinquent in filing tax returns, and~~
- ~~6. The taxpayer will make equal monthly installment payments that will fully pay the liability within the 12 or 36 month limits, as stated above.~~

~~Closed out accounts with self-assessed liabilities are not eligible for a SIPA but may be considered for a standard IPA.~~

~~Standard Installment Payment Agreements (IPA)~~

~~If the taxpayer does not meet the criteria for a SIPA, but requests to pay the liability in installments, the collector may consider the request under the requirements for a standard IPA. Documentation is required to determine the taxpayer’s need for an IPA and the ability and willingness to meet its terms. The collector must review the taxpayer’s past payment history, including the individual’s history under any related accounts, e.g., as a partner, corporate officer, LLP manager, etc. If the review shows that a taxpayer’s payment history is unsatisfactory, but an IPA is the only viable method for paying the liability, the district office or program area has discretion to make an exception and accept an IPA from the taxpayer.~~

~~When evaluating a taxpayer’s financial situation, an individual may be required to submit information as listed on a Form BOE 58, *Request for Installment Payment Agreement Documentation-Individual*. A corporation or other entity type may be required to submit information as listed on a Form BOE 60, *Request for Installment Payment Agreement Documentation-Non-Individual*. Such documentation can be a complete financial statement, Form BOE 403 E, *Statement of Financial Condition*, bank statements (both personal and business), income tax returns, accounts receivable listings (including names, addresses, phone numbers, and amounts owed), income and expense (or profit and loss) statements, balance sheets, and cash flow statements for review as well as other documentation relating to the taxpayer’s finances. Additional information and verification may be required as deemed necessary by the collector. Weekly or monthly payments should not be forestalled~~

~~while financial information is compiled by the taxpayer. The taxpayer should be required to utilize any available lines of credit, including credit cards, cash advances, or a bank loan, to pay the liability in part or in full.~~

~~The primary consideration in accepting a standard IPA is whether the plan is in the best interest of the state. Staff has full discretion to accept or deny an IPA, based on the taxpayer's past payment history, the merits of the proposal and the viability of the business. When reviewing past history, a taxpayer's record under related accounts as an individual, partner, or corporate officer should also be considered. Although a taxpayer's payment history may be unsatisfactory, the district office or program area has discretion to grant an exception. Staff must document the justification in ACMS notes.~~

~~If a standard IPA exceeds 2 months on an active account, the taxpayer should be required to make weekly or monthly payments against anticipated liabilities for the upcoming periods. This requirement will ensure that the taxpayer does not incur further debt with the BOE and does not accrue further penalty for failure to file, or to pay, a tax return timely.~~

~~Upon acceptance of a standard IPA, the taxpayer should complete, sign, and return a Form BOE-407A, *Installment Payment Agreement*. If a lien has not already been filed for the period(s) in question, a decision must be made by staff to either withhold the filing of a lien or to advise the taxpayer of the possibility of a lien filing. ACMS will prompt the user to include either a lien warning statement or a lien withhold statement on the Form BOE-407A. The taxpayer should be verbally advised during the IPA negotiation that a lien may be filed despite the IPA. Staff must document the decision in ACMS notes. Even if a taxpayer is likely to complete the IPA before returning the Form BOE-407A, staff should send the BOE-407A to document the IPA proposal.~~

If an online payment plan request is automatically approved, the required payments will be automatically debited from the taxpayer's bank account and the details of the payment agreement will be recorded in the Automated Compliance Management System (ACMS).

Only **final** liabilities are eligible for online payment plans. In addition, accounts with any of the following conditions are **not** eligible to request an online payment plan:

- Account is assigned Taxable Activity Type (TAT) PS, MJ, PC, PK, PO, PT, or SM;
- Account does not currently exist in ACMS;
- Permit or license is revoked or suspended;
- Account is in any of the following functional areas in ACMS: Offer in Compromise, Write Off, Special Operations/Bankruptcy, or Legal;
- Account already has an active or pending payment plan;
- All liability periods are in DFB (discharged in bankruptcy) status; or
- Account has Owner Code R (Receivership).

To submit a payment plan request online, taxpayers can either log in as a Registered User using their User ID and Password, or they can use their Express Login code. Only taxpayers who log in as a Registered User will:

- Have the ability to view the total amount due² on the “Proposed Payment Terms” page;
- Have the ability to view the current status from the “Account Service Menu” page, under “Account Functions;” and
- Receive status updates by email after the request is submitted (e.g., Approved, Submitted, Reviewed, Denied and Unable to Process).

Taxpayers may request a payment plan for any final liability amount (no minimum or maximum), and must enter the following information when requesting a payment plan:

- Name (Express Login users only),
- Phone number,
- Payment amount (payment must be \$10 or more),
- Frequency (weekly, biweekly, or monthly),
- First payment date (first payment must be within 45 days of request), and
- Bank information (routing number, account type, and account number).

The online system then provides a review screen for taxpayers to check the information entered and the terms of their proposed payment plan for accuracy. The taxpayer can edit or cancel the request prior to submitting it. Once submitted, the taxpayer will be immediately advised if the plan was approved or submitted for review. They will also be provided a confirmation number. Staff can find the confirmation number in ACMS on the “Review Online Promise” and “View Online Proposals” windows.

Online Payment Plans Entering ACMS

Payment plans will enter ACMS in real time. Immediately after the taxpayer submits the request, a history line is created and the payment plan terms are populated. Staff can view the submitted payment plan in ACMS by selecting the “Online Proposal” button. For purposes of the Collection Cost Recovery Fee (CRF) assessment, the effective date of the payment plan will be the date of the request, and is not modifiable in ACMS.

Automatic Approval

Payment plans that meet the criteria for auto approval will be immediately approved and the account will be routed to the Promise to Pay work state in ACMS without any action required by staff. Exceptions to this are partnership accounts (ownership type of P, M, L, or V) or accounts with both final and non-final liabilities. Partnership accounts and accounts with both final and non-final liabilities will route to the Access A – Awaiting Call work state in ACMS so staff can review for any additional actions needed. In either case, the Automated Clearing House (ACH) debit payments will begin. Staff should not attempt to renegotiate an auto approved payment plan of the individual partner for partnership accounts. Note that Consumer Use Tax Accounts route to the appropriate state for the type of account (i.e., Automobiles, Boats, or Planes).

² Only the total amount of the liability will be displayed for Registered Users. It will not be broken down into individual liability or reporting periods.

Requests Submitted for Review

Requests that are not automatically approved will route to the Review Online Promise work state to be reviewed by staff and will appear in the collector’s work list within 1-2 business days (see CPPM section 770.012).

Payment Plan Confirmation

The method in which the taxpayer logs in (Registered User or Express Login) and whether the payment plan is auto approved or approved after a collector’s review determines which forms, if any, are required. A Registered User’s proposal whose payment plan is auto approved will automatically receive an email notification and no action is required by the collector. For an Express Login user whose payment plan is auto approved, a BOE-407-CN, *Payment Plan Confirmation*, is automatically mailed out by the headquarters’ mailroom. See CPPM section 770.012 regarding what forms are required if the payment plan is not auto approved.

PROCESSING REVIEW OF THE OFFER OR REQUEST **770.012**

SIPA Offer to Taxpayer

~~Using the “Send Letter” function in ACMS, a collector can send a taxpayer Form BOE-407-S, *Streamlined Installment Payment Agreement Invitation*, if the account qualifies for a SIPA. The BOE-407-S should be signed by the taxpayer and returned within 15 days. If a signed form is not received within that time, the taxpayer should be called in order to expedite its return. In general, if the form is not returned within 30 days after the taxpayer has been called, the SIPA is not accepted and the collector will note this result in ACMS.~~

~~However, situations may occur where the BOE-407-S form is not signed and returned, but the taxpayer begins making payments according to the terms of the SIPA as agreed to with the collector. If this occurs, the taxpayer and the BOE are considered to be bound to the terms of the SIPA. Should this happen and the taxpayer then defaults on his or her implied promise to pay, the requirements of RTC section 6832 relating to terminating an installment payment agreement must be completed. See CPPM section 770.025 for procedures to terminate an IPA.~~

Standard IPA

~~Although a SIPA may be offered to the taxpayer when a liability falls within established criteria, a standard IPA is a request that must come from a taxpayer. A collector should not solicit a request from the taxpayer to enter into an IPA in order to pay off the liability. If the taxpayer makes a request for an IPA during the collection process, the collector must evaluate the financial ability of the taxpayer in order to determine if the request is reasonable~~

~~Before entering into a discussion of an IPA, the collector must first ascertain whether the taxpayer has assets or other sources of funds to pay the liability in full. Exhausting other means or sources of funds to pay off the existing liability relieves the BOE of the burden of financing the taxpayer’s accrued tax debt. Before the collector considers allowing the taxpayer to enter into an IPA, the taxpayer should have explored the possibility of borrowing against all available sources of income. Although not an exhaustive list, some common sources of income are listed below:~~

- ~~1. Family members, relatives, and friends.~~
- ~~2. Lines of credit — secured and unsecured.~~

- ~~3. Life insurance policies or retirement funds.~~
- ~~4. Equity in real property interests.~~
- ~~5. Equity in vehicles, vessels or aircraft.~~
- ~~6. Credit card advances.~~
- ~~7. Stock certificates or bond holdings.~~
- ~~8. Interests in estates or trusts.~~

~~In order to determine the financial need for an IPA, and without making any commitment to its acceptance, the collector must first send the taxpayer Form BOE-403-E, *Individual Financial Statement*, to complete and return. As noted in the previous section, individuals and individual partners may be requested to provide the information listed on Form BOE-58. Corporations or other entities provide similar information using Form BOE-60. In addition to these forms, the collector may require the taxpayer to provide any information or documentation that is necessary for the evaluation of an IPA request, for example copies of:~~

- ~~1. Federal or state income tax returns with associated schedules filed in prior years.~~
- ~~2. Business or household utility bills.~~
- ~~3. Profit and loss statements.~~
- ~~4. Accounts receivable records.~~
- ~~5. Bank or credit union statements.~~

If the payment plan is not automatically approved, the collector must evaluate the financial ability of the taxpayer to determine if the request for a payment plan is reasonable. Before accepting a payment plan, the collector will have thoroughly investigated the financial condition of the taxpayer and made a determination that a payment plan is the most effective method available to collect the amount due.

The primary consideration in accepting a payment plan is whether the plan is in the best interest of the state. When it is not in the best interest of the state, the BOE is not required to accept a taxpayer's request for a payment plan. Staff must review the taxpayer's past payment history, the merits of the proposal and the viability of the business when determining whether to accept the proposed payment plan. When reviewing past payment history, a taxpayer's record under related accounts as an individual, partner, or corporate officer should also be considered. Although a taxpayer's payment history may be unsatisfactory, the district office or program area has discretion to grant an exception. Staff must document the justification in ACMS notes. In addition, financial documentation may be needed to determine the financial need for a payment plan, and to evaluate reasonable repayment terms.

If the taxpayer has the ability to pay the liability in full, or has assets that can be liquidated or borrowed against to pay the liability, he or she should be required to do so. Some examples of sources to borrow from include:

- Lines of credit – secured and unsecured,
- Life insurance policies or retirement funds,
- Equity in real property interests,
- Equity in vehicles, vessels, or aircraft,
- Credit cards,
- Cash advances,
- Stock certificates or bond holdings, or
- Interests in certain estates or trusts.

By requiring the taxpayer to exhaust other means to pay off the existing liability, the BOE is relieved of the burden of financing the tax debt. If the taxpayer has the ability to pay in full but refuses, the collector should proceed with collection action. If borrowing is not an option, the taxpayer should attempt to make arrangements with other creditors to defer or make smaller payments to those creditors to allow for payment in full or larger payments towards the delinquent tax liability.

Online Requests Requiring Staff Review

In ACMS, the “Review Online Promise” screen will display the terms of the proposal as submitted. The collector will review the proposal and make the decision to accept or deny the request. If the proposal is acceptable, the collector will send a BOE-407-CN, *Payment Plan Confirmation*, to the taxpayer. The BOE-407-CN is available in ACMS. If the proposal is not acceptable, the collector must contact the taxpayer to discuss acceptable terms.

Once new terms are agreed upon, the collector will deny the original request in ACMS and have the taxpayer resubmit a new request online. If the taxpayer is not able to resubmit the request online in a timely manner (i.e., in time for the first payment to be processed, or before a Collection Recovery Fee (CRF) would be assessed), the collector should modify the original request using the “Modify” button in the Review Online Promise window before using the “Accept” button.

Staff may modify the plan only after contact is made with the taxpayer and the terms are negotiated. If the plan is modified, the taxpayer **must** complete and sign a BOE-407, *Payment Plan Agreement*. The following fields can be modified:

- Taxpayer name;
- Frequency;
- First payment amount;
- First payment date;
- If twice monthly frequency is selected, the second payment amount and date will become enabled;
- Difference selection;
- Banking information;
- Review date; and
- Maximum amount.

In addition, when the collector selects the “Modify” button, the “Modify” button will then change to “Update Periods.” If the “Update Periods” button is selected, the system will determine if new amounts due have entered or amounts previously due have exited ACMS since the payment request was submitted. The collector is to ensure the correct periods for the payment plan are checked. The “Current Promise Amount” will be updated to the total of all periods that are checked, including updated interest amounts, if applicable.

By selecting the “Online Proposal” button, collectors can view payment proposals that were submitted online. The screen will display the most current online proposal; however, staff can view prior online proposals by selecting the “Request Date” from the pull-down menu.

If the payment proposal is not auto approved and financial documentation to support the proposal is required, the account will remain in the Review Online Promise work

state and the collector can set an appropriate follow-up date. However, if the account is left in the Review Online Promise state for 21 business days, it will automatically route to the Sup Review work state.

Direct Contact from Taxpayer

Taxpayers may call a collector directly asking to set up a payment plan. Staff should first request that taxpayers pay their liability in full. Taxpayers who are unable to pay in full should be directed to make their payment plan request online. For those taxpayers unable to make their request online, staff will evaluate the requested payment plan and if accepted, must send the taxpayer a BOE-407 to complete and return, ensuring that all terms of the agreement are documented on the BOE-407. The BOE-407 is available in ACMS.

When Financial Documentation is not Needed for Approval

When the taxpayer is unable to make the request online (i.e., does not have access to the Internet), the collector may accept a payment plan without reviewing financial documentation if all of the following criteria are met:

- The final balance is less than \$10,000;
- The minimum monthly payment amount is at least \$10.00;
- If the account is active, the final balance must be paid in full within 12 months;
- If the account is closed, the final balance must be paid in full within 24 months;
- The taxpayer is not delinquent in filing required tax returns;
- The taxpayer has not been subject to enforced collection action (e.g., levy, lien, withhold, wage garnishment) within the previous 90 days; and
- The taxpayer is not in bankruptcy or other legal status.

Before accepting a proposal for a payment plan that does not meet the criteria above, the collector will have thoroughly investigated the financial condition of the taxpayer and determined that a payment plan is the appropriate method to collect the amount due.

ANALYZING REQUESTING FINANCIAL INFORMATION

770.013

~~Unlike the SIPA, when analyzing the financial information submitted in support of a standard IPA, there are no set formulas that will allow calculation of a minimum or maximum payment. The taxpayer's documentation should indicate how much money the taxpayer is able to pay in order to pay the liability in full, including interest accruals, within the time frame specified. The taxpayer's income should be compared to his or her claimed expenses. If expenses exceed income, the taxpayer is required to provide an explanation.~~

~~The following sections explain and provide guidelines for a collector to use when analyzing the financial documentation submitted by a taxpayer.~~ Documentation may be required to determine the taxpayer's need for a payment plan and financial ability to meet its terms. When evaluating a taxpayer's financial situation, the collector may require an individual to submit information as listed on the BOE-58, *Payment Plan-Need Information (Individual)*. A corporation or other entity type may be required to submit information as listed on the BOE-60, *Payment Plan - Need Information (Non-Individual)* Review. Such documentation may include:

- A BOE-403-E, *Statement of Financial Condition*,

- Bank statements (both personal and business),
- Merchant card statements,
- Income tax returns,
- Accounts receivable listings (including names, addresses, phones numbers, and amounts owed),
- Income and expense (or profit and loss) statements,
- Balance sheets,
- Cash flow statements, and
- Other documentation relating to the taxpayer's finances.

The collector should not make a blanket request for information, but should tailor the requested documents to each taxpayer's specific situation.

One example of documentation that may be requested, but should not be requested as a matter of routine, is evidence of a loan in process or loan denial letter. While taxpayers should be encouraged to seek other sources of funds to repay their tax debt, staff should not request evidence of a loan in process or denial letter from taxpayers who do not have the means to get a loan. This documentation should also not be requested from taxpayers who meet the criteria for a payment plan without providing financial documentation as outlined in CPPM section 770.012.

Additional information and verification may be required as deemed necessary by the collector; however, only documentation that provides financial information may be requested. Staff should not request any documents that do not provide financial information (e.g., dual questionnaires), and may not require such documents as a condition of acceptance of the payment plan.

The collector should require the taxpayer to start making the proposed payments while financial information is compiled by the taxpayer and evaluated by the collector.

If the payment plan exceeds 2 months on an active account, the taxpayer may be required to make weekly or monthly payments against anticipated liabilities for the upcoming periods in addition to the payment plan payments. This requirement will ensure that the taxpayer does not incur further debt with BOE and does not accrue further penalty for failure to file, or to pay, a tax or fee return timely. Since payment plans with automatic debit payments cannot accommodate unbilled future liabilities, these payments must be made separately by the taxpayer.

DEFINITIONS OF ALLOWABLE EXPENSES **ANALYZING FINANCIAL INFORMATION**

770.014

The financial information submitted in support of a payment plan request should indicate how much money the taxpayer is able to pay in order to satisfy the liability in full, including interest accruals, within the time frame specified. The taxpayer's income should be compared to his or her claimed expenses. If expenses exceed income, the taxpayer must provide an explanation (i.e., what expenses are not currently being paid).

Evaluating a payment proposal for an active business can be less straightforward than a proposal for a closed account where, for example, the source of income is wages and the only expenses to consider are household expenses. In addition, active businesses owned by sole proprietors or partnerships require a financial review of both the individual owner(s) and the business. For businesses owned by other entities (e.g.,

corporations, LLCs), the documentation may consist of financial statements and bank records. The following guidelines are based on the *Financial Analysis Handbook* published by the Internal Revenue Service (IRS) and may be helpful when analyzing a taxpayer's financial condition.

Determining Individual Income

Generally, all household income will be used to determine the taxpayer's ability to pay. Income consists of the following: wages, interest and dividends, net income from self-employment or Schedule C of the Federal Income Tax Return Form 1040, net rental income, pensions, child support, alimony, or other income (e.g. royalties, gambling winnings, payments from a trust account). Income claimed on the BOE-403-E, *Individual Financial Statement*, should be compared with bank statements, tax returns, and all other financial documents. The taxpayer should be asked to explain any differences noted by the collector.

Business Financial Statements

Many businesses employ accounting firms to maintain books and records or use over-the-counter software programs. Because of the complexity of some business entities, reviewing these records may be very important in determining the business' ability to pay and the true value of its assets.

When determining ability to pay, the income and expense information must reflect a sufficient time frame to accurately determine the monthly average that could be expected for the entire year. Seasonal variations in business income must be considered, as well as extraordinary events that can lead to excessive increases or decreases in income or expenses at a particular time. Information provided on the BOE-403-E, as it pertains to income, assets, and expenses, should match the information provided on other financial statements, tax returns and schedules, and other sources used to verify assets or encumbrances. Discrepancies must be addressed and documented in ACMS.

The following is a list of financial statements and the information contained in them that may be used to evaluate a payment proposal:

- **Income Statement (Profit and Loss Statement)**

The Income Statement (Profit and Loss Statement) shows a business' revenue, expenses, and profit during a given accounting period, usually either quarterly or annually. Along with the balance sheet, the income statement is a tool used to assess the health and prospects of a company. The income statement shows revenue and expenses, including operating expenses, depreciation, income taxes, and extraordinary items. Staff should be able to determine funds available for a payment plan based on cash flow, profit margins, and other important indicators of how the business is doing by reviewing the income statement.

- **Balance Sheet**

A business' balance sheet is a snapshot of its financial picture on a given day. A balance sheet shows the financial position of a company by indicating the resources that it owns, the debts that it owes, and the amount of the owner's equity in the business. One side of the balance sheet totals up assets, moving from the most liquid (cash) to least liquid (plant and equipment or goodwill).

The other side lists liabilities in order of immediacy or urgency. Remember that assets must equal liabilities plus shareholder's/owner's equity. Although the balance sheet by itself may not clearly show funds available for a payment plan, it should be used to identify assets and other liabilities.

- **Cash Flow Analysis**

Staff may also request a cash flow analysis. This is often completed when taxpayers seek loans or investors and may already be available for staff's review. Cash flow is net income minus preferred dividends plus depreciation (as given in the income statement). Generally, depreciation charges are not considered an allowable expense as they are not genuine bills that have to be paid. Cash flow is the key to a company's ability to cover debts and can be especially useful in assessing businesses in capital-intensive industries where huge depreciation charges can hide healthy profits.

Cash flow projections are used by a business to forecast future income to meet upcoming expenses. They are based on comparing money owed to expected revenues. This information is useful when dealing with a business that does not have the ability to pay in full within a short period of time. This information will help determine if the business can remain current with operating expenses and taxes, and also pay the delinquent taxes. The cash flow analysis will help staff determine an appropriate and sustainable payment amount based on revenue and expenses.

Analysis of income and expenses may identify many of the assets the taxpayer has available. For example, rental income may identify real property or equipment owned. Expenses such as taxes and licenses may indicate assets such as machinery and equipment. The IRS *Financial Analysis Handbook* identifies common sources of income, expenses, and assets that may be listed on the taxpayer's income tax return.

Determining Equity in Assets

To determine the equity in an asset, staff must determine its value, whether there are encumbrances against it, and the priority of the Notice of State Tax Lien. Proper valuation of an asset is necessary to determine whether it is a source for collection. Some assets can be complex or difficult to value. The Fair Market Value (FMV) of an asset is the price set between a willing and able buyer and seller in an arm's length transaction where both parties have full knowledge of the relevant facts. The FMV can be influenced by market conditions, age of the asset, condition of the asset, demand, and other factors. The Quick Sale Value (QSV) of an asset is an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the seller to sell in a short period of time, usually 90 days or less. Generally, the QSV is calculated at 80% of the fair market value. A higher or lower percentage may be appropriate depending on the type of asset and current market conditions. Sources for determining FMV may also depend on the type of asset. For vehicles, for example, there are several online tools available to help determine the value.

Once the equity in an asset is established, staff may determine the taxpayer has the ability to pay the liability in full if they can liquidate, refinance, or borrow against the asset. Taking payments over time is not in the best interest of the state if the taxpayer's financial information indicates an ability to pay their liability in full.

ANALYZING EXPENSES FOR INDIVIDUALS**770.015**

Allowable expenses are segregated into two categories: “necessary” and “conditional.” Necessary expenses are those expenses that must be paid in order to support health, welfare, and production of income. Conditional expenses are expenses that the taxpayer may be allowed to continue paying if all of the taxpayer’s liability, including interest accruals, can be paid during the stipulated time.

When analyzing the necessary and conditional expense allocations of the taxpayer, collectors should use the ~~*National Standards for Allowable Living Expenses*~~ Collection Financial Standards tables published by the ~~Internal Revenue Service~~ (IRS). These standards are based on the Federal Bureau of Labor Statistics, Consumer Expenditure Survey. ~~The IRS updates the tables in January of each year.~~

These national standards serve as a guide for determining the average expense levels applicable to a taxpayer who is applying for ~~an IPA~~ a payment plan. Whenever a taxpayer lists an amount lower than the standard, collectors should use the actual figure given ~~in the table~~ by the taxpayer. Whenever the taxpayer lists an amount higher than the IRS standard and higher than local averages, the collector should question the amount and determine if the claimed amount is excessive.

Necessary Expenses

The ~~tables~~ first category of expenses on the IRS’s Collection Financial Standards page website ~~are laid out with~~ is the National Standards: Food, Clothing and Other Items, for Allowable Living Expenses appearing first. ~~The tables cover from one to four persons and the amounts indicated are based on gross monthly income. The fifth table contains the allowable living expense for more than four persons.~~ with a link to a table that provides a set amount allowed depending upon the number of family members. The tables ~~are categorized into~~ lists the following necessary expenses:

1. Food-
2. Housekeeping supplies-
3. Apparel and services-
4. Personal care products and services-
5. Miscellaneous: ~~– An example of a miscellaneous necessary expense is a mandatory payment required by court order or by order of a state administrative agency. Alimony or child support payments (and other court ordered payments) are necessary expenses, but the collector should not credit such payments as an additional expense if an amount is already being deducted from the taxpayer’s wages.~~ The miscellaneous allowance is for expenses a taxpayer may incur that are not included in any other allowable living expense items, or for any portion of expenses that exceed the standards.

~~Below~~ In addition to the ~~National Standards~~ table of allowable living expenses for food, clothing and other items, ~~s are links to additional tables that cover allowable living expenses for~~ the IRS website has links to tables for out-of-pocket health care expenses, housing and utilities, ~~and for~~ transportation. The table for housing and utilities is organized by state and, once the collector clicks on the California link, by county. The transportation table has an allowance for car ownership (limited to two cars) and is then segregated into operating ~~and public transportation costs by region and by census~~ cost by region. Also listed is a nationwide allowance for public transportation.

CPPM Chapter 7, Collections

Other expenses that do not appear in the IRS tables can be “necessary” if they meet the necessary expense test (health, welfare, or production of income), but the amount of the claimed expense must be reasonable. For example, childcare and dependent care services do not have standardized costs, and the cost for these services can vary greatly depending on a number of factors. The collector should analyze the cost for these types of expenses based on the prevailing living standards where the taxpayer is incurring the expense. In addition, the collector should use his or her best judgment and experience when determining if the amount of the claimed expense is necessary and reasonable. Adequate ~~substantiation~~ documentation should be provided when an expense falls into this category and the amount is questionable. The taxpayer is responsible for determining the specific areas in its budget that can be modified or eliminated in order to pay the tax liability

The following list describes some of the various types of expenses in the “other” category:

1. Accounting and legal fees are necessary only if they are for representation before the Board or they meet the necessary expense test. Other accounting expenses and legal fees are not necessary expenses. They are conditional expenses, but they may be allowed if the liability owed to the BOE can be paid in full, including projected interest and penalty accruals, within three years.
2. Charitable contributions include donations to tax exempt organizations such as civic groups, religious organizations, and medical services or associations. Contributions to religious organizations as a condition of membership (tithing and educational donations) should be allowed if the amount donated matches the amount required by the organization.
3. Childcare costs, such as baby-sitting, daycare, nursery school, and preschool, can vary greatly, and the collector must determine whether the cost appears reasonable in relation to the type of care provided. If a portion of a childcare expense seems excessive, the taxpayer should be required to provide an explanation or to submit documentation to support the claimed amount.
4. Dependent care expenses for the elderly, handicapped, or infirm are necessary if the taxpayer has no recourse except to pay the expense.
5. The cost of education is a necessary expense if it is required for a physically or mentally challenged child, and no public education providing a similar service is available. If childcare is provided by the educational institution and the cost for the childcare is included as part of the educational expense, it should not also be included by the taxpayer as an additional childcare expense. Where the charge for the childcare is segregated from the charge for the educational expense, the childcare expense should be claimed separately from the educational expense. The cost of education is also a necessary expense if it is required as a condition of employment. Current licensure is a requirement for many professionals in order for them to work. Therefore, continuing education units for professionals such as attorneys, accountants, teachers, healthcare workers, realtors, and other professions that are required to maintain a current license are necessary expenses.
6. The cost incurred in obtaining medical insurance when a separate premium is paid, or when the premium is taken as a deduction from the taxpayer’s wages, qualifies as a necessary expense. Medical and dental services, prescription drugs and medical supplies, eyeglasses and contact lenses, and guide dogs for the visually impaired are also necessary expenses.

7. Involuntary deductions such as Medicare, mandatory union dues, and wage garnishments are necessary expenses. If the taxpayer has extra withholding taken from net wages to offset future income tax liability, this may be allowed if the liability owed to the BOE can be paid off within twelve months. Otherwise, the taxpayer must make other arrangements or adjustments to eliminate the extra tax withholding. The taxpayer must arrange for this increase in income to be paid to the BOE.
8. The payment of insurance premiums for a life insurance policy is generally a necessary expense. However, many insurance policies are also used as a vehicle for saving money and the taxpayer may be able to borrow against these funds. For a life insurance policy to be a necessary expense, the policy must be a term-life policy that is already in effect at the time of the BOE's billing to the taxpayer. Even for term-life policies, expensive premiums must be justified. The collector should determine if the payoff of the policy is high compared to the lifestyle of the beneficiaries. For whole-life policies, the taxpayer should be required to obtain a loan against the value, withdraw the cash value (if it can be done without penalty) or suspend payments while the IPA-payment plan is in progress (if allowable by the insurance company). If policy premium payments cannot be suspended, the expense will be considered as conditional.
9. Payments to creditors may be necessary for secured or legally perfected debts. If the claimed debt meets the necessary expense test, then payments to these creditors will be allowed to continue; however, the taxpayer must substantiate that the payments are being made regularly.
10. Current federal and state taxes that are withheld from wages, including FICA withholding, are necessary expenses. ~~Back taxes being paid voluntarily to federal, state, or local agencies should be allowed if the liability owed to the BOE can be paid in full within twelve months. Otherwise, the taxpayer must make arrangements or adjustments with the other agencies and pay the difference to the BOE.~~
11. Minimum payments to creditors for unsecured debts (such as money due for credit card purchases) will be allowed if the liability owed to the BOE, including projected penalty and interest accruals, will be paid in full within three years. With the exception of credit card minimum payments, payments on unsecured debts will not be allowed if omitting them would permit the taxpayer to pay the liability in full within 90 days.
12. Miscellaneous expenses are ~~those that~~expenses the taxpayer claims are necessary but that ~~the~~ BOE staff considers questionable. Examples include extracurricular activities for children, monthly Christmas savings account deposits, and expenses for newspapers, magazines, and trade publications. Allowing or disallowing these expenses is left to the discretion of the collector or the collector's supervisor.

Conditional Expenses

Conditional expenses are those that do not meet the necessary expense test but may be allowable if the tax liability, penalty, and interest accruals are paid in full within the following guidelines: ~~the time periods listed below. Examples of conditional expenses are:~~

- ~~1. Accounting and legal services (other than for representation before the Board).~~
- ~~2. Transportation.~~
- ~~3. Educational expenses.~~

~~4. Certain housing costs.~~

~~Wage garnishments and child support payments (necessary expenses) as well as the above conditional expenses, may have an expiration date. The responsible collector should determine whether the expense will expire within the IPA period. If the expense does end within the IPA period, the collector should insure that the available extra funds are directed towards paying the BOE's liability and not paid to other creditors.~~

~~The time limits for allowing conditional expenses follow:~~

- 1. Three years.** For substantiated conditional and excessive expenses to be allowed, the tax debt must be paid in full within 3 years.
- 2. One year.** ~~This allows the taxpayer up to one year to modify or eliminate excessive necessary or non allowable conditional expenses if the liability cannot be paid off within three years.~~ If the tax liability cannot be paid in full within 3 years, conditional and excessive expenses may be allowed if the taxpayer agrees to modify or eliminate the expense within 12 months. This period may be adjusted from 1 to 12 months based on the nature of the expense.
- 3. 90 days.** Payments on unsecured debts, other than credit card debt, will not be allowed if omitting these payments would permit the taxpayer to pay its tax liability in full within 90 days. Minimum payments will be allowed on credit cards to preserve a taxpayer's credit rating.

Conditional expenses, and some necessary expenses (e.g., wage garnishments, child support payments, and other court ordered payments), may have an expiration date. The responsible collector should determine whether the expense will expire within the timeframe of the payment plan. If the expense does end within the period of the payment plan, the collector should require the additional available funds to be directed toward paying the BOE's liability and not paid to other creditors.

Examples of Conditional Expenses

The following conditional expense items do not constitute an exhaustive list of all the expenses a taxpayer may have incurred. If a claimed expense is questionable, the collector should ask for an explanation or documentation as the case requires.

1. Accounting and legal fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health and welfare or production of income). Other accounting expenses and legal fees are conditional expenses.
2. An expense incurred for private education (unless it meets the criteria for a necessary expense, as previously stated) is considered to be a conditional expense.
3. Housing costs other than for the taxpayer's primary residence are conditional expenses. Expenses to maintain a secondary dwelling that are not necessary for the health, welfare, or production of income should be disallowed. If the taxpayer owns the secondary dwelling, and if sufficient value in the property exists, the taxpayer should attempt to borrow against the equity and pay off the liability. A state tax lien subordination will generally be allowed in order to refinance a home, ~~either to~~ for purposes of ~~increase~~ ing the payments offered in the ~~IPA~~ payment plan or for a lump-sum payment in full from the refinance.

4. Other expenses not associated with the maintenance of the primary residence are considered conditional expenses. For example, pool and gardening services are conditional expenses.
5. Transportation charges falling within the ~~statewide standards~~ limits in the IRS tables are generally allowable. Excess transportation charges and claimed expenses for more than one vehicle must pass the necessary expense test. Expenses claimed for items such as boats, motor homes, or extra vehicles must be substantiated. In addition:
 - a. In order to claim ownership costs as an allowable expense, the taxpayer must provide documentation of a lease or loan on his or her vehicle, vessel, or aircraft.
 - b. Transportation costs such as gasoline, maintenance and repairs, vehicle insurance, license and registration fees, towing charges, tolls, and automobile service clubs may also qualify as allowable expenses as long as they are necessary expenses.

Other transportation expenses such as fares for mass transit (buses, trains, ferry services, taxis, airlines, and private school buses) are allowable provided they can be documented as a requirement in the production of income, or they pass the necessary expense test.

ACCEPTING ~~AN INSTALLMENT PAYMENT PROPOSAL~~ A PAYMENT PLAN 770.020

~~Accepting a SIPA proposal is conditional only to the extent that the liability owed to the BOE will be paid in full within the period of time stipulated in the agreement. An agreement exists between the taxpayer and the BOE regardless of whether the taxpayer actually completes and returns a signed copy of form BOE-407-S or merely begins making payments according to the verbal agreement discussed with the collector. See CPPM 770.010.~~

~~For a standard IPA, a~~ After the taxpayer's documentation has been analyzed and the amount and frequency of payments have been discussed and agreed to, the collector will finalize the agreement in writing by mailing to the taxpayer Forms should direct the taxpayer to use the BOE website and enter the agreement online. The collector will then approve the online request and send a BOE-407-CN, *Payment Plan Confirmation* (see CPPM section 770.010). The BOE-407-CN is available in ACMS.

If the taxpayer is unable to submit the request online, the collector must send the taxpayer a BOE-407, *Installment Payment Agreement* *Payment Plan Agreement*, and the cover letter, Form-BOE-407-A. These forms are available through ACMS and must be completed ~~for standard IPAs~~ only for taxpayers who are unable to submit their request online. All terms of the agreement must be documented on the BOE-407.

Payment Plans Requiring Use of the BOE-407 and BOE-407-A

When a payment plan has been agreed upon and the taxpayer is unable to make the request online, the collector must send the taxpayer a BOE-407 and BOE-407-A. The collector should complete all applicable sections of these forms prior to mailing them to the taxpayer. ~~The initial payment field on the form should be filled in with the amount the taxpayer agreed to pay in the IPA discussion with the collector. All terms of the agreement must be documented on the BOE-407, and~~ —The collector must discuss ~~all of the written~~ those terms ~~of the agreement~~ with the taxpayer. ~~—and, in particular~~ Specifically, the collector must explain the circumstances under which a

~~lien may be filed, statement (RTC section 6757) CRF fees may be assessed, or an FTB refund may be offset. In addition the collector must also explain that failure to comply with the agreement will result in its termination.~~

~~on Form BOE-407, which reads:~~

~~“Failure to comply with the terms of the agreement will cause it to be terminated. If the agreement is terminated, if any portion of the liability remains unpaid for more than 30 months from the original bill date, or if the Board determines that collection of the liability is in jeopardy, a certificate of lien will be recorded.”~~

~~In addition to signing, dating, and returning the completed Form BOE-407, the taxpayer must indicate that they understand that a lien may be filed by initialing the space provided on the form. The taxpayer must sign the BOE-407 indicating agreement with the terms. Payments should be made by automatic debit (debit payments), and banking information must also be completed on the form, as well as the bank account owner’s signature authorizing the account to be debited. Debit payments are required in most circumstances (see CPPM 770.022 for information regarding the automatic debit requirement).~~

~~An accepted SIPA or standard IPA~~ After a payment plan is entered into ACMS, ~~and~~ the case is ~~then~~ monitored by ACMS for appropriate taxpayer notifications and collector follow-ups. All IPAs payment plans consisting of three or more payments require supervisory approval and the approval must be noted in ACMS. Single or two-part payment plans with automatic debit payments also require supervisory approval.

~~Before accepting any proposal for an IPA, the collector will have thoroughly investigated the financial condition of the taxpayer and made a determination that an IPA is the only method available to collect the amount due. If a taxpayer has cash equal to the tax liability, immediate payment should be demanded. The taxpayer can liquidate unencumbered assets, cash out interests in estates and trusts, or borrow against the equity in real property to pay all or part of the liability due. In addition, a taxpayer’s ability to obtain an unsecured loan should be considered. If there are assets with value and a taxpayer is unwilling to raise money from them, enforcement action should be taken.~~

~~If there appears to be no borrowing ability, the taxpayer should be asked to defer payment of certain other debts if that would allow the liability to be paid in full or in larger installments than otherwise possible. A payment deferral should not be requested if doing so will cause the taxpayer to lose assets and thereby jeopardize our ability to collect the liability.~~

~~The terms of any proposal should provide for payments commensurate with the ability to pay. Installment payments should be paid on at least a monthly basis unless there are extenuating circumstances that make it advantageous to accept payments on a less frequent basis.~~

Entering the Payment Plan in ACMS

Upon receipt of the completed BOE-407, the details of the payment plan may be recorded using the “Add Summary” button in ACMS and selecting “Promise Summary.” The collector must then record an action (e.g., “Record Letter”) in ACMS, record appropriate comments, and select “Take a Promise to Pay.” A pop-up box appears that must be completed using information on the completed BOE-407. Detailed instruction on entering payment plan information is also available on eBOE by selecting the ACMS

heading under the Technology Services tab, and then selecting the “Promise to Pay” link.

The collector must select one of two categories of payment plans, “Manual” or “Auto Pay.” In a Manual payment plan, payments are initiated by the taxpayer. Manual payment plans should generally only be used in situations where the taxpayer is unable to set up debit payments from his or her bank account. For Manual payment plans entered into ACMS, a reminder notice is automatically mailed to the taxpayer several days before the payment due date³. Note that when a payment plan is already in effect for the account, the collector will not be able to input another payment plan in ACMS, and therefore a reminder notice will not be sent and the collector must monitor the payment plan manually.

Auto Pay is selected when payments will be automatically debited from the taxpayer’s bank account. Under Auto Pay, the taxpayer will not receive a notice of the debit payment from BOE.

Payment Method and Frequency

The collector must enter the amount and frequency of payments (e.g., single, two-part, monthly, twice monthly, weekly, bi-weekly). The twice-monthly frequency would be used when a taxpayer wishes to make two payments per month on specific dates (e.g., 5th and 20th of each month). For payment plans with debit payments, the collector must also enter the bank account information.

Liabilities Included in Payment Plan

The Take a Promise to Pay screen will automatically display all unpaid, final liabilities available for a payment plan. By default, all liabilities will be selected for inclusion in the payment plan with the exception of those that are identified in IRIS as having been discharged from bankruptcy (DFB Difference Status code). If a “Manual” payment plan is selected, no modification can be made to liabilities included in the payment plan. If Auto Pay is selected, ACMS will allow the liabilities and amounts included in the payment plan to be modified, when necessary, using the following functions:

- Liability Selection – Specific liabilities or portions of a liability (e.g. interest and/or penalty) can be excluded from a payment plan. A liability could be excluded if, for example, it is subject to future adjustment.
- Exclude Amount (Penalty) – A portion of a penalty amount may be excluded from the payment plan. This feature would be used if only a portion of the penalty for a specific liability is excluded.
- Maximum Amount – This feature allows the payments to stop automatically once the specified dollar amount has been received. If a maximum amount is entered, the tax, interest, and penalty amounts for each of the selected liabilities must be included in the payment plan.

Liabilities included in an active payment plan are identified in IRIS with the Difference Status code PRM. The PRM status code will automatically be removed from the liabilities when the payment plan is no longer active (i.e., completed or terminated).

³ This does not occur for accounts under the Motor Carrier Office (MCO). MCO uses the IFTA Processing Consortium (IPC) to send all notices, and therefore ACMS will not automatically generate notices for those accounts.

Review Date

A review date can be selected for any payment plan with three or more payments. A review date would be entered, for example, to schedule a date to contact the taxpayer for a review of his or her financial condition. A review date can be set for up to one year in the future. When the review date is reached, the account will route to the Promise Review work state in ACMS. While an account is in Promise Review, the payment plan remains in effect and debit payments or payment reminder notices (for Manual payment plan) will continue. Regardless of whether or not a review date is entered, the account will automatically route to Promise Review once the account has been in the Promise to Pay state for 365 days. If the account routes to a different state within that time (e.g., routes to new ACCES Model state to transition from ACCES A to ACCES B), the 365 time period starts over.

Payment Plan Statuses in ACMS

The status of the payment plan indicates its current disposition. The status is displayed in ACMS on the Promise to Pay screens. The following is a list of statuses:

- Pending – The payment plan has been input in ACMS, but it has not been approved by a supervisor. While a payment plan is in pending status, debit payments and payment reminder notices will not occur. While in pending status, the payment plan can be modified. However, if the payment plan was submitted online, some fields cannot be modified.
- Active – The payment plan is active and debit payments will be initiated, or payment reminder notices will be sent. Liabilities included in the active payment plan are identified in IRIS by the PRM status code. This status not only indicates there is an active payment plan for the account but identifies the specific liabilities included in the payment plan. While in Active status, bank account information fields can be modified in the Promise to Pay screen.
- Completed – All liabilities included in the payment plan have been paid in full or the amount required to be paid by the taxpayer (i.e., the “Maximum Amount”) has been received.
- Terminated – The payment plan is terminated. The status changes to terminated after staff has initiated the termination process, a BOE-407-T, *Payment Plan – Notice of Termination*, has been sent, and the 15-day period from the date the Notice of Termination was sent has passed. Note: during the 15-day period, the status of the payment plan remains active and debit payments and reminder notices continue.
- Cancelled – The payment plan has been cancelled by BOE staff. If, for example, a new payment plan is negotiated with the taxpayer due to a change in the taxpayer’s circumstances, the existing payment plan must be cancelled before a new one can be entered into ACMS.
- Taxpayer Cancelled – The payment plan has been cancelled at the taxpayer’s request.
- Legal Cancelled – The payment plan has been cancelled as a result of a bankruptcy case filed by the taxpayer or other legal proceeding. The status will automatically change to Legal Cancelled when bankruptcy information is entered in IRIS. For all non-bankruptcy related legal types in IRIS, the payment plan will not be cancelled automatically. Staff with supervisor security capability in ACMS have the ability to change the status to Legal Cancelled.

- Denied – The pending payment plan has been denied by a collector or supervisor.
- Unable to be Processed – The status of the pending payment plan will automatically change to Unable to be Processed when any of the following enter ACMS:
 - New bankruptcy
 - All periods of liability are paid in full and/or adjusted to zero
 - All periods of liability become non-final

Approving a Payment Plan in ACMS

Other than online payment plans that have been automatically approved, payment plans with automatic debit payments require supervisor approval in ACMS prior to becoming active. Manual payment plans with three or more payments also require supervisor approval. Until the payment plan is active, no payments are debited and no payment reminder notices are mailed. Therefore, timely review and approval of a pending payment plan is imperative.

Accounts with pending payment plans route to one of two supervisor work states. Auto Pay payment plans route to the Sup App – Auto Pay while Manual payment plans are routed to the Supervisor Review state. Review and approval of the Auto Pay payment plans must be a priority since the BOE-407 completed by the taxpayer has a specific date on which the BOE will begin debiting the taxpayer’s bank account. All attempts should be made to review and approve (if appropriate) these payment plans no later than two business days prior to the due date of the first debit payment. ACMS allows Manual payment plans to be approved any time regardless if the due date of the first payment has passed.

In instances where an Auto Pay payment plan is not approved within this time period, the payment dates identified on the Promise to Pay screen will need to be modified prior to approval. Generally, this involves retaining the previously agreed to payment schedule and merely advancing the start date of the payment plan to the date of the next regularly scheduled payment. If the only modification to the payment schedule is with regard to the date of the first payment, the taxpayer is not required to complete a new BOE-407. The taxpayer should, however, be informed of the new date on which the debit payments will begin. Additionally, the taxpayer should be requested to make the “missed” payment online or by check.

Supervisors review and approve or deny payment plans in ACMS using the Supervisor Review screen. From this screen, the Review Promise to Pay screen can be displayed and all details regarding the payment plan should be reviewed prior to approval. When reviewing the payment plan, the supervisor must select one of the following three options:

- Approve – The payment plan is approved and the status changes to Active.
- Deny – The payment plan is not approved and the status changes to Denied.
- Send Back – The payment plan is not approved, but is returned to the collector for additional work. All payment plan information is retained and the status remains Pending.

Once approved by a supervisor, a BOE-407-CN, *Payment Plan Confirmation*, may be sent to the taxpayer.

AUTOMATIC BANK DEBIT REQUIREMENT**770.022**

Automatic debit payments are the preferred payment method for all payment plans established in ACMS. However, if a payment plan calls for only one or two payments, taxpayers are not required to pay using automatic debit. These taxpayers should generally be directed to make their payments online, or if they are unable to pay online, payment made by check, money order, etc., will be accepted.

When a payment plan calls for three or more payments, BOE requires that the payments be made by automatic debit. The only exceptions to the mandatory requirement are the following STFD accounts, with corresponding Taxable Activity Type (TAT):

- Fire Prevention Fee (FF),
- Water Rights Fee (WR), and
- Cigarette and Tobacco Products Internet Program (consumer accounts CI/UI).

For all other accounts, the payment information is entered by the taxpayer when setting up their online payment plan. Only in the following circumstances will the taxpayer be allowed to pay by another method:

- The taxpayer does not have a checking or savings account,
- The taxpayer's financial institution is unable to process Automated Clearing House (ACH) payment transactions (debit payments), or
- More than one payment plan exists for the account (e.g., partnership accounts), and a payment plan is already established in ACMS.

Note: accounts should not be set up for automatic debit payments when any Legal status (e.g., bankruptcy, probate) exists on the account, and payment plans should be established using the manual payment plan method, if appropriate.

The BOE-407 is used only when taxpayers cannot enter their payment plan online. When the BOE-407 is used, the section with the banking information and signature for authorization for payments to be debited must be completed. Attached to the BOE-407 is an information sheet (BOE-FAQ). Another type of authorization form (BOE-407-CA) is also available through ACMS and also has a BOE-FAQ attached. The BOE-407-CA would be used when a taxpayer already in an active payment plan wants to change bank accounts from which payments are debited. Completed authorization forms must be received before the payment plan can be processed in ACMS. Forms received by fax are acceptable.

Bank Account Information

A checking or savings account may be used for debit payments. The bank name and routing number and the taxpayer's bank account number are required. Since taxpayers may be unfamiliar with routing and bank account numbers, the BOE-FAQ is automatically sent with the BOE-407. The BOE-FAQ provides detailed information about bank account and routing numbers, and asks taxpayers to provide a copy of a cancelled check or bank specification sheet. In some instances a financial institution may use a unique routing number for ACH transactions (debit payments) that is different from the routing number on the taxpayer's checks. In addition, the numbers on deposit slips are generally not the routing number for debit payments. Therefore,

taxpayers should be requested to verify the routing number with their financial institution and provide the bank specification sheet if appropriate.

Before entering the bank information in ACMS, the collector should compare the numbers on the BOE-407 to the numbers on the cancelled check or bank specification sheet. If a simple error is found (e.g., transposed numbers), staff should use the number on the cancelled check, etc., and enter a comment in ACMS regarding the correction. If the banking information provided on the BOE-407 differs significantly from the cancelled check or bank specification sheet, or if there is any question as to the correct bank account information, the taxpayer should be contacted to determine the correct information. Staff must enter a comment in ACMS detailing the contact and identifying the correct bank information.

The “Take Promise to Pay” screen in ACMS will verify the bank routing number input by matching the routing number to one that has been previously identified as valid for debit payments. If ACMS is unable to verify the validity of a routing number, staff should first confirm the routing number was input correctly. If it was input correctly but still cannot be validated in ACMS, staff must contact the taxpayer to verify that the routing number is valid for debit payments. The following are some general guidelines for bank account information:

- Bank routing numbers are always nine digits and are comprised of only numbers.
- Bank account numbers may be up to a maximum of 17 characters. Although bank account numbers are usually comprised of numbers, they can contain letters, spaces, and dashes.
- Bank deposit slips cannot be used to confirm banking information since the information on the deposit slip may differ from the information required for debit payments.
- Taxpayers may erroneously include the check number as part of their bank account number or bank routing number when completing the BOE-407. The check number should not be included in either of these numbers.

ACH Debit Block/Filter

In some cases, a taxpayer’s bank may have an ACH debit block or filter that prevents unauthorized debit payments. In this situation, the taxpayer must contact their financial institution to authorize the payment and may be required to provide the BOE’s Company Identification Number:

- For Sales and Use Tax accounts: 1282531033
- For Special Taxes and Fees accounts (including Lumber Products Assessment and Prepaid Mobile Telephony Services Surcharge): 1282435088

Collection Cost Recovery Fee

A Collection Cost Recovery Fee (CRF) is imposed on past due liabilities over \$250 that remain unpaid for more than 90 days from the date of the demand notice, unless the liability is included in an active payment plan. Therefore, when the payment plan information is entered into ACMS, the “Effective Date” field should be used to indicate the date the BOE-407 was sent to the taxpayer, or the date the taxpayer verbally agreed to the terms of the payment plan, whichever date is earlier. As part of the review for approval, supervisors should confirm this date is accurate. For payment

plans submitted online, the effective date is the date of the taxpayer's request and is not modifiable in ACMS.

IRIS will compare the Effective Date field in ACMS to the CRF assessment date(s) that exist on an account. Any CRFs assessed on or after the Effective Date will automatically be deleted by IRIS.

Payment Processing

The debit payment process starts two days prior to the due date of a payment. This generally allows the BOE to debit a taxpayer's bank account on the actual due date of the payment. If the due date falls on a weekend or bank holiday, the payment will be debited from the taxpayer's bank account on the first banking day following the due date.

A file is automatically created in ACMS two business days prior to the due date of the payment. The file contains the payment information (e.g., payment amount, due date, bank account information). The ACMS file is sent to IRIS and is used to create the payment in IRIS, and is posted to the account in IRIS prior to the funds actually being received from the taxpayer's bank account.

Debit payments are identified in IRIS with remittance type code "ELF" and will be displayed on the existing payment screens in IRIS. Payment plan payments are identified in the PAY RE screen in IRIS with an "I" displayed to the right of the value in the "EFT Ref Nbr" field, and in the PAY EA screen with an "I" in the EFT column.

Debit payments will be allocated to the liabilities included in the payment plan and will initially have a "WST" (Waiting Settlement) Held Reason code. Generally, on the due date of a payment, the WST Held Reason code will automatically be removed and the payment will be applied to the payment plan liability. Payments will follow the standard payment application rules (see CPPM section 707.020) but will apply only to those liabilities included in the payment plan. If the last scheduled payment exceeds the remaining amount owed, generally, only the amount owed will be debited.

In rare instances the final debit payment received may exceed the balance of the liabilities in the payment plan. This can happen if, for example, the taxpayer makes an additional payment that is not reflected in IRIS until after the automatic payment is debited. If this occurs, the excess payment will generally be applied automatically to any other billed, unpaid liabilities that exist on the account. If no other billed liabilities exist on the account, the overpayment will remain unapplied and will be assigned the "QUS" (Questionable Situation) Held Reason code. Unapplied payments are identified on a report that is periodically reviewed by BOE headquarters' staff. For Sales and Use Tax accounts (including Lumber Products Assessment), the report will be reviewed by the Return Analysis Unit. For accounts administered by the Special Taxes and Fees Department (STFD), the report will be reviewed by the STFD Return Processing Branch.

Rejected Payments

A debit payment may not be received, most commonly for insufficient funds or an invalid or closed bank account. If the bank information is valid, but the funds were not available on the date the debit was attempted, a second attempt will automatically be made two to three business days after the first attempt. If funds are not available after the second attempt, the payment will be identified as "rejected." Information

regarding the rejected payment, including the specific reject reason, is captured in IRIS and ACMS.

If the payment is rejected for any reason other than insufficient funds (e.g., the bank account is closed, payment was not authorized, taxpayer is deceased, etc.), staff **must cancel the payment plan immediately**. Continuing to debit the taxpayer's account after the payment was rejected for these reasons may constitute a violation of National Automated Clearing House Association rules and may result in the BOE being fined. Generally, rejected payments will cause the account to route into the Broken Promise work state in ACMS which must be reviewed **daily** (see CPPM section 770.024).

A report containing information for all rejected payments will automatically be produced. The report will be produced for statistical purposes and will assist management in identifying any potential issues with the debit payments.

Moving Payments

BOE staff with the IRIS security level necessary to move payments in IRIS will have the ability to move payment plan debit payments. However, these payments should generally **not** be moved from one liability to another. If a payment is moved to a liability that was not included in the payment plan, this could result in the BOE debiting the taxpayer's bank account for an amount in excess of the sum of the total payment plan. Supervisor approval is required for any payment or portion of a payment over \$5,000 that is moved, and for SUTD (including Lumber Products Assessment payments), an approval assignment will automatically be created in the Assignment Control (ASC) in-basket. For STFD accounts, supervisors will follow existing review criteria for moved payments.

Unscheduled Payments

An unscheduled payment (e.g., FTB offset payment) is not considered part of the payment plan and will not cause the due date of the next scheduled debit payment to change, unless the liability in the payment plan is paid in full.

Payment Errors

When establishing the payment plan in ACMS, staff should take reasonable precautions to avoid potential debit payment errors. For example, staff should call the taxpayer to resolve any apparent issues with bank account information before proceeding. Staff must also use care when inputting the payment information, including bank account information, payment terms, etc. in ACMS.

Regardless of the precautions taken by staff, the possibility exists that an error may occur. Errors may consist of debiting an incorrect bank account if the account number was entered incorrectly, debiting the wrong amount if the payment amount was entered incorrectly, or continuing to debit the bank account after the taxpayer requested to cancel the agreement (see CPPM 770.032 for cancellation requests).

Resolving Payment Errors

The BOE will most commonly be made aware of a payment error when a taxpayer or other person contacts the BOE to resolve the problem. The collector assigned the account in ACMS is responsible for taking prompt action to confirm and resolve the error before another debit payment is attempted. If the assigned collector is not available, the designated back-up collector, supervisor, or other designee must provide assistance in resolving the error.

First, the collector must confirm the error occurred by reviewing the debit payment information input in ACMS and comparing it to the information provided on the taxpayer’s payment plan agreement (BOE-407) or authorization form (BOE-407-CA), and then comparing it to the payment information in IRIS. If the error is on the agreement or authorization form, a corrected BOE-407-CA should be obtained from the taxpayer. The correction must also be made on the Modify Promise to Pay screen in ACMS. An error with the bank routing number or bank account number can be corrected by updating the existing (active) payment plan. Errors involving the payment amount and frequency will require the existing payment plan to be cancelled and a new (corrected) payment plan input.

The collector must then take action to correct the payment error. Depending on the circumstances of the error, the erroneous payment transaction can either be reversed or refunded. The following table identifies the recommended action for resolving a payment error based on type of error and the number of banking days that have passed since the person’s bank account was debited (generally the same date as the “EFT Settlement Date” in the PAY RE screen in IRIS):

<u>Error Type</u>	<u>Number of Banking Days Since Debit Occurred</u>	
	<u>6 Days or Less</u>	<u>7 Days or More</u>
<u>Incorrect Bank Account</u>	<u>Payment Reversal</u>	<u>Payment Reversal*</u>
<u>Incorrect Payment Amount</u>	<u>Payment Reversal</u>	<u>Refund Check</u>
<u>Debit After Cancellation</u>	<u>Payment Reversal</u>	<u>Refund Check</u>
<i>* A Refund Check can be issued if a Payment Reversal is not possible.</i>		

Payment Reversal – 6 Days or Less

A payment reversal is similar to a stop payment for a check and must, therefore, be initiated by the taxpayer. To initiate a reversal, taxpayers must contact their financial institution and request the transaction be reversed. To assist taxpayers making such a request, they may provide the financial institution the “return reason code” for the reversal. Return reason code R29 (“corporate customer advises not authorized”) should be used for bank accounts held by a corporation. Return reason code R10 (“customer advises not authorized”) should be used for bank accounts held by individuals and all other entities other than corporations.

Payment Reversal – 7 Days or More

Reversal of a payment transaction after six banking days requires the BOE to authorize its financial institution to allow the reversal. BOE authorization must occur prior to the attempted reversal of the payment. To authorize the reversal, the collector must provide the following information in an email to their supervisor (or designee):

- Subject line should be “Auto Pay Reversal Authorization.”

- Taxpayer's name and the BOE account number to which the payment was applied,
- Name on the bank account that was debited in error,
- Name, title, and phone number of the person requesting the reversal,
- Copy of PAY RE screen showing the remittance to be reversed, and
- Copy of IRIS comments pertaining to the error added to the remittance.

The supervisor is responsible for reviewing the request and confirming an error has occurred requiring reversal. The supervisor should also confirm the email contains all necessary information for Return Analysis Unit (RAU) staff or the designated STFD representative to authorize the reversal. The supervisor should input a comment in the PAY RE screen in IRIS stating that the request has been reviewed and approved. Requests should be marked as high importance and for SUTD accounts should be forwarded to the RAU email group at SUTD-Auto Pay Reversal Refund Group, and those related to STFD accounts should be forwarded to the designated STFD representative.

RAU staff or the STFD representative is responsible for contacting the BOE's financial institution to request the reversal of the erroneous payment. BOE staff initiates the reversal through BOE's financial institution on a specific form. Afterwards, RAU or the STFD representative will inform the collector whether the reversal was completed or if a problem was encountered.

Refund Check

The BOE will issue a refund check for erroneous debit payments in instances where:

- The taxpayer's financial institution refuses to reverse the payment; or
- The taxpayer prefers that BOE issue a refund in lieu of a reversal of the transaction.

A refund check cannot be issued unless seven or more banking days have passed since the bank account was erroneously debited. This is necessary to confirm the debit payment is valid and not rejected. In instances where the incorrect bank account that was debited belongs to someone other than the taxpayer, a payment reversal should be used to correct the error if at all possible.

Prior to initiating a refund request, the collector should first confirm the mailing address on the taxpayer's BOE account is accurate since this is the address to which the refund check will be mailed. If the taxpayer wants the refund check mailed to a different address, the taxpayer must provide a signed, written request identifying the mailing address for the refund check. A signed request is also required when issuing a refund to a person that does not have a BOE account.

To initiate the refund request, the collector must provide the following information in an email to his or her supervisor (or designee):

- Subject line "Auto Pay Refund Authorization;"
- Taxpayer's name and the BOE account number to which the payment was applied;
- The name on the bank account that was debited in error;
- The name, title, and phone number of the person requesting the refund;

- The mailing address to which the refund check should be mailed if different than the mailing address on the taxpayer's BOE account or if refund is being issued to a person that does not have a BOE account;
- Copy of the PAY RE screen showing the remittance to be reversed; and
- Copy of the IRIS comments pertaining to the error the collector added to the remittance.

The supervisor is responsible for reviewing the request and confirming an error has occurred which requires a refund. The supervisor should also confirm the email contains all information necessary for RAU or the designated STFD representative to initiate a refund of the erroneous payment. The supervisor should input a comment in IRIS (PAY RE) stating that the request has been reviewed and approved. Requests should be marked as high importance and forwarded to the RAU email group SUTD-Auto Pay Reversal Refund Group for SUTD accounts, and those related to STFD accounts should be forwarded to the designated STFD representative. If applicable, the signed, written request regarding the mailing address for the refund check must be faxed to RAU or provided to the STFD representative.

RAU staff or the STFD representative is responsible for taking actions necessary to initiate the refund. Processing of the refund should be expedited by all sections and units involved in the process so that the taxpayer receives the payment as quickly as possible. However, refunds over \$50,000 require approval from the appropriate Deputy Director (or designee). In addition, if BOE determines that a claim for refund in excess of \$50,000 should be granted, the decision must be made available as a public record for at least ten days before it becomes effective.

Requesting Waiver of Bank Fees

In some instances, an erroneous debit payment may cause the taxpayer to incur bank fees. For example, a taxpayer may be assessed fees for items returned due to insufficient funds. If the erroneous payment was caused by an error on the part of a BOE employee, the collector is responsible for providing the taxpayer's financial institution with a letter on BOE letterhead requesting any bank fees associated with the erroneous debit payment be waived. The request should be addressed to the taxpayer's financial institution and should include pertinent information regarding the erroneous payment (e.g., bank account, settlement date, payment amount). The request should either be faxed or mailed to the financial institution and a copy of the letter provided to the taxpayer.

In situations where the financial institution will not waive bank fees relating to an erroneous payment caused by BOE error, the account holder may file a claim for reimbursement. Under Revenue and Taxation Code (RTC) section 7096 and equivalent special taxes and fees statutes, a taxpayer may file a claim for reimbursement of bank charges and any other reasonable third-party check charge fees incurred as a direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE (see CPPM section 155.025 for detailed information about requirements under RTC section 7096 and what constitutes "BOE error"). These claims must be filed in writing within 90 days from the date the bank or third party charges were incurred by the taxpayer. District offices and headquarters units should forward claims for reimbursement to the Taxpayers' Rights Advocate (TRA). Claims forwarded should include:

- The original, written claim filed by the taxpayer/claimant,

- A copy of the notice of charge(s) from the taxpayer's/claimant's bank, and
- A memorandum explaining the facts that led to the filing of the claim and a recommendation whether the claim should be paid. The memorandum should be written by the collector that is knowledgeable of the case and approved by his or her immediate supervisor.

The statute requires a response within 30 days; therefore, the district offices or headquarters units should review and forward claims as soon as they are received. The TRA will evaluate the claim and notify the claimant 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 to four weeks later.

Notice of Change to Banking Information

Banks routinely notify the BOE of changes to a taxpayer's banking information. Changes in banking information can occur, for example, as a result of bank mergers or acquisitions. A bank may notify BOE of a change in banking information for a specific taxpayer in response to the BOE debiting the taxpayer's bank account. The BOE must take action on these items to avoid future debit payments from being rejected. The correct bank information on the Notification of Change must be corrected within **six banking days** of receipt or before initiating another entry, whichever is later.

As a result of receiving updated banking information, a "Notice of Change" report is automatically generated and emailed to the BOE-Auto Pay Bank Changes email group. This email group is comprised of specific staff in RAU and STFD. The report contains notice of change information for automatically debited payments. Items included on the report are grouped by taxable activity type (TAT) and listed in account number order. A report will only be produced on days where there is at least one change to report.

RAU and STFD staff receiving the report must take the following actions:

1. For each item included on the report, staff must locate the name of the responsible collector for the account in ACMS.
2. Staff must email the information contained in the report for the specific payment to the responsible collector, with a copy to the collector's supervisor. The subject of the email should state "Auto Pay – Bank Information Change" and should be sent as a high priority.

If the payment plan is still active, the collector must put comments in ACMS stating the banking information has been changed. Taxpayers are not required to complete a new authorization form since electronic banking guidelines allow the BOE to update the information based on what was provided by the bank.

REJECTING A ~~STANDARD INSTALLMENT PAYMENT AGREEMENT~~ PAYMENT PLAN **770.023**

A taxpayer's payment proposal ~~to enter into an IPA~~ may be rejected if the taxpayer's financial circumstances do not warrant the BOE accepting payments over time. Rejection of an IPA a payment proposal may also occur for other reasons, such as the failure of the taxpayer to provide adequate documentation to support the need

for ~~an IPA~~ [payment plan](#). Collectors must be able to show that the reasons for rejecting a taxpayer's [IPA-payment](#) proposal are justified.

The reason for rejecting a taxpayer's [IPA-payment](#) proposal must be entered into ACMS notes. ~~Currently, a form letter is not available for rejecting a proposal so~~ [The](#) responsible collector should contact the taxpayer and verbally explain why the ~~taxpayer's IPA-payment~~ proposal was not acceptable. This contact should be followed by mailing a ~~letter~~ [BOE-407-D, Payment Plan Denial Letter](#), to the taxpayer that summarizes the verbal explanation and declines the [IPA-payment](#) proposal.

If a taxpayer's [IPA-payment](#) proposal is declined, all of the documentation provided by the taxpayer should be returned or placed in a confidential destruction bin. If the taxpayer subsequently makes a new request for ~~an IPA payment plan for the current liability, or for liabilities that may be incurred in the future, the taxpayer must submit a new Form BOE-407, Installment Payment Agreement, along with another Form BOE-403-E, Individual Financial Statement, and supporting~~ [the collector should request current financial documents.](#)

REVIEWING ACCOUNTS IN BROKEN PROMISE WORK STATE 770.024

When the system determines the payment plan is in default, it will route to the Broken Promise work state in ACMS. This is generally due to a payment that is dishonored because of insufficient funds, failure to file a current return or prepayment, or failure to make a manual payment on time. While accounts are in the Broken Promise work state, the payment plan is still active and debit payments and payment reminder notices continue.

The collector must review the account thoroughly to determine if the payment plan is actually in default, and not in Broken Promise in error (e.g., payment erroneously applied to another account or another reporting period). If it is determined that the plan is in default, the collector should call the taxpayer first to try to resolve the issue immediately. In some instances a payment agreement may need to be modified, or temporarily modified, due to the taxpayer's unexpected financial crisis, but the past history of any defaulted payment plans should be considered, and documentation to support the situation should be requested prior to modifying the payment plan.

If the BOE receives notification that a plan payment was dishonored for any reason other than insufficient funds or uncollected funds, staff **must cancel the payment plan or modify the banking information immediately.** Continuing to debit the taxpayer's account after the payment was dishonored may constitute a violation of National Automated Clearing House Association rules and may result in the BOE being fined. Therefore all collection accounts in Broken Promise must be reviewed **daily.** To determine why the debit was dishonored, the collector must highlight the "Returned Payment" history line in ACMS and click the "Details" button to open the history detail window. The reason for the dishonored payment will appear in the top center of the window. Note: To prevent another debit attempt, the cancellation must occur at least two business days prior to the scheduled due date of the payment.

In any case, if the payment plan is in default and resolution is not immediate, the collector should terminate the agreement (see CPPM section 770.025).

Modifying a Payment Plan

A payment plan can be modified in ACMS using the Modify Promise to Pay screen in ACMS, but can only be modified when in Pending or Active status. When a payment plan is in Active status, only the banking information fields can be modified. If any other information needs to be changed, the payment agreement must be cancelled, and a new payment plan entered. If banking information is updated, staff may send a BOE-407-CC, *Payment Plan – Confirmation, Automatic Payment Modification*, to the taxpayer informing them the bank information has been updated. The BOE-407-CC is available in ACMS.

Skipping a Payment

Collectors can allow the taxpayer to skip a payment without terminating the payment plan. The collector responsible for the account has the discretion to determine whether or not a taxpayer should be allowed to skip a payment based on the taxpayer's circumstances. Supervisor approval is not required in ACMS to skip a payment. ACMS will only allow a payment to be skipped once every 365 calendar days, up to a maximum of two times during the entire length of the payment plan.

The skip payment option is available in the Modify Promise to Pay screen in ACMS. Skipping a payment is not an option for payment plans with only one or two payments, and is not available for accounts where termination of the payment plan has been initiated in ACMS. For a debit payment to be skipped, the collector must initiate the skip payment option at least two business days prior to the due date of the payment to be skipped. Otherwise, the following payment will be skipped instead. For Manual payment plans, the skip payment option can be initiated up to, and including, the due date of the payment. Where appropriate, a BOE-407-SP, *Payment Plan – Notice of Skipped Payment*, may be sent to the taxpayer. This letter is available in ACMS.

TERMINATING A ~~STANDARD INSTALLMENT PAYMENT AGREEMENT~~ PAYMENT PLAN 770.025

Under RTC section 6832, the BOE has authority to terminate ~~an IPA~~ a payment plan upon default of the agreement by the taxpayer. It requires BOE to mail a notice of termination to the taxpayer, and requires the BOE to wait 15 days after the notice before taking collection action. The BOE-407-T, *Notice of Termination*, states that if the requested items are not received within 15 days, the payment plan will be terminated, and collection action will be taken. The 407-T also advises of the taxpayer's right to an administrative review.

RTC section 6832 also allows the BOE to bypass the required notification process if it ~~is determined and documented~~ finds that collection of the liability is in jeopardy. Collectors seeking to terminate ~~an IPA~~ a payment plan must fully document their reasons in ACMS and, if the liability is in jeopardy, they must secure supervisory approval before initiating collection action. Although the provisions of RTC section 6832 apply to sales and use taxes, ~~the same~~ there are similar statutes that contain termination authority also applies to IPAs that apply to payment plans entered into for certain special taxes and fees programs.

While a taxpayer may terminate the ~~IPA~~ payment plan at any time, the BOE may only terminate ~~an IPA only~~ it when the taxpayer defaults on the agreement and the

provisions in the law for terminating ~~an IPA~~ payment plan have been met. A taxpayer defaults on ~~an IPA~~ the payment plan when any or all of the terms in the agreement are not met. ~~An IPA~~ It is considered to be in default for missed or late payments, delinquent or partial remittance returns, or failure to disclose assets or income on a financial statement. Failure to increase the payment amount when a financial review warrants an increase, or failure to comply with a required financial review, may likewise result in default of the agreement.

The termination process is initiated from the Modify Promise to Pay screen in ACMS and is only available for payment plans in Active status (note: If a payment plan is in Pending status, the only way to terminate it is for the supervisor to deny approval in ACMS). When termination is initiated in ACMS, the BOE-407-T is automatically displayed in ACMS so that it can be printed and provided to the taxpayer.

The collector must immediately mail ~~form the BOE-407-T, Installment Payment Agreement — Notice of Termination,~~ when a taxpayer defaults on ~~an IPA~~ the payment plan. The taxpayer then has 15 days from the mailing date of the BOE-407-T to file a written request for an administrative review during which time collection action will be suspended, except when collection of the liability is in jeopardy (RTC section 6832(d)). Any scheduled debit payments or payment reminder notices continue during the 15-day period. After the 15-day period has elapsed, collection action may begin even though an administrative review has been scheduled or is ongoing. A supervisor has discretion to extend the hearing period ~~and withhold collection action~~ if the taxpayer can provide a reasonable explanation as to why an administrative hearing cannot be set within the 15-day period.

~~As discussed in CPPM 770.012 above, s~~ Situations can occur where a ~~SIPA or an IPA~~ payment plan is not formally established ~~by~~ because the taxpayer's did not complete and return of a completed Form BOE-407-S or BOE-407, but a termination letter (BOE-407-T) must still be sent and the 15-day period must have passed before collection action may be taken. To decide whether a ~~Form BOE-407-T~~ termination letter should be issued, the collector should first determine whether the actions taken have given the taxpayer a reasonable presumption to believe that they are in ~~an IPA~~ a payment plan. Generally, if the collector and taxpayer agree to a payment plan, and the collector sends the BOE-407, and the taxpayer does not return the form, the collector should still send a BOE-407-T and suspend collection until the 15-day period has passed. Below are three examples of ~~this type of~~ possible situations:

1. The taxpayer proposes a monthly payment plan of \$500 and the collector verbally accepts the offer. A ~~Form~~ BOE-407 is not issued or, if one is issued, the taxpayer did not sign and return it. Although there is no further contact between the collector and taxpayer, the taxpayer has paid some of the agreed upon payments. In this situation the taxpayer can reasonably presume the acceptance of the payment proposal since we have not indicated anything to the contrary and have been accepting ~~its~~ the taxpayer's payments without contacting ~~them~~ the taxpayer to inform them otherwise. If the taxpayer defaults on the verbal agreement, the taxpayer should be contacted, and a ~~Form~~ BOE-407-T should be issued before initiating any new collection action.
2. The taxpayer proposes a monthly payment plan of \$500, which is verbally agreed to pending receipt of supporting documentation. The taxpayer does not remit any payments and does not provide any supporting documentation (i.e. financial information). In this situation, the taxpayer has not made any effort towards

compliance and cannot reasonably presume that ~~an IPA~~ payment plan is in effect. The collector does not need to ~~issue a Form~~ send a BOE-407-T in this situation, but an attempt to contact the taxpayer prior to initiating any new collection action should be made.

3. Same ~~offer situation~~ as #2 above; however, the taxpayer sends us the financial information and begins making voluntary payments while the financial information is being reviewed. The payments being remitted are not sufficient to pay off the liability in a reasonable amount of time, but they are accepted while we are reviewing the account. To ensure there is no misunderstanding, the taxpayer should be sent a letter stating that the voluntary payments are being accepted only until the financial information has been reviewed. Assuming the financial information is reviewed timely, sending the taxpayer a ~~Form~~ BOE-407-T is not required. The collector should contact the taxpayer once the review of the financial information is completed and provide the taxpayer with the appropriate payment proposal form to complete and return.

REINSTATING A PAYMENT PLAN

770.030

A payment plan can be reinstated in ACMS if the termination process has been initiated, as long as the status has not changed to Terminated. Reinstatement of the payment plan is initiated in the Modify Promise to Pay screen in ACMS. Once the payment plan is reinstated, the termination process is cancelled and the status of the payment plan remains active. A payment plan can be reinstated up to a maximum of three times during the length of the payment plan.

After reinstatement, a BOE-407-R, *Payment Plan – Notice of Reinstatement*, must be provided to the taxpayer. This letter is available in ACMS and documents the fact that the payment plan is not being terminated and informs the taxpayer that the payment plan will continue.

Although the system will allow a payment plan to be reinstated if new liabilities or delinquencies exist on the account, only liabilities that were included in the payment plan when it was originally approved will be included in the reinstated payment plan. In order to add new liabilities that were not included in the original payment plan, if appropriate, the existing payment plan must be cancelled and a new one established.

The taxpayer should be directed to request the new payment plan online. If the payment plan is not auto approved, but is accepted by the collector, it must then be approved by the supervisor. A BOE-407-CN must then be sent to the taxpayer. If the taxpayer is unable to make the request online, the collector will send a BOE-407 that includes the new liabilities, and outlines the terms of the agreement. The BOE-407 must be received by the collector, entered into ACMS and approved by the supervisor before the new payment plan is confirmed.

ADMINISTRATIVE REVIEW UPON TERMINATION

770.031

A taxpayer's request for an administrative review upon termination of a payment plan by BOE will be conducted at a time convenient for the taxpayer but within the 15-day period mentioned in CPPM section 770.025-~~above~~. The taxpayer may choose the district or branch office ~~in which~~ to hold the administrative review. For STFD accounts, the administrative review will be held in BOE Headquarters in Sacramento if convenient or by conference call.

The review will be informal and the reviewing officer will be a ~~Business Taxes~~ ~~Compliance~~ ~~Supervisor~~ who, if at all possible, will not be the assigned collector's direct supervisor. The reviewing officer will verbally notify the taxpayer of the time and place of the administrative review when possible, and may also send ~~Form a~~ BOE-407-AR, ~~Installment Payment Agreement~~ Payment Plan, - Notice of Administrative Review-Notice, to the taxpayer's address of record. The reviewing officer will document this action in ACMS.

The reviewing officer will advise the taxpayer that the issues subject to discussion are limited to the reasons for terminating the ~~IPA~~ payment plan. Any documentation presented at the review must relate to the reasons why the taxpayer defaulted on the ~~IPA~~ payment plan.

Within 5 calendar days following the administrative review, the reviewing officer must issue a written decision to the taxpayer and the ~~district-originating~~ office indicating whether the ~~agreement~~ payment plan was:

1. Reinstated~~-,~~
2. Referred back to the district for further evaluation~~-, or~~
3. Terminated.

If the reviewing officer determines that the original ~~IPA~~ payment plan terms should be modified, the termination will be reversed and the case sent back to the ~~district~~ originating office. The ~~district-originating~~ office will re-evaluate the circumstances and modify the agreement accordingly. Modification of ~~an IPA cannot occur unilaterally, it a~~ payment plan can only occur with the mutual consent of the taxpayer and the reviewing officer. If the terms of the original agreement are modified, a new ~~Form~~ BOE-407, ~~Installment Payment Agreement~~, must be completed.

CANCELLING A PAYMENT PLAN

770.032

A payment plan in Active status can be cancelled using the Modify Promise to Pay screen in ACMS. The three different cancellation status types are Cancelled, Taxpayer Cancelled, and Legal Cancelled (see CPPM section 770.020). Cancellation of a payment plan in Pending status can only be accomplished by having a supervisor deny approval in ACMS.

A taxpayer whose payments are automatically debited can request BOE to stop debiting the account at any time. Taxpayers can request cancellation either verbally or in writing. Taxpayers are advised in writing on the BOE-407 that a request to cancel the agreement and stop a debit payment must be received at least five business days prior to the due date of a payment. This allows BOE staff time to process the request prior to the next scheduled payment. Regardless of the manner in which a cancellation request is received, it must be processed immediately to avoid the taxpayer's bank account from being erroneously debited.

After cancelling the payment plan, the collector should send the taxpayer a BOE-407-C, *Payment Plan - Notice of Automatic Payment Cancellation and Termination*, which can be accessed in ACMS. The letter advises the taxpayer that the automatic payment has been cancelled and the payment plan will be terminated after 15 days. The collector must wait for the 15-day period to pass before taking collection action.

ANNUAL REVIEWS

770.032-033

All ~~IPAs~~ payment plans lasting more than a year must be reviewed every 12 months, at a minimum. The review will be recorded in ACMS notes. As part of the review, collectors must verify the taxpayer’s current income by obtaining recent payroll stubs, copies of the taxpayer’s current income tax returns, etc. Collectors should also review the original BOE-403-E, *Individual Financial Statement*, to see if any claimed expenses previously allowed have been paid off by the taxpayer. If the taxpayer has paid off some claimed expenses, the amount of payment previously directed to that debt is to be paid to the BOE. When performing a review of any existing ~~IPA~~ payment plan, staff will use the appropriate review letter in ACMS when requesting updated financial documentation from the taxpayer. The review letters are ~~Form the~~ BOE-59, *Payment Proposal Plan — Renewal Review (Individual)*, and ~~Form the~~ BOE-61, *Payment Proposal Plan — Corp. Renewal Review (Non-Individual)*.

Accounts in the ~~ACMS Promise to Pay~~ Promise to Pay work state (XX05) for 365 days will automatically be routed to the ~~Promise Review~~ Promise Review state (XX65). If the account routes to a different state within that time (e.g., routes to new ACCES Model state to transition from ACCES A to ACCES B), the 365 time frame starts over. Accounts in the Promise Review state will be placed on the appropriate collector’s work list. Collectors will review the agreement as discussed above and, when appropriate, route the account back to the ~~Promise- to- Pay~~ state. When ACMS routes the accounts into the Promise Review state, the ~~IPA~~ payment plan remains in effect and any scheduled debit payments or promise reminder notices scheduled to be mailed to the taxpayer will continue ~~to be mailed~~. Existing ~~IPAs~~ payment plans determined to still be in the State’s best interest will be manually routed back into the ~~ACMS Promise- to- Pay~~ state by the collector.

If cancellation of ~~an IPA~~ a payment plan is necessary, collectors will route the account to their supervisor. Accounts remaining on the Promise Review state for more than 15 days are automatically routed to the work list of the assigned collector’s supervisor.

When performing an annual review of ~~an IPA~~ a payment plan, staff must check to see if any liability periods will become 30 months old prior to the next annual review. Liability periods exceeding 30 months ~~are subject to the Board of Equalization’s policy regarding the filing of a lien or liens to protect the State’s interest~~ may be nearing the 3-year statute of limitations for filing liens, and are subject to BOE’s lien policy outlined in CPPM section 757.000. Prior to requesting a lien, staff will mail ~~Form a~~ BOE-407-L, *Notice of Intent to Lien*, to the taxpayer. If the taxpayer does not remit payment for the aged liability periods within 45 days of the ~~Form~~ BOE-407-L mailing date, staff will initiate the lien request through ACMS.

SUCCESSFUL COMPLETION — RELIEF FROM FINALITY PENALTY

770.035

Pursuant to RTC section 6832(e) for sales and use tax and similar provisions for special taxes and fees, the BOE will relieve finality penalties for taxpayers who satisfactorily complete ~~installment~~ payment proposals plans under certain conditions. To be eligible for relief, ~~the taxpayer must initiate the installment payment proposal and the proposal~~ the liability must be BOE-assessed and the payment plan must be accepted entered into within 45 days of the finality date of the Notice of Determination or Redetermination.

CPPM Chapter 7, Collections

Relief of finality penalties will not be granted when:

1. The determination includes a fraud penalty. ~~Persons involved in fraudulent acts have acted with willful neglect and their failure to make payment was not due to circumstances beyond their control.~~ Fraud requires clear and convincing evidence of a deliberate intent to deprive the state of tax legally due, or intent to evade the payment of tax. Fraud is a step beyond a 10% penalty for negligence or intentional disregard of the law.
2. The taxpayer fails to complete the proposal as agreed. This does not include payments which are late due to circumstances beyond the taxpayer's control including, but not limited to, late U.S. Postal Service delivery of timely mailed payments and checks dishonored due to bank error.

~~Authority to relieve the finality penalty has been delegated to the Deputy Director, Sales and Use Tax Department, the Chiefs of the Field Operations Divisions, the supervisor of the Special Procedures Section, the Petitions Section Supervisor, the Deputy Director and Administrators of Property and Special Taxes Department, all District Administrators, and the Administrator of the Centralized Collections Section.~~

This section only applies to relief of the finality penalty assessed on a determination pursuant to RTC section 6565. All other requests for relief from penalty such as those under RTC section 6592, 6833, and similar provisions for special taxes and fees, must be requested through the process outlined in CPPM section 535.055.

For payment plans made online that are automatically approved, the finality penalty is included in the payment plan, so relief is not automatically granted or processed. Therefore, on a monthly basis, each office must obtain the ACMS Promise Reports and identify the auto-approved accounts that qualify for relief of the finality penalty. These reports can be found on the SUTD SharePoint page on eBOE, with access limited to supervisors. After the auto-approved accounts are identified, the collector will select a review date on the ACMS Modify Promise to Pay screen for a future date. The future date should be a date just prior to when the payment plan will be completed to prevent the finality penalty amount from automatically being debited.

~~Upon completion of the prescribed payments~~After the payment plan is completed, the collector will make a recommendation for relief of the finality penalty to the supervisor, and if appropriate, the supervisor will forward the request to the appropriate administrator. If appropriate, the administrator will notify the Petitions Section that the finality penalty is to be adjusted out of the taxpayer's liability. If, in the opinion of the administrator, relief should not be granted for reasonable cause, the administrator should set forth the facts of the case in a memo to the Petitions Section provide the reason to the collector's supervisor.

**ALCOHOLIC BEVERAGE LICENSE
SUSPENSIONS AND TRANSFERS 765.000**

**SUSPENSION OF ALCOHOLIC BEVERAGE
LICENSE FOR FAILURE TO FILE OR PAY SALES & USE TAXES 765.005**

~~Under Business & Professions Code (BPC) section 24205, a taxpayer's alcoholic beverage license may be suspended~~ provides for the automatic suspension of any alcoholic beverage license issued by the Department of Alcoholic Beverage Control (ABC) when:

- ~~1. The taxpayer is three or more calendar months delinquent in the payment of sales or use~~ fails to pay taxes or penalties due under the Sales and Use Tax law and that liability arises in whole or in part from the exercise of the privilege of an alcoholic beverage license, or
- ~~2. The alcoholic beverage license is directly related to a delinquent seller's permit.~~ taxpayer fails to pay any taxes or penalties due under the Alcoholic Beverage Tax Law, and
- ~~3. The taxpayer is at least 3 months delinquent in the payment of either the sales and use, or alcoholic beverage taxes or penalties listed above.~~

Staff must verify that the name of the licensee who holds the alcoholic beverage license (ABC license) for a specific business location matches the name and location of the BOE permit holder before requesting a suspension of the license. Staff can use the ABC License Query System on the website www.abc.ca.gov to find the name and business location of the licensee.

If the registration information of ABC and BOE do not match, staff may not request suspension of the license. Staff must investigate the discrepancy and determine the true ownership or location of the business. If the investigation supports a questionable ownership dual determination, a request for a dual billing against the ABC licensee with supporting documentation and supervisory approval should be sent to the Special Operations Branch (SOB). If staff's investigation reveals that BOE's registration is correct, staff should contact the local ABC office to request they investigate a possible "undisclosed ownership" issue or to get the correct entity licensed.

When the individual licensees are married or in a registered domestic partnership, ABC will make an exception and allow the suspension of a license even if the names do not match. ABC will allow a suspension of an ABC license when the seller's permit and the suspension request only list one tax debtor and the liquor license is held in the name of the tax debtor and his or her spouse or registered domestic partner. Conversely, ABC will also allow a suspension when the seller's permit and the suspension request is in the name of a husband and wife or registered domestic partnership and the liquor license is held in the name of only one of the spouses or partners. This exception also applies to ABC license transfer withholds (see CPPM section 765.040).

Taxpayers who have entered into an approved ~~installment~~ payment ~~agreement~~ plan and are ~~actively making~~ current with their payments ~~in accordance with that agreement~~ should not be considered ~~as~~ candidates for suspension of their ~~alcoholic beverage license~~ ABC license.

CPPM Chapter 7, Collections

ACMS contains two warning letters for use in cases where the potential to request suspension of an ~~alcoholic beverage~~ABC license exists. The first letter, ~~Form~~ BOE-1495, *ABC Suspension — Preliminary Notice, Delinquency*, is designed to be used once an account is roughly 2 1/2 months delinquent in the filing or payment of a return or prepayment (calculated from the due date of the return/prepayment). This letter warns the taxpayer of the potential consequences for not filing and paying the delinquent return/prepayment or not paying the delinquent ~~account receivable~~balance. The BOE-1495 should be mailed to the mailing address of record. In the case of tax return delinquencies, ~~a blurb will be attached to~~ the taxpayer will be mailed a delinquency citation notice ~~that which also contains a~~ warnings of the possibility that the taxpayer's liquor license may be suspended.

The second letter, ~~Form~~ BOE-1497, *ABC Suspension — Final Notice, Delinquency*, must be ~~sent~~ mailed to the mailing address of record prior to suspending the ~~alcoholic beverage~~ABC license. The taxpayer must be delinquent in the filing or payment of a return or prepayment for three full calendar months (calculated from the due date of the return/prepayment) before the BOE-1497 can be mailed. ~~This letter should always be mailed to the mailing address of record prior to suspension of the alcoholic beverage license.~~—This final letter affords the taxpayer 14 calendar days to comply before suspension occurs.

~~Once~~ After the 14-day period has expired, ~~and if~~ the taxpayer has not filed and paid the ~~liability~~delinquent return/prepayment, paid the delinquent account balance, or commenced ~~with~~ a satisfactory payment plan, a ~~Form~~ BOE-200-A, *Special Procedures Operations Action Request*, should be completed and sent to the ~~Special Procedures Section (SPS)~~SOB for processing. ~~SPS~~ SOB will verify that:

1. ~~Forms~~ Both the BOE-1495 and BOE-1497 have been sent to the taxpayer.
2. 14 days have elapsed since the BOE-1497 was mailed.
3. The taxpayer has not ~~provided a valid surety bond or~~ filed and paid the delinquent return/prepayment, paid their delinquent ~~taxes and penalties~~account balance, or commenced with a payment plan.

~~SPS~~ SOB will forward a ~~memo, Form~~ BOE-1499, *ABC Suspension Request*, to ~~the Department of Alcoholic Beverage Control (ABC),~~ requesting ~~that the alcoholic beverage license be suspended~~suspension of the ABC license until further notice. (Note: If the taxpayer complies before ~~SPS~~ SOB issues the BOE-1499, staff must notify ~~SPS~~ SOB immediately.)

~~Once the memo is received, ABC will conduct a field call, confiscate the liquor license, and notify SPS when the suspension of the alcoholic beverage license is complete.~~ Once a month, ABC processes BOE suspension requests by issuing a Notice of Suspension to the ABC licensee with the effective date of the suspension. SOB receives a copy of the notice and will note the suspension date in the appropriate ACMS account. The suspension status can be confirmed on ABC's website. Business and Professions Code BPC section 24205 provides that reinstatement of the liquor

license should only be allowed when the taxpayer is current in filing and paying all delinquent sales ~~&and~~ use taxes ~~returns~~¹.

Once the ~~seller-taxpayer~~ has filed and paid all delinquent ~~and-current~~ sales ~~&and~~ use tax returns, the ~~responsible~~-collector assigned to the account will ~~send Form~~ complete a BOE-1500, ABC Suspension Release, available in ACMS. Staff will scan the form and email it as a PDF file attachment to ABC's headquarters in Sacramento using the email address LicensingUnit@abc.ca.gov. Copies do not need to be sent by mail or fax to ABC's headquarters or to local offices. The BOE-1500 notifies ~~ing it~~ ABC that the taxpayer's liquor license should be reinstated. ABC will process the release requests it receives by email and update its website within two business days. ~~An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed any applicable surety bond, and is making payments on an approved installment payment agreement against an audit liability.~~

SUSPENSION OF ALCOHOLIC BEVERAGE

LICENSE FOR FAILURE TO RENEW A SURETY BOND

765.006

~~Additionally,~~ BPC section 24205 provides that the liquor license of a taxpayer shall be automatically suspended upon cancellation of its sales and use tax bond, or if that bond becomes void or unenforceable for any reason.

However, this procedure is not to be used when the BOE is making an initial demand for security. ACMS contains two warning letters for use when requesting an ~~alcoholic beverage~~ ABC license suspension for the above reasons. ~~Form~~ A BOE-1496, *ABC Suspension — Preliminary Notice, Security*, should be used when the taxpayer has not replaced a bond that was cancelled, became void or unenforceable, or when the taxpayer is delinquent in renewing or replacing the bond for approximately 2 1/2 months. This letter warns of the potential consequences of an automatic suspension of its ~~alcoholic beverage~~ ABC license for not providing a valid surety bond.

~~Form~~ The BOE-1498, *ABC Suspension — Final Notice, Security*, should be mailed to the taxpayer approximately two weeks after the first letter or when a taxpayer is delinquent in renewing or replacing the surety bond for three full calendar months. A BOE-1498 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14-day period has expired, and the taxpayer has not provided a valid surety bond replacement or commenced with a satisfactory payment plan to replace the bond, ~~Form~~ A BOE-200-A, *Special ~~Procedures-Operations~~ Action Request*, should be completed and forwarded to ~~SPS-SOB~~ for processing. ~~SPSSOB~~ will verify that:

1. ~~Forms~~ Both the BOE-1496 and BOE-1498 have been sent to the taxpayer.
2. 14 days have elapsed since the BOE-1498 was mailed.
3. The taxpayer is currently three full calendar months delinquent in the renewal or replacement of the surety bond.

¹ An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed any applicable surety bond, and is making payments on an approved payment plan against an audit liability.

~~SPS-SOB~~ will forward a ~~memo~~ (BOE-1499, *ABC Suspension Request*)² to ABC, requesting that the ABC license be suspended until further notice. (NOTE: If the taxpayer complies prior to issuance of the BOE-1499, staff must notify ~~SPSSOB~~ immediately.) ~~ABC will conduct a field call, confiscate the liquor license, and notify SPS when the license is suspended.~~

~~Business and Professions Code~~BPC section 24205 expressly provides the license shall be automatically reinstated if the taxpayer files a valid bond, or pays his or her delinquent taxes or penalties, as the case may be². Once the seller has provided a valid surety bond and has paid all delinquent taxes or penalties, a release ~~memo~~letter (BOE-1500, *ABC Suspension Release*) should be scanned and sent as a PDF file attachment by the responsible collector to ABC's headquarters in Sacramento using the email address LicensingUnit@abc.ca.gov. No copies should be mailed or faxed to ABC's headquarters or to local offices. This ~~memo~~letter will notify ABC that the taxpayer's liquor license should be reinstated. ~~An exception may be allowed if the taxpayer is current on self-declared taxes, has a valid surety bond, and is making payments on an approved installment payment agreement.~~ABC will process the release requests it receives by email and update its website within two business days.

WITHHOLD OF TRANSFER — ALCOHOLIC BEVERAGE LICENSE 765.010

~~Business and Professions Code~~BPC section 24049 provides that the transfer of any alcoholic beverage license may be refused if the applicant is delinquent in the payment of any taxes due under:

1. The Alcoholic Beverage Tax Law²
2. The Sales and Use Tax Law²
3. The Personal Income Tax Law²
4. The Bank and Corporation Law²
5. Revenue and Taxation Code (RTC) section 134, defining unsecured property, when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license², or
6. The Unemployment Insurance Code, when such liability arises out of the conduct of a business licensed by the ~~Department of Alcoholic Beverage Control~~ABC.

This allows the BOE, through an arrangement with ABC, to request placement of a withhold against a liquor license transfer when the applicant is delinquent under any of the laws mentioned above.

For the purpose of these withholds and in cases of transfers, the applicant is deemed to be ~~either~~ the transferor ~~or the transferee~~ of the liquor license. ABC will not accept a withhold on a temporary or pending license of a transferee.

TYPES OF LIQUOR LICENSES SUBJECT TO WITHHOLD 765.020

“Limited” liquor licenses are those licenses that are restricted. This type of license is issued based on the population of the county in which the business premises are

² An exception may be allowed if the taxpayer is current on self-declared taxes, has a valid surety bond, and is making payments on an approved payment plan against an audit liability.

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located. Those that lend themselves to withhold procedures are listed by the following ABC Tax Control Codes:

- 20 Off-sale beer and wine (~~affected by the moratorium;~~ (see listing in CPPM 767.110)-)
- 21 Off-Sale General
- 47 On-Sale General Eating Place
- 48 On-Sale General Public Premises
- 49 On-Sale General Seasonal
- ~~58 Caterer's Permit~~ [57 Special On-Sale General](#)
- 75 Brewpub-Restaurant

In transferring a limited liquor license for a purchase price or consideration, ~~establishment of~~ an escrow must be established, with the following exceptions:

1. Any transfer of a liquor license made by an executor, administrator, guardian, conservator, trustee, receiver, assignor, or fiduciary who has been approved or authorized by ABC is considered to be the same as an escrow agent for the purpose of receiving withholds and release letters. Escrows are not required on premise transfers when ownership of the license remains the same.
2. ~~Four~~ [Many](#) types of licenses are excluded from the withhold procedure, as there is no requirement that escrow information be furnished to ABC. These license codes ~~are~~ [include](#):
 - 20 Off-Sale beer and wine (not affected by the moratorium)
 - 40 On-Sale Beer
 - 41 On-Sale Beer and Wine
 - 51 Club (worth a maximum of \$350)

FORM LETTERS USED IN THE WITHHOLD PROCESS

765.030

~~Form~~ [The](#) BOE-871, *Request for Transfer of Liquor License To Be Withheld*, is sent to ABC by [SPSSOB](#) to request a withhold on the transfer of a liquor license. ~~This form is prepared in sets of five to provide copies to all offices concerned.~~

~~Form~~ [The](#) BOE-872, *Release of Hold Against ABC License*, is used by the district offices to notify ABC to release a withhold placed against the transfer of a liquor license.

~~Form~~ [The](#) BOE-872-A, *Release of Withhold on Liquor License Transfer*, is used to inform the escrow agent of requirements that need to be met prior to the transfer of the liquor license. If a demand has been made to the escrow agent because of a liability against an account, generally both ~~Form~~ [the](#) BOE-872 and ~~Form~~ BOE-872-A, are sent to the escrow holder. After all liabilities against an account have been cleared, the escrow agent will forward ~~Form~~ [the](#) BOE-872, ~~Release of Withhold Against ABC License~~, to ABC so the liquor license may be transferred. If ABC does not approve the transfer, the release will be returned with a brief explanation.

[If BOE staff sends the BOE-872 to ABC to release the withhold, the form should be scanned and emailed as a PDF file attachment to ABC headquarters using the email address LicensingUnit@abc.ca.gov. No copies should be mailed or faxed to ABC's headquarters or to local offices. ABC will process requests received by email within two business days. For expedited requests, staff must contact SOB after emailing the release request to ABC. SOB can be reached by phone at 916-445-1122 or by email at](#)

SpecialOperationsBranch@boe.ca.gov. SOB will then contact ABC to expedite the release.

TRANSFER WITHHOLD REQUESTS

765.040

BPC section 24049 provides the BOE the authority to refuse the transfer of an ABC license if the applicant is delinquent in the payment of any sales and use taxes due. BPC section 24040 states that each ABC license shall be issued to a specific person for a specific business location.

~~District offices and SPS~~ Collection staff and SOB staff share responsibility with respect to placing holds against the transfer of certain types of liquor licenses. The ~~knowledge~~ notification of a pending license transfer ~~application has been made will~~ may come, ~~for the most part, from daily information sent to SPS by ABC. Each of the ABC district offices sends daily notices of license transfer applications to ABC Headquarters who, in turn, transmits the information to SPS on a rush basis. from the taxpayer or escrow company to the district office, or from daily ABC licensing reports obtained by SOB.~~

~~SPS will locate account numbers for the indicated liquor licenses and check for reporting delinquencies and final liabilities.~~ On a daily basis, SOB retrieves a licensing report of new ABC applications and identifies the district responsible for the applicant's business location. These reports are disseminated to District Principal Compliance Supervisors. The reports can assist staff in identifying permit issues, transfers involving an account with a delinquency or liability, or possible sale of a business.

A liquor license withhold may only be requested if the licensee matches the permit holder, with the exception of spouses and registered domestic partners (see CPPM section 765.005). A withhold may be requested if:

1. There is a reporting delinquency, ~~or~~ or
2. A final or non-final liability exists.

~~3. If the license being transferred has a non-final liability.~~

When ~~SPS~~ SOB determines that a withhold should be placed on a liquor license, ~~Form a~~ BOE- 871, Request for Transfer of Liquor License To Be Withheld, will immediately be sent to ABC headquarters, Sacramento, with a copy to the ~~taxpayer responsible BOE district office. Where no reporting delinquency or final liability exists, SPS will send notification of the license application transfer to the responsible district office for any action deemed necessary, e.g., close out of the seller's permit, etc.~~

When staff has determined that a withhold on the transfer of the liquor license should be placed, the district will notify SOB either by telephone (if an escrow is pending) or by sending a BOE-200-A, Special Operations Action Request. If notification is made by telephone, staff should also send a BOE-200-A to ensure the request is documented in ACMS. The request must contain the taxpayer's name, account number, liquor license number, and reason for requesting a withhold.

When there is a pending liquor license transfer and the BOE has a withhold on the license, the district will ~~notify, by send a~~ letter, to all interested parties ~~and informing~~ them a tax liability exists that must be cleared prior to the withhold being removed and the license being transferred.

**DEMAND AND RELEASE PROCEDURE
FOR ALCOHOLIC BEVERAGE LICENSE WITHHOLDS**

765.050

Upon receipt of ~~Form the~~ BOE-871, ABC will send ~~SPS-SOB~~ two copies of the application to transfer the license and ~~SPS-SOB~~ will forward this information to the responsible district office. ~~Since-Because~~ a liquor license can transfer no earlier than 30 days from date of application to the date of transfer, the district office staff must make every effort to:

1. Clear all delinquent periods.
2. Search for related accounts that may be involved. Note that a withhold may only be placed for liabilities associated with use of the ABC license for a specific business. If there are taxes owed under another account held by the same taxpayer, a Notice of Levy may be sent for any additional funds that may be held in the escrow account.
3. ~~If-Once~~ a final or non-final liability is determined, send ~~Form the~~ BOE-872, *Release of Hold Against ABC License*, and ~~Form the~~ BOE-872-A, *Release of Withhold on Liquor License Transfer*, to the escrow holder. In cases where the escrow is not being handled by an escrow company, (e.g., bank, etc.), or when there are multiple tax agency withholds on the license, only Form the BOE-872-A, should be ~~presented-sent~~ to the escrow holder. ~~Form-The~~ BOE-872 should be held pending payment of the demand or BOE's prorated share of the selling price with the other tax agencies.

If a demand is not sent to the escrow holder within 30 days, ABC may allow the license to transfer without payment.

When the escrow holder is in a position to disburse funds, payment will be made to the BOE pursuant to the ~~Form~~ BOE-872-A instructions and the escrow holder, except as noted ~~above~~previously, will simultaneously forward the ~~Form~~ BOE-872, *Release of Hold Against ABC License*, to ABC headquarters, Sacramento. ABC will then remove the withhold on the transfer of the liquor license.

If staff sends the BOE-872 to ABC to release the withhold, the form should be scanned and emailed as a PDF file attachment to ABC headquarters using the email address LicensingUnit@abc.ca.gov. No copies should be mailed or faxed to ABC's headquarters or to local offices. ABC will process requests received by email within two business days.

For expedited requests, staff must contact SOB after emailing the release request to ABC. SOB can be reached by phone at 916-445-1122 or by email at SpecialOperationsBranch@boe.ca.gov. SOB will then call ABC to expedite the release. ABC headquarters will only accept a withhold or release request by telephone when a license transfer is pending.

~~DISTRICT OFFICE RESPONSIBILITY~~ FOLLOW UP REQUIRED ON WITHHOLDS

765.060

~~When district office staff determines that a withhold needs to be placed on the transfer of a liquor license, the district will notify SPS either by telephone (if an escrow is pending) or by Form BOE-200-A, Special Procedures Action Request. If notification is made by telephone, follow up with a Form BOE-200-A to ensure the request is~~

~~documented in ACMS. The request must contain the taxpayer's name, account number, liquor license number, and reason for requesting a withhold.~~

Each district office is responsible for follow-up on its their own liquor license withholds. If an audit is recommended, compliance staff will notify the ~~district office~~ audit staff immediately so ~~that an audit will be~~ they can initiate the audit promptly or ~~an audit waiver will be obtained~~ make the determination that no audit is necessary.

Under RTC section 6813, the BOE may require the posting of a security deposit in order to issue a Certificate of Tax Clearance that will allow the escrow to proceed with the transfer of the business and the liquor license. When a license withhold cannot be placed because no delinquencies exist with respect to reporting, or the account does not have a final or non-final liability at the time the application for transfer is made, the provisions of RTC section 6813 should be considered in order to ensure payment of any anticipated liability. If additional liabilities are found within the allotted time, or before all the escrow funds are disbursed, an amended demand should be made on the escrow agent.

Once the reason for placing the ABC withhold on the liquor license has been resolved, staff should make sure to have the withhold removed. Districts can make use of the "uncleared items flag" in ACMS to remind themselves that the withhold needs to be removed once the liability is resolved. The uncleared items flag will prevent the case from exiting ACMS until the flag has been cleared. This is important because the BOE-872, Release of Hold Against ABC License, is generated in ACMS and an account will route out of ACMS once payment in full is applied to the account.

MISCELLANEOUS INFORMATION — LIQUOR LICENSE WITHHOLD 765.070

~~Business and Professions Code~~ BPC section 23959 states, "If an application 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 then due from the applicant under Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code or the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant." ABC notifies SOB when such fees are available for a potential offset.

~~From time to time, it may be necessary to expedite the release of a liquor license withhold by making a telephone call to ABC headquarters in Sacramento. District office staff, after ensuring that a rush release is necessary, will contact SPS and an authorized person from SPS will call ABC to have the license released.~~

REMINDER TO THE DISTRICT OFFICES — LIQUOR LICENSE WITHHOLDS 765.080

The following information is included as guidelines for ~~district office~~ staff when considering placement of a withhold against a liquor license.

1. Unless the account has a reporting delinquency, a non-final liability, or a final liability, a withhold on the transfer of a license will not be placed.
2. Withholds are not placed against ~~renewals of~~ cancelled, pending, or revoked liquor licenses.
3. After considering all factors, including application of cash deposits, a withhold is not to be requested on balances less than \$100.

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- 3.4. A withhold should not be requested when the name of the ABC licensee does not match the name of the BOE permit holder, except in the cases of spouses and registered domestic partners.
- 4.5. A withhold should not be requested unless all or part of the liability or delinquency arose from the operation of a business requiring the holding of a liquor license.
- 5.6. No “rush” withhold on the transfer of a liquor license ~~will~~can be made unless there is an application for the transfer on the license.