

Memorandum

To : Mr. David J. Gau
Executive Director (MIC 73)

Date: June 20, 2016

From : Susanne Buehler, Deputy Director
Business Tax and Fee Department (MIC 43) *Susanne Buehler*

Subject : **Board Meeting July 14, 2016**
Item N: Administrative Agenda
Proposed Revision to Compliance Policy and Procedures Manual
Chapters 1, 2, 4, and 7

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

- Chapter 1, Sections 155.022 and 155.025, regarding release of levy and bank charge reimbursement
- Chapter 2, Sections 265.010 – 265.020, regarding retailers under RTC section 6015
- Chapter 4, Section 405.020, regarding general security deposit requirements
- Chapter 7, Various sections

These revisions have been reviewed and approved by Business Tax and Fee Department and Field Operations Department 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 Board Member staff requesting a change to the first sentence in CPPM Chapter 7, section 705.060, *Cash Collections – Overnight Retention of Funds*, which was incorporated. No other comments were received from Board Members or other interested parties.

If you have any questions, please let me know, or contact Ms. Lynn Whitaker at 916-324-8483.

SB:rs

Attachment

STATE BOARD OF EQUALIZATION

BOARD APPROVED



At the July 14, 2016 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

Approved

B. J. Fleming for

Mr. David J. Gau
Executive Director

cc: (all with attachment)

Mr. Wayne Mashihara (MIC 47)
Chief, Tax Policy Division (MIC 92)
Mr. Richard Parrott (MIC 57)
Mr. Kevin Hanks (MIC 49)
Mr. John Thiella (MIC 73)
Mr. Marc Alviso (MIC 73)
Mr. Chris Lee (MIC 73)
Ms. Leila Hellmuth (MIC 43)
Ms. Lynn Whitaker (MIC 50)

SECTION 7094, RELEASE OF LEVY

155.022

Under RTC section 7094 and equivalent Special Taxes and Fees statutes, ~~provides that~~ the Taxpayers' Rights Advocate may order the release of a levy or notice to withhold, or order the return of levied funds up to \$2,300 received within the last 90 days, up to \$1,500, upon finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or their spouse and dependents or family. The section is recognized as an extension of the existing summary collection action review procedures and will be utilized when disagreements between the staff and the taxpayer exist. Under these circumstances, the taxpayer should be advised of provisions of RTC section 7094.

Current compliance policy (CPPM Section 753.000 et seq.) states that when a notice of levy is issued, the taxpayer is entitled to be informed of the exemptions provided in the Code of Civil Procedure. Form BOE-425, *"Exemptions from the Enforcement of Judgements,"* BOE-425-L3, Notice of Levy – Information Sheet, and BOE-403-E, Individual Financial Statement ~~is~~are sent to the taxpayer with a copy of the Notice of Levy. To comply with RTC subdivision 7094(b), the person signing the levy should ensure ~~this~~these forms ~~is~~are included with the taxpayer's copy. A notice to withhold can have the same effect on health and welfare issues as a notice of levy; therefore, it will be treated in the same manner as a notice of levy.

Note: this section continues but is not being modified at this time.

**SECTION 7096, CLAIMS FOR REIMBURSEMENT
OF BANK AND THIRD-PARTY CHARGES ~~BY TAXPAYER~~**

155.025

Under RTC section 7096 and equivalent Special Taxes and Fees statutes, a taxpayer may file a claim with the BOE for reimbursement of bank charges and other reasonable third-party charges and fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. ~~Bank charges~~ Charges subject to reimbursement include:

1. ~~a~~ A financial institution's or third-party's customary charges for complying with the levy or notice to withhold instructions,
2. A financial institution's customary charges for overdrafts or non-sufficient funds that are a direct consequence of the ~~erroneous levy.~~ BOE's error, and
3. Any reasonable third-party charges incurred by a taxpayer due to an error by the BOE. Third-party charges are fees charged by payees, such as retailers, utility companies or service providers, for returned checks or dishonored electronic payments.

The charges subject to reimbursement are those paid by the ~~taxpayer claimant~~ and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the BOE.

The BOE will grant a claim if:

1. The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by BOE error, ~~and;~~
2. Prior to the levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the BOE and provided the BOE with any requested information or documentation sufficient to establish the taxpayer's position. ~~(the BOE may waive T~~ this provision ~~may be waived by the BOE for reasonable cause.); and~~
- ~~2.3.~~ The claim is filed in writing within 90 days from the date the bank or third-party charges were incurred by the taxpayer.

In the context of RTC section 7096 and equivalent Special Taxes and Fees statutes, "BOE error" can include an action taken by the BOE that would not (or should not) have been taken if all the facts of the case were known; that is, the error occurred due to circumstances that were beyond the control of BOE staff and the taxpayer, notwithstanding the taxpayer's timely and cooperative response to all contacts by the BOE, where such contacts were feasible. In addition, the requirements of ~~RTC section 7096~~ these statutes are fulfilled if the levy causes funds to be captured that do not belong to the taxpayer and are not subject to community property laws.

Erroneous levies can occur for any number of reasons, including but not limited to: failing to follow RUPA (Revised Uniform Partnership Act) rules; taking collection action too soon (contrary to BOE written policy); or issuing a Notice of Levy during a bankruptcy stay.

An example of an erroneous processing or collection action would be if BOE staff mistakenly entered incorrect bank account information while processing a new Auto Pay authorization for a payment plan. The next payment would then be debited from

Chapter 1, General

the unrelated bank account, resulting in overdraft charges being incurred. The BOE would accept a claim for reimbursement from the account holder who incurred the bank charges due to the BOE's erroneous processing action.

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

~~Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold.~~ Within 30 days from the date the claim is received, the BOE shall respond to the claimant. If the BOE denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

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

1. The original written claim filed by the taxpayer/claimant.
2. A copy of the notice of charge, including evidence of payment, from the taxpayer's/claimant's bank and/or from a third party.
3. A ~~statement~~memorandum explaining the facts that lead 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.

Because the statute requires a response within 30 days, district offices should forward claims as soon as they are received. The Taxpayers' Rights Advocate will evaluate the claim and notify the taxpayer/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.

~~Because the statute requires a response within 30 days, district offices should forward claims as soon as they are received.~~ Since reimbursements under this section are paid out of the BOE's general operating fund and tax liabilities involve other government funds, offsetting transfers between these funds are not routinely possible. Therefore, payment of tax liabilities and reimbursement of bank or third-party charges must be handled separately. Requests to internally credit reimbursement of ~~bank~~such charges toward any outstanding tax liability of the taxpayer will not be granted.

PERSONS QUALIFYING AS RETAILERS UNDER RTC SECTION 6015 265.010

For efficient administration of the law, the BOE may declare certain sellers, wholesalers or distributors as retailers of their products even though they sell to salespersons, representatives or canvassers for resale to consumers. This is done so each of the salesmen, representatives or canvassers is not individually required to hold a seller's permit. Even though the wholesaler or distributor may or may not desire to be considered a retailer under RTC section 6015, the final decision in these matters rests with the BOE.

In order to assist the BOE, whenever a person indicates a desire or need to operate under section 6015, he/she should be instructed to submit a request in writing to the district or branch of control for the account.

Districts should submit a complete report with a recommendation to approve or deny placement of the account on section 6015 status. The report will be addressed to the Compliance ~~Program Analysis Section (CPAS)~~ Policy Unit (CPU). When the request originates with the taxpayer, the letter of request should be attached to the district's report, and should contain the following information:

- Name of taxpayer.
- Principal place of business.
- Place of sale (see CPPM section 265.025).
- Account number.
- Products sold and manner of operation.
- Territory covered.
- Number of outlets or salespersons.
- Financial stability and security status (profit and loss statement).
- Estimated annual sales volume.
- Adequacy of records and their location.
- Name, address, and account numbers of all representatives. (If the 6015 requester is a large, established distributor/wholesaler, a random sample will be adequate.)
- Ceopy of the agreement/contract with distributors.

Two additional factors to be taken into account when the reports and recommendations are being completed and reviewed are:

1. To what extent does the wholesaler maintain control over the representatives?
Is the representative handling only the product line of the 6015 requester?
Is there a working contract?
Product flow?
Will all the representatives' sales be at retail?
2. If approved, could there be an excess tax reimbursement situation?
Review product sold ultimate retailer/consumer, and taxable/nontaxable sales.

The district's report and taxpayer's request are reviewed by ~~CPAS-CPU~~ and directed to the Tax Policy Division Chief for approval. After approval by the Tax Policy Division Chief, ~~CPAS-CPU~~ will send letters to the retailers notifying them of the disposition of their request. A copy of the taxpayer's notification will be sent to the district to make corrections to the account record, if applicable.

~~CPAS-CPU~~ will maintain a file on all approved section 6015 Retailers. ~~CPAS-CPU~~ also enters the 6015 information in the registration system for the account record. A list of

6015 retailers can also be found ~~in Outlook under Public Folders (go to: Public Folders> All Public Folders> CBOE> SUTD>6015)~~ [on eBOE on the Tax Policy Division page. Click on the Compliance tab under the Quick Links.](#)

**RESCISSION OF BOARD’S APPROVAL TO
OPERATE UNDER RTC SECTION 6015**

265.020

If a request is made by the taxpayer to be removed from the status of a retailer under RTC section 6015, or the district determines that the taxpayer’s operations have materially changed and are no longer compatible with section 6015, the procedure is as follows:

1. The district of control will submit a complete report with a recommendation to terminate authorization of the seller to operate under RTC section 6015. The report will include:
 - a. The name, address and account number of the seller,
 - b. A list showing the name and address of former agents and representatives, and
 - c. The reason(s) for the recommendation.
2. When the request has originated with the taxpayer, a copy of the taxpayer’s letter of request together with the list of agents should be attached to the district’s report. The report will be sent to ~~CPAS~~[CPU](#).

The district’s report and taxpayer’s request will be reviewed by ~~CPAS~~[CPU](#) and directed to the Tax Policy Division Chief for approval. After approval by the Tax Policy Division Chief, ~~CPAS~~[CPU](#) will send letters to the retailers notifying them of the disposition of their request. A copy of the taxpayer’s notification will be sent to the district to make corrections to the account record, if applicable.

SECURITY – NEW ACCOUNTS/NEW OWNERS/EXISTING ACCOUNTS 405.020

General Guidelines

In general, security deposits are not required from taxpayers applying for a permit with BOE unless security is mandated by law. Under exceptional circumstances, staff may request security from taxpayers with a history of non-payment or those which pose a high compliance risk. This requires supervisory approval.~~the BOE will not require an applicant for a seller's permit to post a security deposit unless:~~

- ~~1. The applicant has previously established a history with the BOE of late payments or delinquencies, or~~
- ~~2. The applicant is a corporation or LLC.~~

In determining whether or not security is necessary to protect the interest of the ~~state,~~ consideration should be given to such factors as:state, consideration should be given to the applicant's payment history, if any, with the BOE. If the applicant has held prior permits, his or her history may indicate future actions. ~~A poor payment history includes acts such as multiple delinquent returns and/or multiple liabilities.~~A poor payment history includes acts such as multiple delinquent returns, multiple liabilities, and/or multiple revocations.

- ~~1. The applicant's payment history, if any, with the BOE. If the applicant has held prior permits, his or her prior history may very well indicate future actions. A poor payment history includes such acts as multiple delinquent returns and/or multiple liabilities.~~
- ~~2. Type of ownership. Sole proprietor and partnerships consisting of individuals are generally a lower risk than other types of ownership. Any decision to either conditionally waive or release security for other entities should be weighed carefully with special attention given to the state's interest, balanced with sound public policy, good judgment, and the specific facts and history of the taxpayer.~~
- ~~3. A corporation's financial condition. A recent financial statement is often helpful in making this determination.~~
- ~~4. The history of the individual forming a new closely held corporation. If the individual forming the closely held corporation has established a prior good payment history with the BOE, then the security may be waived.~~

~~The above list is not all-inclusive but should be helpful in implementing the BOE's security policy.~~

~~In cases where an existing account has been revoked twice, security will be required presuming the account meets the required minimum security amount threshold. The security will be obtained after the account has been reinstated.~~

BusinessNon-Corporate Owners

As noted above, ~~for sales and use tax purposes,~~ if the owner(s) of the business (sole proprietor, partnership, corporation, LLC, joint venture, fraternal associations, etc.) does not have a history of payment problems with the BOE, no initial demand for security will be made unless required by statute. However, ~~the applicant will in every instance be advised that failure to meet the requirements of correct and timely payment and reporting~~when appropriate, taxpayers should be advised that failure to meet their reporting and payment requirements may result in ~~security being~~

Chapter 4, Security

~~demand~~ the BOE demanding ~~to~~ the maximum amount of security allowed by law. The taxpayer should also be advised that failure to post security when required may result in revocation of the seller's permit. (Note: Certificate of Registration-Lender (SL) accounts are not required to post a security deposit).

Corporations

~~Posting a security deposit is generally required of corporations and LLCs. The requirement to post a security deposit may be waived if the corporation or LLC has sufficient interest in real property in this state or if the facts and circumstances indicate that posting a security deposit is not necessary.~~

COLLECTIONS – IN THE FIELD

705.000

GENERAL

705.001

~~While operating in the field, a tax representative or specialist (collector) will often collect money from tax and fee payers. A field receipt must be issued to the taxpayer to memorialize these transactions. The money collected, receipts, and other supporting documents must be submitted to the cashier along with Form BOE 609, Tax Representative's Daily Report, upon return to the office for inclusion in the deposit and transmittal process.~~

Payments Received in Field Offices – No-Cash Policy

The BOE no longer accepts cash payments. Staff should first encourage taxpayers to pay online using their bank account information or credit card as listed on the BOE website. Alternatively, staff should provide taxpayers with a list of nearby businesses that can convert their cash to a money order or cashier's check. Note that taxpayers required to pay by Electronic Funds Transfer (EFT) will incur a penalty if they pay their return payment or prepayment using any other method than EFT.

Hardship Policy

The no-cash policy may pose an undue hardship to certain taxpayers with cash-based businesses that are unable to open a bank account. To accommodate these taxpayers, exemption form BOE-245-NC, *No Cash Exemption Request*, has been created. Taxpayers requesting an exemption from the no-cash policy must explain the reason why they are unable to pay using the methods provided and list the reason why they are unable to establish a bank account. The BOE-245-NC, must be signed by the owner, partner, or corporate officer. The request must be reviewed and signed by a District Administrator, or their designee, with comments entered in IRIS regarding the approval or denial of the request. If the request is approved, staff must review the EFT EI screen in IRIS to determine if the taxpayer is required to pay by mandatory EFT. If the account is on mandatory EFT, staff will mark the EFT box and submit the BOE-245-NC and any documentation to the Return Analysis Unit E-Services mailbox at RAUE-Services@boe.ca.gov with the subject line identified as "EFT Account - No-Cash Exemption Request."

Once the district office reviews the exemption request, a decision letter will be provided to the taxpayer, BOE-245-NCA, *No Cash Approval*, or BOE-245-NCD, *No Cash Denial*. If granted, the district office will coordinate with the taxpayer the date and time for their cash payments. When setting the date and time, districts should attempt to schedule the payment earlier in the day to ensure cashiers have adequate time to process the funds. If the exemption request is denied, the taxpayer may request the case to be referred to the Deputy Director of the Field Operations Department for further review.

In addition, a tax representative or specialist (collector) will often collect money from tax and fee payers during field calls (see CPPM section 749.000). A field receipt must be issued to the taxpayer to document these transactions. The money collected, receipts, and other supporting documents must be submitted to the cashier along with form BOE-609, *Tax Representative's Daily Report*, upon return to the office for inclusion in the deposit and transmittal process.

CASH COLLECTIONS — OVERNIGHT RETENTION OF FUNDS

705.060

When ~~cash is accepted by~~ a collector deems it necessary to collect cash, all bills in denominations of \$20.00 or greater must be tested with a counterfeit detector pen in the presence of the taxpayer. The bills must be segregated in individual envelopes together with the BOE copies of the BOE-602, *Field Receipt*.

All cash collected must be converted to a cashier's check or money order payable to the BOE before staff returns to the office. The cost of the cashier's check or money order will not be deducted from either the cashier's check or the money order but will be paid from the collector's own funds. The collector will then claim reimbursement on his or her travel expense claim. Note that in many instances, there will be no charge for a cashier's check purchased from a Bank of America branch.

The overnight retention for cash collected is not to exceed \$500. ~~Due to the overnight retention limit, all~~ All funds should be kept segregated (by receipt number) until exchanged for a cashier's check or money order. ~~When total cash received exceeds \$500 and is to be held overnight, s~~ Separate cashier's check(s) or money order(s) must be obtained for each cash remittance.

~~Cash collected will be transferred to the cashier on the day of receipt whenever practical. It is not considered practical for the collector to make a special trip to the office or go out of his/her way to convert the cash to a money order, etc., unless the total cash collected exceeds \$500. The action taken should be in accordance with the availability of the following alternatives for disposition or protection of funds:~~

- ~~1. Transfer the money collected to the cashier in the district or branch office.~~
- ~~2. Purchase a separate cashier's check or money order, payable to the BOE, for each cash payment collected. (The cost of the cashier's check or money order will not be deducted from either the cashier's check or money order but will be paid from the collector's own funds. The collector will claim reimbursement on his or her travel expense claim.)~~

In any instance not covered by the above items-, the collector will take whatever action is necessary to protect the cash collected. In all circumstances, the collector will exercise good judgment and use every precaution to prevent loss or theft.

LEVY POLICY**753.200**

A BOE-425-LA, Notice of Levy, is a collection tool used when a taxpayer has not voluntarily resolved a liability after it becomes due and payable. The levy is used to collect the taxpayer's interest in or right to money controlled by the taxpayer or a third party. Funds held in a joint bank account are presumed to be community property under Probate Code section 5305(a), and subject to levy.

Levies are most commonly served on financial institutions (banks), but can also be served on merchant credit card processors, stock trading companies, third parties (e.g., to attach the taxpayer's commissions), tenants (to attach rents payable), or third-party customers (for accounts payable). The money remitted to the BOE pursuant to a levy represents money the entity owes and would have otherwise paid to the taxpayer.

~~Use of Form BOE-425-LA, Notice of Levy,~~ The levy should be approved by the ~~d~~ District ~~a~~ Administrator, ~~s~~ Special ~~t~~ Taxes and Fee ~~d~~ Division ~~a~~ Administrator, or a designee. This designation may be made to the level of Business Taxes Representative, Range B, who may also be the person serving the levy. With the exception of a tax debtor's interest in a decedent's estate, a levy notice will only be used to levy on money, or right to money, held or controlled by the taxpayer or by a third party. Warrants will continue to be requested for keepers or to reach any assets other than money or right to money (excepting wages). An addressed envelope should be included with the levy notice to ensure the reply is directed to the correct BOE office.

Notice To Withhold forms ~~s~~ BOE-465 ~~and BOE-465-B~~ may be used for any reason where use of the levy notice is not desired (see CPPM 752.000.)

Staff will delete the taxpayer's social security number from all copies of the *Notice of Levy* when the levy is being sent to entities other than financial institutions. The exception to this is a levy sent to a credit card (merchant card) processor. Social security numbers may be included on levies sent to credit card processors even though they are not included in the legal definition of financial institutions. In ACMS, click on the drop down menu near the bottom of the first page of the levy just after the statement, "You are notified in the capacity of a", and select "person in possession of monies owed to tax debtor," ~~and then~~ For levies to non-financial institutions, other than credit card processors, staff must delete the populated taxpayer's social security number in the Identification of Taxpayer window on the original levy notice.

Revenue and Taxation Code (RTC) section 6703, equivalent Special Taxes and Fees statutes, and related sections of the Code of Civil Procedures (CCP) authorize the BOE to use levies to take possession of tangible personal property in possession or under the control of a retailer, when served personally or by first class mail. This includes seizing money held or controlled by the tax debtor or by a third party (e.g., an employee), sometimes referred to as a till tap levy. The collector will take the BOE-425-LA generated in ACMS when making a field call to the business to personally serve the till tap levy. However, in the event of non-compliance with the till tap levy, a warrant may still be necessary (see CPPM section 753.025).

When a collector is uncertain whether the taxpayer or the taxpayer's employee is operating the business, two BOE-425-LA forms should be generated from ACMS. One should be addressed to the taxpayer and the other to the employee of the taxpayer. The BOE-425-LA is generated in ACMS under the Send Levy option. When staff is prompted to select an address source, the "Other" option should be selected. This

allows the name and address of the person being served to be modified. Staff will input the taxpayer's name and business address for both copies of the levy, but will type "Employee of" in the attention line for a till tap levy being addressed to the taxpayer's employee.

In addition, the following information contained on the BOE-425-LA must be modified before finalizing the levy:

- From the ACMS Document Generation window displayed at the top of the document, staff should select the Blurb option. Under the Blurb Types drop-down menu, staff must select the Levy/Withhold option and then select the Till Tap Blurb from the list.
- After the statement "You are notified in the capacity of a," staff will select "person in possession of monies owed to tax debtor."
- Lastly, the taxpayer's social security number must be deleted.

All monies collected as a result of the till tap levy must be converted to a money order or cashier's check payable to BOE before staff returns to the district or branch office. See CPPM section 705.000 for additional information regarding processing funds received during a field call.

NOTICE OF LEVY

753.205

The *Notice of Levy* contains two copies of the levy. The first copy is sent to the entity being levied, ~~i.e., a bank, savings and loan association, credit card processor~~ (e.g., bank, credit card processor), who is known as the "garnishee." The second copy is sent directly to the tax debtor informing them of the levy. The levy is created in ACMS and the Notice of Levy and accompanying forms are automatically printed and tracked.

Taxpayers are entitled to various exemptions provided in the United States Code and in the California codes, primarily the Code of Civil Procedure (CCP). Per CCP section 700.010, the BOE-425, *Exemptions from the Enforcement of Judgments*, must accompany the copy of the levy notice sent to the tax debtor. The BOE-425 must also be sent to the spouse when sending a levy to attach community property belonging to the spouse.

~~The~~ CCP section 700.010 also requires that the BOE-425-L3, *Notice of Levy - Information Sheet*, will be included with the copy of the levy sent to both the tax debtor and the garnishee. The BOE-425-L3 must also be sent to the spouse when sending a levy to attach community property belonging to the spouse.

The BOE-425-L3 includes an Information Sheet for the tax debtor, person other than the tax debtor, and the person served, as well as an Exemption Claim Form, and an Individual Financial Statement (BOE-403-E). For additional information on claims of exemption, see CPPM section 753.260, and for information regarding third-party claims, see CPPM section 753.210.

~~Taxpayers are entitled to various exemptions provided in the United States Code and in the California codes, primarily the Code of Civil Procedure (CCP). BOE 425, *Exemptions from the Enforcement of Judgments*, must accompany the copy of the levy notice sent to the tax debtor. This mailing is required by CCP section 700.010.~~

Generally, a financial institution served with a levy will hold levied funds for ten days from the date it receives the levy before remitting the funds to BOE. The collector will

Chapter 7, Collections

mail the tax debtor's copy of the levy, including the ~~information sheet~~ BOE-425, Exemptions from the Enforcement of Judgements, and exemptions list the BOE-425-L3, Notice of Levy – Information Sheet, and the BOE-403-E, Individual Financial Statement, ~~shall be mailed~~ to the tax debtor within ten calendar days after the levy has been mailed to the garnishee. This period will allow time for the financial institution, including banks with a centralized levy processing system, to receive and process a BOE levy.

Per CCP section 703.520, the taxpayer has ten days from the date of receipt of the *Notice of Levy* to file a claim of exemption with the office that issued the levy. If the tax debtor contacts the district office and asserts that they qualify for an exemption from enforcement of the levy, staff will provide the tax debtor with an additional three days to file the claim of exemption. Staff should request the financial institution place a hold on any funds captured for an additional three days.

~~RTC section 6703 permits the BOE to serve a notice of levy, in person or by first class mail, on the tax debtor or on a third party holding personal property belonging to the tax debtor. If the asset consists of money other than wages, the person served with Form BOE-425-LA, Notice of Levy, is required to turn the money over to the officer who will turn the money over to the BOE to credit the taxpayer's account, after deducting fees, expenses and commissions. If the asset is other than money, the officer will take possession of the property and arrange for its sale to the highest bidder at public auction. After deducting fees, expenses and commissions from the proceeds of the sale, the levying officer will remit the remainder to the BOE to credit the taxpayer's account.~~

CCP section 684.115 requires financial institutions with more than nine California branches to designate one or more in-state central levy processing centers and authorizes those with fewer than nine California branches to do the same. Financial institutions must submit their central levy processing center address to the Department of Business Oversight where these addresses will be available to the public.

Staff must send levies to the designated central processing center in order to be valid. If a financial institution fails to designate a central levy processing center, each branch of that institution located in California is deemed to be a central location. Also, the BOE remains authorized, pursuant to RTC section 6703, to direct the levy to a financial institution's out-of-state processing branch. If staff fails to send the levy to the properly designated central levy processing center when one is established, the financial institution will have the discretion to either accept or reject the levy.

A directory of the central processing locations for financial institutions is regularly updated in ACMS. When preparing a levy to be mailed to a financial institution that does not have a central processing center listed in ACMS, refer to the California Department of Business Oversight's webpage (www.dbo.ca.gov) under *Central Locations for Service of Legal Process* located under the Laws/Regulations tab, to determine if a central levy processing center has been designated to ensure proper service.

The notice of levy may not be used to levy on wages or on out-of-state entities that are holding property belonging to the tax debtor that is also located outside of California. However, the registration of an agent for service of process with ~~in~~ the ~~State of~~ California Secretary of State is an established basis for California's jurisdiction over a

foreign person or legal entity. ~~If the levy is properly served on a foreign person's or legal entity's registered agent for service of process in California, the foreign person or legal entity recognizes California's jurisdiction and the BOE should continue to enforce the levy and not release it. (See CCP section 416.10).~~ When an out-of-state financial institution has no in-state branches or offices and no designated central levy processing center, a levy can be sent to the financial institution's agent for service of process if:

1. The taxpayer resides in California, or
2. There is evidence to support the taxpayer is withdrawing and depositing funds from ATMs or point-of-sale locations within California.

If a financial institution fails to honor the BOE's levy in the above situation, the Legal Department should be consulted to determine California's jurisdiction over the financial institution. Unless the BOE has successfully pursued a judgement in another state, a levy should not be used to access funds from an out-of-state maintained account if the taxpayer resides outside California.

The levy creates a lien for a period of two years on all property described in the notice that is held at the time of service, and the person in possession or control of the property is required to deliver it to the levying officer. (See CPPM [section 753.250](#)).

In addition, RTC section 6703 [and equivalent Special Taxes and Fees statutes](#) provides for a continuous levy. The *Notice of Levy* is effective until the amount specified in the notice, including accrued interest, is paid in full; until the levy is withdrawn; or until one year from the date the notice is received, whichever occurs first. There are two limitations to the continuous levy:

1. The continuous levy is applicable ~~only~~ to sales or use tax ~~or fuel tax~~ liabilities [and some Special Taxes and Fees programs; check each specific law.](#)
2. Funds in a deposit account, as defined by Uniform Commercial Code section 9102, are not subject to a continuous levy. This section defines "deposit account" as a demand, time savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization other than accounts evidenced by a negotiable certificate of deposit. Therefore, only the funds available in the deposit account when the levy notice is served on a financial institution are subject to withhold and subsequent payment to the BOE.

THIRD-PARTY CLAIMS

753.210

A third party may claim ownership or the right to possession of levied property pursuant to CCP section 688.030. Third parties claiming ownership or security interests may file a third-party claim on the property seized by the BOE following the service of a warrant or a notice of levy. A third-party claimant should file its third-party claim with the BOE office that issued the *Notice of Levy*.

~~The office issuing the levy is responsible for advising the third party claimant of all the requirements for a valid claim and determining whether a third party claim conforms to the requirements of CCP section 720.130. The levying office is also responsible for analyzing the claim and, when appropriate, releasing the third party property that was levied in error.~~

~~Claimants must be advised that CCP sections 720.120 and 720.130 require that a third party claim be made by the person claiming ownership and submitted prior to~~

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~~the BOE receiving the levied funds.~~ Third parties affected by a BOE levy may not have received a copy of the Notice of Levy and the accompanying information. When collection staff receives inquiries from third parties, staff should immediately provide a copy of the BOE-425-L3, instruct the third party on how to file the claim, and stress that the claim must be received by BOE prior to any levied funds being deposited by the BOE. If a third-party claim is received after the BOE has deposited the funds, BOE staff should advise the claimant that the only recourse available is to follow the claim for refund process.

The levying office is responsible for advising the third-party claimant of all the requirements for a valid claim and determining whether a third-party claim conforms to the requirements of CCP section 720.130. The levying office is also responsible for analyzing the claim and, when appropriate, releasing the third-party property that was levied in error.

The third-party claim must be signed under penalty of perjury and contain all of the following:

1. The name of the third-party and an address in this state where service by mail may be made upon the third-party.
2. A description of the property in which an interest is claimed.
3. A description of the ownership interest claimed, including a statement of the facts upon which the claim is based.
4. An estimate of the market value of the interest claimed.

The Exemption Claim Form on the back of the BOE-425-L3 may be used to file a third-party claim (see CPPM section 753.265). Copies of supporting documentation should be attached to the third-party claim. However, documentation need not be provided in order for a third-party claim to be valid.

All third-party claims conforming to CCP section 720.130 which cannot be resolved by the office or unit that initiated the levy should immediately be referred to the Litigation Division in the BOE's Legal Department, using the following procedures:

1. Notification of receipt of a third-party claim is to be sent via email to the Assistant Chief Counsel of the Litigation Division with copies to the appropriate ~~SUTD Division Chief~~ program area division chief, administrator, principal compliance supervisor, and SOB.
2. The third-party claim along with documentation, if any, is to be immediately scanned and sent by email or faxed to the Assistant Chief Counsel of the Litigation Division and the hard copy will be sent by inter-office mail to ~~MIC~~ 82the Litigation Division. The hard copy must include:
 - a. A copy of the warrant or notice of levy, including all spousal blurbs or affidavits.
 - b. A brief summary of action taken to levy on the property. The summary should include any known information regarding the relationship between the tax debtor and the third-party, any information substantiating the tax debtor's ownership of the property, and any other information that may assist ~~Legal Affairs~~ the Litigation Division in evaluating the third-party claim.

~~An~~ The attorney in the Litigation Division that is assigned to the case will promptly determine if a third-party claim legal proceeding should be initiated, or if the third-party claim is justified. If the litigation attorney determines the claim is justified, or other circumstances warrant the levy's release, the litigation attorney will advise the collector to release the levy. Otherwise, the litigation attorney will ~~determine whether to release the levy or~~ request SOB to prepare the referral for the office of the Attorney General for commencement of a third-party claim legal proceeding.

SERVICE OF FORM BOE-425-L4 TO REACH COMMUNITY INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT

753.220

RTC section 6703 and equivalent Special Taxes and Fees statutes authorizes the BOE to serve a *Notice of Levy* on a third party holding property belonging to a tax debtor. Funds held in a joint bank account are presumed to be community property (Probate Code § 5305(a)) and funds in some bank accounts in the name of the taxpayer's spouse may be subject to levy as community property. ~~†~~To reach community property interests, staff must attach a spousal affidavit (BOE-425-L4) to the *Notice of Levy*.

Family Code ~~S~~section 910 provides:

“(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) “During marriage” for purposes of this section does not include the period during which the spouses are living separate and apart before a judgment of dissolution of marriage or legal separation of the parties.”

Family Code ~~S~~section 911 provides:

“(a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.

(b) As used in this section:

(1) “Deposit account” has the meaning prescribed in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

(2) “Earnings” means compensation for personal services performed, whether as an employee or otherwise.”

Before staff sends a levy for community property, a thorough investigation must be done to determine whether the funds of the non-debtor spouse or registered domestic partner are community property. The findings of this investigation should be documented in ACMS. Various sources are available that staff can access to assist in determining this, including:

- Income tax returns filed jointly within the last two years
- County marriage license information/marriage certificate
- County family court index cases involving dissolution of marriage or legal separation

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- Dissolution of the marriage/divorce decree
- Legal Separation Agreement
- Prenuptial agreement establishing sole and separate property
- Credit report or loan application showing marital status
- Evidence of living apart (lease agreement)
- Insurance policy (auto, property, and life insurance)
- Copies of checks to verify names on an account
- Information obtained and documented in ACMS from the taxpayer or a third party regarding marital status

While all of these sources are not required, or may not be available prior to sending the levy for community property, it is the responsibility of the assigned collector to determine that sufficient evidence has been obtained. In addition to verifying the spouse/domestic partner information, a current address should be documented to ensure the spouse/domestic partner receives a copy of the levy, copy of the BOE-425, and a copy of the BOE-425-L3.

The following community property blurb, should be included when levying a joint account held in the names of the tax debtor and the tax debtor's spouse/registered domestic partner, or when the intent is to reach the community property interest that the taxpayer may hold in an account in the name of the spouse/registered domestic partner:

“Service of this Notice also intended to reach any and all community property interest of defendant in any account held in the name of the spouse/registered domestic partner, *****, SSN *****. (Cal. Family Code Section 910[a]).”

~~should be included when levying on a joint account held in the names of the tax debtor and the tax debtor's spouse.~~ For privacy protection purposes, the social security numbers included in the “Identification of Tax Debtor” area of the levy are automatically censored in ACMS on the taxpayer's copy of the *Notice of Levy* ~~when entered into the “Identification of Tax Debtor” area of the levy.~~ Because the community property blurb contains the social security number of the spouse/registered domestic partner, it should be entered in the “Identification of Tax Debtor” area of the levy. Do not enter the blurb within the “Property to be levied upon is described as:” area of the levy because the ~~spouse's~~ social security number will not be censored.

~~The use of the community property blurb on the levy notice is recommended when the intent is to reach the community property interest that the taxpayer may hold, in an account standing in the name of the spouse. The spouse should be specifically named on the Notice of Levy and the taxpayer named as tax debtor. If the social security number of the spouse is available, the number should be entered with his or her name, as should any alias. For partnership defendants~~If the entity is a partnership, enter ensure only the name of the partner(s) for whom a community property interest is reachable is listed in the “Identification of Tax Debtor” area of the levy.

Should the necessity arise to levy via a warrant on the asset, ~~notify SPS with~~ send SOB a BOE-200-W and include the ~~spouse's~~ name and social security number of the spouse or registered domestic partner.

RELEASE AFTER LEVY**753.257**

In some instances, a levy may need to be modified or released.~~the levy upon personal property will result in a contact by the taxpayer to make payment in full or to arrange a satisfactory installment payment agreement (full payment is the primary objective).~~ Other than the authority of the Taxpayers' Rights Advocate to release a levy as set forth in RTC section 7094 and equivalent Special Taxes and Fees statutes (see CPPM section 155.022), the BOE office or Headquarters section serving the levy retains the responsibility for determining if it should be released or modified. If the taxpayer who has been served a levy contacts an office or section that did not issue the levy, the contacted office will assist the taxpayer in contacting the responsible office. If the taxpayer physically goes into a BOE office other than the office that served the levy, the contacted office will immediately notify the office or section responsible for the levy and both offices will attempt to resolve the account while the taxpayer is in the office. The collector that issued the levy or a collection supervisor will determine if it is appropriate to release or modify the levy.

The levy(s) must be released if the taxpayer ~~enters into an installment payment agreement or~~ pays the liability in full.~~—~~ with certified funds (cashier's check or money order). The taxpayer may make this payment in cash if they have received an exemption from the "no cash" policy.

The following examples illustrate other situations where the BOE will release or modify a levy. This list is not all-inclusive and requests to release or modify the levy should be reviewed on a case-by-case basis.

- The levy is served during a bankruptcy while the automatic stay is in effect or after a bankruptcy where the liability is subject to discharge.
- Levied funds are exempt pursuant to the United States Code or the California Code of Civil Procedures as notated on the BOE-425, *Exemption from the Enforcement of Judgements*.
- Delinquent or amended returns have been accepted and processed that will reduce or eliminate the liability.
- The liability that remains due is less than the amount of the levy.
- The BOE determines that the funds attached by the levy are not the taxpayer's funds and are not community property.
- The BOE erroneously served a levy upon a corporate officer's personal bank account for a corporate liability and a dual determination has not yet been billed.
- The BOE determines that the levy is creating a significant financial hardship for the taxpayer.

When BOE staff determines a levy should be released or modified, a BOE-465-F, *Release/Modify Notice of Levy*, generated in ACMS will be sent to the garnishee.

~~The release notice is addressed to the officer who made the levy and accompanied by instructions to release the property to the taxpayer. The taxpayer is responsible for full payment of all expenses incurred in seizing the property and must reimburse the BOE or the levying officer for those expenses.~~

Although a levy ~~may be released through ACMS using Form BOE-465-F, *Authorization to Release Notice of Withhold*, from the "Send Letter" function~~ is generally released by sending the BOE-465-F, there may be situations requiring the use of a photocopy of

the original ~~a~~ Notice of Levy. In this case, ~~at~~ the levy release information is stamped must be used and all relevant information provided on the front of the document. ~~A copy of the~~ The original stamped document is then sent to the ~~taxpayer and to the~~ garnishee and a copy is sent to the taxpayer.

In all cases, staff will document the reason for the levy release in ACMS.

CLAIMS OF FINANCIAL HARDSHIP

753.259

BOE collection staff is responsible for reviewing any claims of financial hardship. Staff must be aware of the taxpayer's health and welfare if the taxpayer claims that the levy will create irreparable harm. The outcome of staff's analysis of the taxpayer's financial condition may require the levy to be modified. Early resolution affords the taxpayer an opportunity to make other arrangements to resolve their liability, such as entering into a payment plan with the BOE.

A completed BOE-403-E, *Individual Financial Statement*, along with supporting documentation must be submitted by the taxpayer to determine whether a modification of the levy is appropriate. Staff must promptly evaluate the financial statement and documentation submitted by the taxpayer before modifying the levy. Analysis of the financial information will disclose the taxpayer's complete financial condition and provide a basis to make a decision whether the levy should be modified to a lesser amount or released.

If the collector recommends that the levy be modified, the collector will obtain the approval from the supervisor who is delegated the responsibility to review the financial documentation. If possible, the reviewing supervisor should not be the assigned collector's direct supervisor. The decision should be clearly documented in ACMS. In addition, the collector will also enter comments in ACMS concerning the asset information based on the collector's findings.

However, if the review of the taxpayer's financial condition reveals the taxpayer has sufficient assets such that the amount held pursuant to the levy does not create a significant hardship, the collector will inform the taxpayer that the levy will not be modified or released. Staff will enter appropriate comments in ACMS concerning the discussion with the taxpayer.

Pursuant to RTC section 7094 and equivalent Special Taxes and Fees statutes, the Taxpayers' Rights Advocate (TRA) has the authority to release any levy, or order the return of levied funds up to \$2,300 received within the last 90 days upon the TRA's finding that the collection action threatens the health or welfare of the taxpayer or the taxpayer's spouse or family (see CPPM section 155.022).

EXEMPTIONS AVAILABLE TO TAXPAYERS

753.260

~~BOE-465, *Notice of Withhold*, does not create a lien; service of the notice merely "freezes" the asset up to 60 days during which a warrant is issued so the sheriff or CHP can levy on the property.~~

Code of Civil Procedure (CCP) sections 703.010 through 704.210 allow taxpayers ~~debtors~~ to claim their property is exemptions from levy. The taxpayer's copy of the *Notice of Levy* includes a BOE-425, *Exemptions from the Enforcement of Judgements*, a BOE-425-L3, *Notice of Levy - Information Sheet*, and a BOE-403-E, *Individual Financial Statement*. Exemption claims must be made within ten days after the date the taxpayer was served a copy of the levy. ~~(see BOE-425, *Exemptions from the*~~

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~~*Enforcement of Judgments*).— CCP section 703.510 et seq., details the procedures for determining the validity of claimed exemptions.~~

The [following](#) table ~~below~~ summarizes amounts exempt from levy under CCP sections 704.010 to 704.100, effective April 1, 2013. These amounts are adjusted every three years as provided by CCP section 703.150. (A table of current dollar amounts of exemptions from the enforcement of judgments, form [EJ-156](#), is available at www.courts.ca.gov.)

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CCP Section	Type of Taxpayer Property	Exemption Amount
704.010	Motor vehicle	\$2,900
704.030	Material for the repair or maintenance of a residence	\$3,050
704.040	Jewelry, heirlooms, art	\$7,625
704.060	Personal property used in taxpayer's or taxpayer's spouse's business or profession	\$7,625
704.060	Commercial motor vehicle used in taxpayer's or taxpayer's spouse's business or profession	\$4,850
704.060	Personal property used in taxpayer's and spouse's common business (co-ownership) or profession	\$15,250
704.060	Commercial motor vehicle used in taxpayer's and spouse's common business (co-ownership) or profession	\$9,700
704.080	Deposit account with direct payment of social security benefits with one depositor as payee	\$3,050
704.080	Deposit account with direct payment of social security benefits with two or more depositors as payee	\$4,575
704.080	Deposit account with direct payment of public benefits with one depositor as payee	\$1,525
704.080	Deposit account with direct payment of public benefits with two or more depositors as payee	\$2,275
704.090	Inmate trust account (spouse also entitled to exemption)	\$1,525
704.090	Levy of funds on inmate trust account per a restitution order	\$300
704.100	Non-mature life insurance or annuity policies, excluding the loan value (spouse also entitled to exemption)	\$12,200 25

As explained in CCP section 704.080, certain types of property are not subject to levy and a Claim of Exemption does not need to be filed for them. Included in this category are “social security benefits” and “public benefits.” [The amounts listed in the above table for social security and public benefits are automatically exempted from the enforcement of judgements \(levies\), provided the benefits are directly deposited by the government or its agent.](#)

Social Security and Public Benefits Directly Deposited

Within ten days, the financial institution shall provide the levying officer with a written notice stating that the deposit amount is one in which payments of ~~public~~social security benefits or ~~social security~~public benefits are directly deposited by the government or its agent, ~~but the balance of~~and whether there are funds in the deposit account ~~that exceeds~~ the automatic exemption. If so, it is the responsibility of the collector to determine whether the excess funds are social security or public benefits. The collector should contact the taxpayer immediately and request the last three bank statements for the account and information regarding the deposit amounts of the benefits. The collector may also request income tax information through the External Access Tracking (EAT) resource person (see CPPM section 720.030) to determine if all or most of the taxpayer's income is from social security or public benefits. The collector should examine all information available for an indication there is another source of deposits into the account (e.g., wages from a spouse, rental property income not yet levied).

~~The BOE has five days after the financial institution sends the notice to the BOE in which to file an affidavit alleging that the excess amount is not exempt. Banks and other financial institutions normally also notify depositors of withholds and levies against accounts and inform the depositors of their right to certain exemptions. The levying officer must be notified to release the money if the amount of the funds levied on is less than the statutory exemption claimed (or allowable, in cases where no claim is required) and the BOE cannot show by affidavit on Notice of Opposition that the exemption is invalid or improper.~~

If the collector determines that the excess funds are not social security or public benefits or otherwise exempt from levy, a court hearing is required to reach the excess funds. Because CCP section 704.080 states that an affidavit must be filed with the court within five days of the date that the notice was received from the financial institution, the collector should immediately refer the matter to his or her immediate supervisor, who will refer the claim to the Litigation Division of the BOE's Legal Department as follows:

1. Notification of receipt of the social security or public benefits information from the financial institution should be sent via email to the Assistant Chief Counsel of the Litigation Division with a copy to the program area division chief, administrator, and compliance principal supervisor.
2. The information from the financial institution must be immediately faxed or scanned and emailed to the Assistant Chief Counsel of the Litigation Division.
3. A copy of the warrant or notice of levy, including affidavits, and a brief summary of action taken to levy on the property should be forwarded to the Litigation Division. The summary should include any known information that may assist the Litigation Division in evaluating the claim.
4. Hard copies of the documents must follow via inter-office mail to the Litigation Division.

If the excess funds are determined to be social security or public benefits or otherwise exempt, a BOE-465-F, *Release/Modify Notice of Levy* must be promptly sent to the financial institution to release the funds.

Social Security and Public Benefits Deposited by Check

Because financial institutions cannot differentiate social security and public benefits deposited by check from any other deposits, exempt benefits may be withheld as a result of a levy. If this occurs, it is up to the tax debtor to file a claim of exemption with the collector (see CPPM section 753.265 for elements required for claims of exemption).

If the documentation provided supports the claim that the funds are exempt social security or public benefits, a BOE-465-F, *Release/Modify Notice of Levy* must be promptly sent to the financial institution to release the funds.

Life Insurance Policy

The basic purpose of life insurance is to provide some form of financial security for a deceased person's beneficiaries. Life insurance can, with certain types of policies, serve as a savings function. Thus, various types of life insurance products offer different levels of protective functions (e.g., funds for family members of the deceased) and savings functions (e.g., the ability to borrow against the savings or to obtain a cash surrender value of the policy) as a financial tool.

According to the CCP section 704.100, unmaturred life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim. The loan value is the cash value that can be borrowed on a policy. When there is a loan value to the life insurance contract, BOE may be able to levy on any amounts over the current exemption amount (see table at beginning of CPPM section 753.260).

CCP section 699.720 prohibits levies on unmaturred life insurance contracts, endowment, and annuity policies. The statute recognizes that creditors are able to garnish only those monies which are payable without any conditions. Even though a life insurance policy has a potential "cash surrender" value that could be available to the insured person at his or her option, when the insured has not opted to surrender the policy to receive the cash surrender value, the creditor of the insured can obtain nothing. The creditor cannot force the insured to surrender the life insurance policy.

However, if the life insurance contract has managed to become fully "matured" and there are no more contingencies, then it may be levied upon if the proceeds are more than what is reasonably necessary for living expenses. A matured policy can be found where the insured has an enforceable right to receive payments and there is an absence of conditions to the insurance company's obligation to pay. Fully matured life insurance contracts with a definite payout may be levied upon, but such occurrences are uncommon.

The types of life insurance products available on the marketplace vary in terms and conditions. In attempting to levy on a taxpayer's life insurance contract, staff should work to obtain a copy of the policy and review the terms and conditions of the contract.

CLAIMS OF EXEMPTION

753.265

If the taxpayer claims that he or she is entitled to an exemption under sections of the Civil Code of Procedure (CCP) or United States Code (including as a third party), the collector will instruct the taxpayer to file a claim of exemption by completing the *Exemption Claim Form* provided with their copy of the *Notice of Levy* and, if the

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applicable statute requires it, submitting a completed BOE-403-E, *Individual Financial Statement*. Pursuant to CCP section 703.520, the claim must be made within ten days after the notice of levy was served on the taxpayer. The “date of service” is considered to be the date the notice of levy is placed into the mail.

The taxpayer, or a person acting on behalf of the taxpayer, may file a claim of exemption. In cases of community property, a taxpayer’s spouse may also file a claim of exemption. While these forms are included with the taxpayer’s copy of the levy, the taxpayer may also obtain an exemption claim form and current dollar amounts of exemptions from enforcement of judgements online at www.courts.ca.gov/forms.

A claim of exemption must conform to the provisions of CCP section 703.520. For a claim to be valid it must be filed timely, be executed under oath (signed under penalty of perjury) and include all of the following:

- The name of the claimant and the mailing address where the notice of our opposition to the claim can be mailed;
- The name and last known address of the taxpayer (judgment debtor) if the claimant is not the taxpayer (judgment debtor);
- A description of the property claimed to be exempt. If an exemption is claimed pursuant to CCP section 704.010 (motor vehicles) or 704.060 (tools), the claimant shall describe all other property of the same type (including exempt proceeds of property of the same type) owned by the taxpayer alone or in combination with others on the date of levy and identify the property, whether or not levied upon, to which the exemption is to be applied. If the claimed exemption is under CCP section 704.100 (insurance policies), the claimant shall state the nature and amount of all other property of the same type owned by the taxpayer or the taxpayer’s spouse alone, or in combination with others, on the date of levy;
- A financial statement if required by CCP section 703.530. The financial statement must show that the levied property is necessary for the support of the taxpayer, their spouse, and their dependents. The financial statement must include all sources and amount of earnings and assets of the taxpayer, their spouse, and their dependents. It must also show their outstanding obligations. The financial statement must be signed under penalty of perjury.
- A citation of the statute upon which the claim is based; and
- A statement of facts necessary to support the claim.

If the tax debtor contacts the BOE and claims an exemption within the ten days but has not filed an exemption request, staff will allow the tax debtor another three days to give the tax debtor an opportunity to file the exemption. Staff will contact the bank to hold the funds an additional three days pending a review of any potential filed claim of exemption.

If a claimant files a timely (within the ten days) claim of exemption, but the funds have already been received, staff will commence an expedited review of the claim of exemption. Staff will inform the taxpayer that if the claim of exemption is found to be valid, the taxpayer will need to complete a claim for refund (BOE-101) to allow BOE to return the funds. In this case, if the claim of exemption is accepted, staff will request expedited processing of the claim for refund. If the claim of exemption is not timely, and is filed subsequent to BOE receiving the levied funds, collection staff is not

obligated to review the claim of exemption and the claimant's only recourse is to file a claim for refund with BOE.

If there is not enough evidence to support the claim, the collector must decide whether filing a notice of opposition to the claim is in the best interest of the BOE. Pursuant to CCP section 703.550, a notice of opposition must be filed with the court within ten days after service of the claim of exemption. Therefore, if the claim is to be opposed, the collector must immediately refer the claim to his or her immediate supervisor, who will refer it to the Litigation Division as follows:

1. Notification of receipt of a claim of exemption should be sent via email to the Assistant Chief Counsel of the Litigation Division with a copy to the program area division chief, administrator, and compliance principal supervisor.
2. The exemption claim along with documentation, if any, must be immediately faxed or scanned and emailed to the Assistant Chief Counsel of the Litigation Division.
3. Hard copies of the document(s) must follow via inter-office mail to the Litigation Division.

If the notice of opposition is not filed within the ten-day period, the funds claimed as exempt must be released by the responsible collector. If a valid claim is received after the financial institution has sent the money to BOE, the taxpayer should be advised to file a claim for refund.

As with any other collection activity, these actions should be documented in ACMS.

GENERAL PROBLEMS IN CONNECTION WITH LEVIES

753.270

As stated previously, RTC section 6703 authorizes the BOE to serve a Notice of Levy on persons having in their possession any credits or other personal property belonging to a taxpayer that is indebted to the BOE. In the case of a financial institution, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

Although serving multiple levies on the same financial institution is not prohibited, BOE staff will allow a financial institution time to respond to an outstanding levy prior to issuing another levy unless there is a valid business reason to levy again. This will reduce the ~~incidence~~occurrence of over collecting by the BOE. In the event the BOE ~~does~~over collects the liability by issuing multiple levies, staff ~~should~~must take appropriate action to remedy the situation ~~as follows~~by:

1. Returning the check to the financial institution along with a modified levy, if the remaining balance due is less than the amount of the check received.
2. Returning the check to the financial institution with an explanation that the levied amount has been satisfied, if that is the case.
3. Contacting the financial institution to request that a stop payment be placed on the levy check, if the BOE has recently deposited the levy check.
- 3.4. Contacting the financial institution to request that they waive any levy processing fee charged to the taxpayer in connection with the levy that caused the over collection. If the financial institution declines to waive the charge, staff must advise the taxpayer they may file a claim for reimbursement of the bank charge (see CPPM section 155.025).

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If none of the above actions is possible, the taxpayer should file a claim for refund. Staff should follow the guidelines in CPPM 707.040, *Refunds of Excess or Erroneous Amounts Received*, when the taxpayer is instructed to file a claim for refund.

The manner in which assets are levied may vary. Therefore, the problems that can arise in connection with serving levies may also vary. For this reason, to describe all of these situations and attempt to set forth instructions covering all possible contingencies is not practical. When unusual situations arise, staff is expected to use sound judgment in handling the matter and, when necessary, obtain supervisory approval to contact SOB for assistance with resolution.

Generally, a levy is in order when an entity that is indebted to the taxpayer has possession of, or control over, assets belonging to the taxpayer, or when personal property, owned free and clear by the taxpayer, has been located. Whenever a levy is made, the person requesting the levy should always be prepared to carry the action through to a sale of the property levied upon or, in the case of money, to seize all of the funds available or a sufficient amount to clear the liability plus costs.

Although proper discretion must be used in deciding whether to levy, there should be no hesitancy about using this collection tool when necessary. The levy procedure is extremely effective and will frequently result in immediate payment. Even when payment is not immediate, the levy process provides the state with protection against the taxpayer's other creditors. Failure to make use of levies at the proper time often results in loss of revenue to the state.

Claim for Reimbursement of Bank or Third-Party Charges

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 charges or fees incurred by the taxpayer as a direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the BOE. Bank charges include a financial institution's customary processing fees and charges for overdrafts and non-sufficient funds that are a direct consequence of the erroneous levy, erroneous processing action, or erroneous collection action. Third-party charges are fees charged by payees, such as retailers, utility companies or service providers, for returned checks or dishonored electronic payments. The charges subject to reimbursement are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. These claims must be filed in writing within 90 days from the date the bank or third-party charges were incurred by the taxpayer.

Please see CPPM section 155.025 for procedures for claims for reimbursement of bank or third-party charges.

POLICY AND MINIMUM AMOUNTS — NOTICE OF STATE TAX LIEN

757.060

Filing a lien protects the state’s interest in a taxpayer’s assets. The use of the *Notice of State Tax Lien* is an effective collection tool that often results in payment of accounts that would have been difficult, if not impossible, to collect.

Taxpayers should be advised that a lien may be filed and its effects (decreases credit rating and attaches to property currently owned and later acquired.) With the exception of a jeopardy lien, a tax lien should not be filed unless there have been documented efforts made to contact the taxpayer by phone and in writing.

Per statute, a lien can be filed 30 days after the taxpayer is advised in writing that a lien may be filed. ~~A lien is recorded in the county in which the business was located and in any other county in which the taxpayer may own real property.~~ If it is determined that a lien is necessary, staff should complete a thorough search for real property to ensure that liens are filed in the appropriate county or counties specific to each taxpayer.

To prevent inappropriate liens, BOE staff should only file a lien in counties where the taxpayer resides, where the business or taxpayer is/was located, and where property is owned or may have previously been owned. If it is determined that a state tax lien should be filed staff must:

1. Investigate sources such as income tax returns, RealQuest, credit reports, and information documented in IRIS/ACMS to obtain county-specific information.
2. Document in ACMS by utilizing the external real property summary, all actions regarding property searches or other methods used to determine whether the taxpayer owns, has owned, or may own real property, specifically noting each county.
3. Complete a “Lien Review Summary” in ACMS. List the county or counties to be included in the lien filing and specifically state why each county is included in the request.

Generally, a lien is not filed for liabilities that do not include tax because an adjustment or request for relief may be pending, but it can be done if the total amount due is greater than \$2,000 and verification is made that there are no adjustments or requests for relief pending.

BOE policy is to file a lien 30 days after the demand date, if there is a valid business reason for such action. Otherwise, a lien will not normally be filed until after 180 days have expired. Supervisory approval of all lien requests initiated prior to the expiration of the 180 days is required and must be documented in ACMS.

A lien should be filed after 180 days if either of the following circumstances apply:

1. Requests for payment in full, installment payments and financial documentation have gone unanswered.
2. The taxpayer has not responded to phone calls or notices.

*****Please note, no changes are being made the remainder of section 757.060 *****

CONTRACTOR LICENSE SUSPENSIONS

766.000

SUSPENSION OF CONTRACTOR'S LICENSE

766.005

Under Business & Professions Code (BPC) section 7145.5, the Board of Equalization (BOE) may request that the Contractors State License Board (CSLB) either deny or suspend a taxpayer's contractor license or application thereof, when that taxpayer has outstanding final tax or fee liabilities assessed by the BOE. This section does not apply to any outstanding final liability if the licensee has entered into a payment plan for that liability with the BOE and is in compliance with the terms of that plan. Staff may verify whether a taxpayer possesses a contractor license by visiting the Department of Consumer Affairs, Contractors State License Board website at www.cslb.ca.gov, and clicking on the Instant License Check icon.

When staff determines that a taxpayer's liability is final and the taxpayer possesses a contractor license with the CSLB, before contacting the CSLB to request the license be denied or suspended, staff must first ensure all other forms of collection actions pertaining to the taxpayer, such as issuing levies, sending notices to withhold, issuing wage garnishments, issuing liens, and utilizing offsets, have been exhausted before contacting the CSLB to request the license be denied or suspended. If the taxpayer has entered into a payment plan for a final liability with the BOE and is in compliance with the terms of that plan, staff shall not make a request from CSLB to deny or suspend the license. It is CSLB's policy to inform the taxpayer (licensee) of the request from the BOE and to allow the licensee an additional 60 days to resolve the issue before the contractor license is indefinitely denied or suspended.

Once the contractor license has been verified, staff will send the taxpayer (licensee) two warning letters informing the taxpayer of the impending request to CSLB for denial or suspension of his or her contractor license:

- BOE-1392-A, *CSLB Suspension - Delinquency Warning First Notice*, and
- BOE-1392-B, *CSLB Suspension - Warning Final Notice*, respectively.

Staff must allow 14 calendar days between both warning letters. If the liability remains unresolved after 14 calendar days from the date of the last warning letter, staff will send the request, via the BOE-200-A, *Special Operations Action Request*, to the BOE Special Operations Branch (MIC 55) for transmittal to the CSLB.

Staff should note that BPC section 7145.5(e) provides that the section does not apply if the taxpayer (licensee) has entered into a payment plan with the BOE and is in compliance with the terms of that plan for the liability owed. If the licensee's license is suspended and the licensee subsequently enters into a payment plan for an outstanding final liability or pays the liability in full and staff determines that the taxpayer is in compliance, the responsible collector will send a BOE-1392-R, *CLSB Suspension Release Notice*, directly to the CLSB's Judgment Unit to rescind the original request and reinstate the contractor license. The request can be sent via email directly to the CSLB Judgment Unit at judgments@CSLB.ca.gov, or by calling 916-255-3970 for assistance.

SELECTION OF ACCOUNTS FOR FTB OFFSET

771.020

Accounts selected for offset must meet the following conditions:

1. Taxpayer is a sole proprietor or individual partner and the social security number is available, or Taxpayer is a corporation or LLC and the corporate/LLC number issued by the Secretary of State's office is available, or Taxpayer is a corporate officer or LLC member against whom a dual liability has been established.
2. There is a final liability which exceeds \$250.00.
3. There is a documented record of at least three [billing or collection letters-notices](#) sent to the debtor.
4. Taxpayer is not in bankruptcy or has received a discharge from bankruptcy. A petition in bankruptcy carries with it an automatic stay, so the offset of the liability is withheld until the debtor receives a discharge or the automatic stay is lifted. The refund to be offset must be for a tax period subsequent to the bankruptcy filing date.
- ~~5. The refund is community property or sole property of the individual. (Staff should look for dissolution of marriage or that the couple is living apart. If the couple is living apart, the income of each spouse is separate property.)~~
- ~~6.5.~~ The request for offset is made on the correct entity. (The person did not give another person's social security number; there was not an erroneous trace — father and son or person with same name; or the billing was made against the wrong person.) If an erroneous offset occurs, it is the BOE's responsibility to issue the refund.
- ~~6.~~ If the taxpayer is on an ~~an installment payment agreement (IPA)~~ [payment plan](#), an offset should still be requested for final liabilities greater than 90 days old. ~~IPA~~ [Payment plan](#) forms (BOE 407 series) include language to notify the taxpayer of the BOE's ability to initiate an offset against their property held by another state agency.
- ~~7.~~ [The refund is community property or sole property of the taxpayer. If the FTB refund is determined to be community property, it is subject to an offset for debt incurred by either spouse before or during the marriage. Debt incurred after the dissolution of the marriage, or while the couple lived apart, is not the responsibility of the non-liable spouse and not subject to offset \(see CPPM section 753.240\). Staff should look for dissolution of marriage or that the couple is living apart. If the couple is living apart, the income of each spouse is separate property.](#)

[When requesting an FTB offset, staff has the responsibility of establishing proof of current marriage and that community property rights exist before placing an offset on a non-liable spouse income tax refund. Offsets will only be placed on non-liable spouses that file income tax returns separately, and when it is established that the refund is community property. Evidence to be considered in determining marital status and community property includes, but is not limited to, the following:](#)

- [Marriage Certificate](#)
- [Previous income tax returns filed as married](#)
- [Court records](#)
- [Loan application or credit report showing married status](#)
- [Dissolution of the marriage/divorce decree](#)
- [Legal separation agreement](#)

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- Pre-nuptial/post-nuptial agreements establishing sole and separate property
- Evidence of living apart (lease agreements, etc.)
- Insurance policy (auto, property, and life insurance)
- Death of either of the spouses

While not all of these sources may be available, it is the responsibility of the assigned collector to determine that sufficient evidence was obtained. Staff should document in ACMS the evidence supporting the FTB offset on the non-liable spouse and must obtain supervisory approval before requesting an offset on a non-liable spouse. An offset request remains in place until the action is taken to remove it, therefore the collector will need to confirm marriage and community property for a non-liable spouse each year.

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