State of California

Board of Equalization
Business Tax and Fee Department

Memorandum

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

Date: September 7, 2016

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

Subject : **Board Meeting September 27-29, 2016**
Item N: Administrative Agenda
Proposed Revisions to Compliance Policy and Procedures Manual (CPPM)
Chapter 7, *Collections*

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 September 2016 meeting. The following sections of CPPM chapter 7 are being added or revised to incorporate current policies and procedures:

- Section 776.010, *Discharge from Accountability, General*
- Section 799.200, *Top 500 Program*

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 no comments 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

Approved

STATE BOARD OF EQUALIZATION

BOARD APPROVED
At the September 27, 2016 Board Meeting
Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

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)

DISCHARGE FROM ACCOUNTABILITY 776.000

GENERAL 776.010

When an amount due from a taxpayer is not economically feasible to pursue, or when collection efforts have been unsuccessful and recovery of the amount due is improbable, the BOE may request a discharge from accountability from the Victim Compensation and Government Claims Board (VCGCB) pursuant to the Government Code. A discharge from accountability, also referred to as a "write off," relieves BOE of the responsibility to collect the amount due and removes the liability from BOE's accounts receivable.

Write offs in district offices are initiated by the responsible collector. A write off checklist (see Exhibit 1) must be completed for all accounts over $2,000 and attached, along with the supporting documents, when it is submitted to the compliance supervisor or their designee for review. Once the compliance supervisor or their designee approves the write off, it will be submitted electronically to SOB. The checklist and documentation will not be forwarded to SOB. In addition, BOE-908, *Important Notice: OIC Program for Closed Businesses* will be mailed to all accounts prior to being written off, except for:

1. Those that previously requested an offer in compromise and were rejected,
2. Those accounts that do not qualify for the OIC Program, and
3. Accounts that do not have a good mailing address.

A reasonable amount of time, generally fifteen days, should be given to the taxpayer to respond before initiating the write off.

Based upon information available in headquarters files or furnished by the district offices, SOB periodically initiates schedules of uncollectible items, which are submitted to the VCGCB for approval.

District offices should have a continuing program to recommend write offs as accounts become uncollectible. If the account is, in fact, not collectible, the case has not been completed until the write off recommendation has been forwarded to SOB and accepted for discharge from accountability, and further approved by the VCGCB or its designee.

TOP 500 PROGRAM 799.200

Revenue and Taxation Code (RTC) section 7063 directs the BOE to make public each quarter a list of the 500 largest sales and use tax delinquencies (liabilities) in excess of one hundred thousand dollars ($100,000). The list is available on BOE's website.

Effective July 1, 2012, state governmental licensing entities that issue professional or occupational licenses, certificates, registrations, or permits, are generally required to suspend or refuse to issue or renew a license if the applicant's or licensee's name is included on the list of the 500 largest sales and use tax delinquencies. The Department of Motor Vehicles (DMV) is required to suspend the license of any person whose name is on the list. The State Bar of California and the Alcoholic Beverage Control Board (ABC) are generally not mandated, but at their discretion, may participate with the application of this section of the law. The Contractors State License Board may also suspend, or refuse to issue or renew the license of any person whose name is on this list. For further information see Business and Professions Code (BPC) sections 494.5, and 7145.5.

The law also prohibits a state governmental agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on the Top 500 list. For further information see Public Contract Code Section 10295.4.

For purposes of compiling the Top 500 list, a liability means an amount owed to the BOE that meets all of the following criteria. The liability must be:

1. Based on a determination deemed due and payable or self-assessed by the taxpayer;
2. Recorded as a notice of state tax lien in any county recorder's office in this state; and
3. For an amount of tax delinquent for more than 90 days.

For purpose of the Top 500 list, a liability does not include any of the following, and, therefore, may not be included on the Top 500 list:

1. A liability that is under litigation in a court of law;
2. A liability for which payment arrangements have been agreed to by both the taxpayer and the BOE and the taxpayer is in compliance with the arrangement; and
3. A liability of an individual or business taxpayer under federal bankruptcy protection, and the taxpayer has not yet exited or emerged from bankruptcy.

Each quarter the list of the Top 500, with respect to each liability, will include all of the following:

1. The names of the person(s) liable for payment of the tax and their last known address(es);
2. The amount of the liability as shown on the notice or notices of state tax lien including any applicable interest or penalties, less any amounts paid;
3. The earliest date that a notice of state tax lien was filed;
4. The telephone number of the Compliance Policy Unit (CPU) located in Headquarters, for taxpayers to contact if they believe their name was included on the list in error;

5. The number of persons that have appeared on the list who have satisfied their liability in full, along with the total dollar amounts that have been applied to the related liabilities; and
6. Any payments made toward liabilities on the list if requested by the taxpayer.

Thirty (30) days prior to making a liability a matter of public record on its website, the BOE shall send a preliminary written notice (BOE-1401, *Possible Public Disclosure of Tax Delinquency*) by certified mail, return receipt requested to each person or persons liable for the payment of tax. The notice will advise each person(s) of the BOE's intent to place their name on the list and the basis for the action.

CPU will use the Automated Compliance Management System (ACMS) to send the BOE-1401 notices, which will include the responsible collector's name and contact information. The notice will provide warning to the person(s) that if their name is included on the list, it may lead to the loss or denial of their professional or occupational licenses, including driver licenses, pursuant to BPC section 494.5, and prevent them from entering into contracts for the acquisition of goods or services with California state agencies as noted in Public Contract Code section 10295.4. If within 30 days after the issuance of the notice, the person(s) does not remit the amount due, or make arrangements with the BOE for payment of the amount due, the delinquent amount shall be included on the list.

Once the tax delinquencies are published, the BOE will provide the state governmental licensing agencies, via Secure File Transfer, a "Certified List" of the Top 500 largest sales and use tax delinquencies for purposes of administering BPC section 494.5. These agencies shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's (our taxpayer) name is included on the "Certified List."

Each state licensing agency shall determine whether an applicant or licensee is on the "Certified List." If applicants or licensees are listed, the licensing agency shall then deliver, within 30 days of receipt of the list, a preliminary notice to the applicants or licensees stating the intent to suspend or withhold issuance or renewal of their licenses. The notice will include CPU's address, a telephone number for immediate contact, and the *License Suspension Release* form (provided by the state agency suspending the license) in the event the licensees wish to challenge the submission of their names on the "Certified List."

Taxpayers challenging the submission of their names on the list will complete the form and make a timely written request (explained below) for release to CPU. The criteria for release are:

1. The applicant or licensee has complied with the tax obligation, by either payment of the unpaid taxes or entry into a payment plan;
2. The applicant or licensee has submitted a request for release not later than 45 days after receipt of the state licensing agency's preliminary notice; or
3. The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. BPC section 494.5(h)(3) defines financial hardship as a financial hardship as determined by BOE where the taxpayer is unable to pay any part of the outstanding liability and is unable to qualify for a payment plan. In order to establish existence of a financial hardship, the taxpayer shall submit any information requested by BOE, including

information related to reasonable business and personal expenses, for purposes of making that determination. Hardship requests will be considered on a case by case basis.

The BOE must remove the taxpayer's name from the Top 500 list no later than five business days from the occurrence of any of the following:

1. The person(s) liable for the tax has contacted the BOE and entered into a payment plan to satisfy the liability. However, if the person fails to comply with the payment plan after having their name removed from the list, the BOE shall add that person's name to the list without providing additional written notice. District offices should notify CPU if a payment plan is terminated. This notification should include the reason for termination and indicate if all criteria for inclusion on the Top 500 list have been met;
2. The BOE has received notice, or discovered that the delinquent taxpayer is under federal bankruptcy protection;
3. The BOE has analyzed the delinquent taxpayer's bankruptcy case docket and papers confirm that there are no more assets to pay down an aged, dischargeable delinquency; or
4. The Special Operations Branch (SOB) has approved the liability for write-off because it is uncollectible. Once Field Operations Department (FOD) staff determines that an account eligible for the Top 500 list should be written off, the write-off should be initiated and sent to SOB as soon as possible. Notify CPU once the write-off has been initiated so CPU can refrain from placing the taxpayer on the list until the write-off occurs. It may take over 30 days before the write-off is approved by SOB and sent to the State Controller's Office. With a new Top 500 list posting roughly every 90 days, the write-off process may not be completed before the next Top 500 list is posted.

HEADQUARTERS RESPONSIBILITY

Compliance Policy Unit (CPU)

Each quarter, CPU will:

1. Coordinate with the Technology Services Department (TSD) to extract a list of candidates that may qualify for the Top 500 list from ACMS, based on the required criteria stipulated above. The list will be sent to FOD to determine if all the criteria have been met for inclusion on the list;
2. Consult with the Offer-In-Compromise (OIC) Section or SOB as appropriate for accounts being reviewed for an OIC or write-off to determine if the accounts should be placed on the list;
3. Post the Top 500 Tax Delinquencies on the BOE's website once the accounts have been certified by FOD;
4. Provide state governmental licensing agencies with the quarterly "Certified List" of the Top 500 largest sales and use tax delinquencies pursuant to section 7063 for purposes of administering BPC section 494.5, and act as a point of contact with state licensing agencies, licensees, and FOD to facilitate tax resolutions;

5. Receive "License Suspension Release" requests from taxpayers wishing to challenge their placement on the Top 500 tax delinquency list and distribute them to FOD for processing of tax payment arrangements; and
6. Notify licensees on the outcome of their License Suspension Release requests. Copies of these responses will be mailed to state governmental licensing agencies related to the licensee. The BOE will respond within 45 days from the date CPU received the License Suspension Release request. In the event the BOE is unable to complete the release review within 45 days after receipt of the licensee's request for release, the release should be granted and the BOE shall notify the licensing agency to reinstate the applicable license with retroactive effect back to the date of the erroneous suspension, and the suspension shall not be reflected on any licensee's record.

Special Operations Branch (SOB)

Once an account on the list has received final approval by SOB for write-off, SOB shall immediately notify CPU, so that the account may be removed from the list.

FIELD OPERATIONS DEPARTMENT (FOD)

To determine the potential liabilities to be placed on the Top 500 quarterly list, each district office will receive a list of potential candidates for review. The list includes accounts for which the respective district office is responsible for performing collection activity. Once the district office has determined whether all the criteria has been met for inclusion on the list, the district office administrator will return the list via email to the CPU shared group email address (BTFDTop500@boe.ca.gov) certifying which accounts on the list qualify for posting on the Top 500 website. After determining whether candidates can be included on the list and responding to CPU, staff in the district offices must continue to monitor those accounts until the Top 500 list is published. Any change in status must be communicated to CPU as soon as possible. As used below, the term "qualifying liabilities" means individual differences that solely, or in combination, cause the account to qualify for listing on the website. The district offices must ensure that:

1. The qualifying liabilities have been final for more than 90 days;
2. The BOE has recorded a notice of state tax lien for the qualifying liabilities in a California county recorder's office;
3. The current delinquency amount due for the qualifying liabilities is in excess of $100,000;
4. The qualifying liabilities are not under litigation in a court of law;
5. The qualifying liabilities are not in the appeals process. For the purpose of this process, if all of the tax liability, with the exception of the penalty and interest, has been paid and a refund request has been submitted, we will consider this as an appeal;
6. The taxpayer is not in bankruptcy status;
7. The account is not on a payment plan;
8. The mailing address is current by checking EDD, DMV, Franchise Tax Board (FTB), Clear and/or other available search tools;

9. For partnerships, husband-wife co-ownerships, and registered domestic partnerships, ensure that all listed taxpayers are liable for the qualifying liabilities. If individual partners are liable for lesser amounts, specify those amounts on the list. If all partners are liable for the full amount, no special notation will be required;
10. The qualifying liabilities were not discharged in bankruptcy. Discharged liabilities will not be adjusted off of the taxpayer's total outstanding tax liability when a lien survives the discharge and remains in place. If a liability was discharged in bankruptcy but a lien remains in place, collection against the property subject to the lien may occur, however not against the individual who was discharged in bankruptcy. Therefore, discharged liabilities cannot be included in the calculation of liabilities qualifying a taxpayer for listing. Verify the taxpayer qualifies for listing based only on the non-discharged liabilities that remain subject to collection action. To determine liabilities subject to collection after a bankruptcy, check for a legal case entry on LGL LC and comments regarding a discharge on the LGL LC screen, a "bankruptcy summary, discharge review" comment in ACMS, or contact SOB, Bankruptcy Team;
11. The accounts have not been written off. An account is considered written off when it has been approved by all required levels within SOB;
12. The taxpayer does not qualify for License Suspension Release. Review taxpayers' "License Suspension Release" requests received by CPU and determine if taxpayers qualify for the license suspension release by agreeing to pay the liability in full or by entering into reasonable payment plans. Once taxpayers agree to either form of payment, FOD should notify the taxpayer of the agreement using current acceptance documents. There may be instances where taxpayers will send their release requests directly to FOD offices instead of CPU. In this case, the district offices should begin working the account and immediately send a copy of the Release Request via email (PDF) to CPU or fax a copy to CPU at 916-322-4530; and
13. Immediately notify CPU of the outcome of the License Suspension Release review so that state licensing agencies can be informed whether or not to release the license suspension.

FOD will continue to be responsible for collection of accounts posted on the Top 500 list. Returned mail updates will be sent from CPU to the responsible district office to determine if a better address exists by using skip tracing tools such as EDD, DMV, FTB and Clear, etc. If a better address is found, the address should be updated in IRIS and ACMS. The information should also be relayed to CPU who will then generate a new letter from ACMS and mail it to the taxpayer. CPU will ensure that the account is not posted to the list if the BOE-1401 letter is generated less than 30 days from the next list update. Returned mail labeled as *unclaimed* and or *refused* need not be further researched and will be included on the list.

Once an account has been posted on the Top 500 list, it should be closely monitored for any changes that would require it to be removed from the list. CPU must be contacted immediately by email if it is necessary to remove an account from the list. RTC section 7063 requires that the taxpayer's name must be removed from the list within five business days after the BOE is notified of an action that disqualifies it from placement on the list.