



## STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70  
450 N STREET, SACRAMENTO, CALIFORNIA 95814-0070  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0070  
PHONE 1-916-324-2798 • FAX 1-916-323-3319  
www.boe.ca.gov

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Orange County

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

CYNTHIA BRIDGES  
Executive Director

August 13, 2014

Mr. David Michael Holden

Dear Mr. Holden:

Thank you for your participation in the June 24, 2014, Taxpayers' Bill of Rights Hearings held in Culver City. I appreciate your taking the time to provide suggestions on ways the Board of Equalization (BOE) can keep taxpayers out of collections and improve its existing collection process. A copy of your written suggestions, which was provided to the Board Members at the Hearings, is enclosed for reference. Following are responses to your suggestions.

***Let's keep them out of collections from the start***

Suggestion: "First time permit holders should be probationary, until they are solvent and compliant."

Response: A change of this magnitude would generally require legislation. In your comments you state that for a new seller's permit holder, there is "no test, no training, no video, not even a warning on the form you sign hinting at the responsibility or consequences if anyone in the company or corporation fails to comply, no mention of secondary responsibility, nor the inability to BK out of this debt."

When a seller's permit is issued to a corporation or Limited Liability Company (LLC), the BOE sends each officer or managing member a letter to warn of potential personal liability under section 6829 of the Revenue and Taxation Code if the corporation or LLC closes and has an outstanding final liability. For your information, BOE staff has been required to send this notice to corporate applicants since 1982. In addition, upon registration for a seller's permit the BOE provides all taxpayers with regulations and publications pertinent to their type of business. This material helps taxpayers understand the sales and use tax rules that apply to their particular business and helps them account for and report the correct amount of tax.

The BOE is committed to helping all permit holders properly comply with the state's tax laws. The agency offers a full range of services and resources tailored to new businesses, including in-person and online basic sales and use tax classes, workshops on how to file returns, other tutorials and seminars, publications, and industry-specific information on the BOE website. Staff in the BOE's Customer Service Call Center is dedicated to answering taxpayers' questions during business hours. In addition, BOE offers an email inquiry service to answer all taxpayers' questions via email where feasible.

As part of the BOE's education and outreach efforts, the Educational Consultation Program is a free taxpayer service where the BOE provides individualized tax education and assistance during a taxpayer's first year of operation. An experienced BOE staff member comes to your business to review your operations and record keeping procedures. This is not an audit; it is an opportunity to educate and inform taxpayers of how the sales and use law applies to their business so they can avoid future problems.

Suggestion: Classify permits according to volume of taxes collected to prioritize oversight and follow-up by BOE staff.

Response: The BOE already classifies permits based on the volume of taxes collected by assigning a reporting basis to each account. Generally, businesses collecting higher volumes of taxes file their sales and use tax returns more frequently than lower volume businesses. With the exception of those required to file quarterly prepayments, businesses have the right to request a change in their sales and use tax reporting basis. In addition, the BOE monitors businesses and industries with a pattern of underpayment and underreporting on an ongoing basis using collection modeling tools, and is constantly looking at ways to improve the current processes.

Suggestion: Failure to file a return should elicit a proactive response by BOE.

Response: The BOE is constantly striving to improve its outreach efforts. We recently began a new Proactive Outreach Manager program designed to make automated, outgoing calls to taxpayers with a history of late filings reminding them of their next filing due date. The BOE also sends "reminder to file" notices by email or by mailing a post card for most taxpayers.

Suggestion: "Quarterly filings should be considered an obsolete concept. Today credit card companies process and post millions of transactions hourly. The BOE's portion could just as easily be posted in the state account by the same process."

Response: A change of this magnitude would generally require legislation. Typically, such policy or procedural change would require the cooperation of the major credit and debit card providers, such as Visa, MasterCard, American Express and Discover. BOE's previous studies into this matter indicate companies in this industry are not likely to voluntarily implement government policies without a statute requiring them to do so. This is because the implementation of these procedures may be costly due to the need to create or modify existing software that would link credit card issuers, merchant processors, retailers, and federal or state agencies such as the BOE. High costs could result in these costs being passed on to retailers and/or consumers.

Since the following two suggestions would also require legislative changes, my response to both follows the suggestions.

Suggestion: "If a company closes and there is an auction of its assets, BOE claims for unpaid taxes should be first before any and all other claims, no matter prior agreements or contracts."

Suggestion: "Companies selling franchises should be required to co-sign on BOE resale accounts for new operators."

Response: The suggestions to prioritize the BOE's credit status claims and to require franchise sellers to co-sign on new accounts require legislation to amend various sections of the Revenue and Taxation Code. My office works continually with all departments of the BOE to identify

areas where improvements to taxpayer services can be made, and will keep your suggestions in mind as we explore new legislative opportunities.

### ***Operational Suggestions for BOE Collections***

Suggestion: All documents requested by BOE should have control numbers on them.

Response: The BOE is currently in the process of converting all documents to an electronic format, and expects this to improve document tracking and retrieval.

Suggestion: “Outbound and inbound phone calls should be recorded for quality control and review [in case] there is a dispute of what was said and by whom.”

Response: A record of contacts between taxpayers and BOE collection staff is maintained in the BOE’s Automated Compliance Management System (ACMS). If there is a dispute, taxpayers have the right to elevate the issue, generally beginning with the employee’s direct supervisor. In addition, “How are we doing?” surveys are available at all district offices and give taxpayers the opportunity to express comments and concerns based on their experience in dealing with BOE staff. Of course, taxpayers may also contact my office directly for assistance if they have not been able to resolve their concern through normal channels.

Suggestion: “All phone logs should be sent to both parties for review and corrections.”

Response: BOE policy requires staff to document all taxpayer communication. At any time, a taxpayer may request copies of all documents pertaining to his or her account under the Information Practices Act, including ACMS transcripts.

Suggestion: “Exhibits and evidence should be unmodified by anyone for any reason. This includes white out.”

Response: The BOE is required by statute to redact confidential information including personal information of third parties, informants, employees, etc.

Suggestion: All accounts in the collection process should have an activity log and the taxpayer should be noticed when the assignment is transferred.

Response: Accounts in the collection process are assigned to staff in our internal database and tracked through ACMS. All staff with access to ACMS can see the entire collection case history, including who has been assigned to the account, anyone who has worked on the account, and all collection activities. Generally, when an active collection case is reassigned, the new collector will contact the taxpayer; however, it may not be practical to automatically generate a notice to each taxpayer in ACMS every time there is a reassignment. Every letter or notice from the BOE contains at least one BOE phone number. Outgoing letters and notices used in the collection process contain the assigned collector’s name and phone number.

Suggestion: “All notices either verbally or in writing should contain a prominent announcement directing the client to the Taxpayers’ Rights Office if they disagree, or have any problems with the notice or its contents.”

Response: A taxpayer who does not understand a notice or disagrees with it can, in most cases, most effectively resolve the matter by contacting the BOE office that issued the notice. My

office advises taxpayers that they have the right to speak to a supervisor to have their concerns addressed. The Taxpayers' Rights Advocate (TRA) Office generally assists taxpayers who have been unable to resolve a matter through normal channels or who claim their rights have been violated.

Taxpayers can learn about the TRA Office and the services it provides in a number of ways. For example: the TRA Office's toll-free number is printed on all BOE permits and licenses; a link to the TRA Office web page is found on all pages of the BOE website; information about taxpayers' rights and the Advocate's role in protecting those rights is contained in publication 70, *Understanding Your Rights as a California Taxpayer*, which is provided to new permit holders and made available at all BOE offices and outreach events; many BOE publications prepared to assist permit or license holders reference the TRA Office's contact information; the TRA Office's phone number is included as an option on various automated BOE phone trees; and the Advocate attends and makes presentations at BOE and many non-BOE sponsored seminars.

Suggestion: Collections seems to not have a consistent strategy on liens. Liens destroy credit and make getting a loan to pay taxes more difficult.

Response: I agree that a lien affects a taxpayer's credit rating negatively and should be avoided if possible. However, liens are a necessary and required collection tool that protects the state's interests, and are generally filed after all attempts to gain compliance from a taxpayer have failed. The BOE policy on liens is explained in the BOE's [Compliance Policy and Procedures Manual \(CPPM\)](#) sections 757.000 - 761.090. In addition, general information on liens is provided in [Publication 54, Collection Procedures](#).

Suggestion: "The State of California needs to consider an amnesty program."

Response: The State of California had an amnesty program in 2005 that covered tax reporting periods prior to January 1, 2003. New legislation would be required to implement a new amnesty program. However, our offer in compromise program currently allows eligible taxpayers to satisfy their liability by paying a lesser amount when the BOE determines they do not have the means or assets to pay the amount due in full. In addition, as provided in [Publication 17, Appeals Procedures](#), under the settlement program, a taxpayer may seek settlement of certain liabilities and claims for which the taxpayer has a pending appeal.

Thank you again for sharing your ideas as part of the annual hearing process. If you have any further questions regarding this matter, please do not hesitate to contact me at 1-916-324-2798. You may also contact Ms. Lauren Simpson of my staff at 1-916-445-0218.

Sincerely,

Todd C. Gilman  
Chief, Taxpayers' Rights and  
Equal Employment Opportunity Division

TCG:bb [TPD]  
Holden 081314.docx

Enclosure

cc (with enclosure):

Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, Board Member, First District  
Senator George Runner (Ret.), Second District  
Honorable John Chiang, State Controller  
Ms. Marcy Jo Mandel, Deputy State Controller  
Mr. Mike Gipson, Board Member's Office, Fourth District  
Mr. Joel Angeles, Board Member's Office, Third District  
Mr. Sean Wallentine, Board Member's Office, Second District  
Mr. Alan LoFaso, Board Member's Office, First District  
Ms. Maria Delgado, Board Member's Office, First District  
Mr. David Hunter, Board Member's Office, Fourth District  
Ms. Shellie Hughes, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Third District  
Mr. Tim Treichelt, Board Member's Office, Third District  
Mr. James Kuhl, Board Member's Office, Second District  
Ms. Cynthia Bridges, Executive Director, MIC 73  
Mr. David Gau, Chief Deputy Director, MIC 101  
Mr. Randy Ferris, Chief Counsel, MIC 83  
Mr. Robert Tucker, Assistant Chief Counsel, MIC 82  
Mr. Jeffrey McGuire, Deputy Director, Sales and Use Tax Department, MIC 43  
Mr. Wayne Mashihara, Chief, Field Operations, MIC 46  
Ms. Susanne Buehler, Chief, Tax Policy Division, MIC 92  
Ms. Lynn Bartolo, Chief, Special Taxes Policy and Compliance Division, MIC 57  
Ms. Michele Pielsticker, Chief, Legislative and Research Division, MIC 66  
Mr. Dan Leddy, Manager, Taxpayers' Rights Advocate Office, MIC 70  
Ms. Lauren Simpson, Taxpayers' Rights Advocate Office, MIC 70

Let's keep them out of collections from the start

When you start a business, let's say a restaurant for an example, the law requires a food handler's permit; the applicant is required to know basic facts about handling food safely. A training book is handed out and studied, a test is administered a passing grade is required before the permit is Issued. If you are going to deliver the food, the Department of Motor Vehicles (DMV) has a more complex test about laws of the road, they even require an eye exam, and proof of financial responsibility.

This contrasts to Issuing a resale permit in California, you sign a form, and you are empowered to collect an unlimited amount of sales tax. No test, no training, no video, not even a warning on the form you sign hinting at the responsibility or consequences if anyone in the company or corporation fails to comply , no mention of secondary responsibility, nor the inability to BK out of this debt . Just sign and go, Now what to do, my experience with the BOE suggests the following could prevent many from falling into collections:

- First time permit holders should be probationary, until they are solvent and compliant.
- I would also suggest classifying permits according to the volume of taxes collected, A, B, C, D, etc. this would help prioritize oversight, and follow up by the BOE staff, a timely phone could prevent taxes from not being paid in a timely manner.
- If a company fails to file a quarterly statement, this should be an automatic red flag. This situation demands a more proactive attitude by the BOE. Assigned agents should make direct calls to all parties who will be held responsible, certified mailings, onsite inspections, and even revocation of the permit. This failure is always a prelude to a business closing.
- Quarterly filings should be consider an obsolete concept, today credit card Company's process and post millions of transactions hourly. The BOE's portion could just as easily be posted in the state account by the same process.
- If a company closes and there is an auction of its assets, BOE claims for unpaid taxes should be first before any and all other claims, no matter prior agreements or contracts. In most cases the BOE fails to collect anything, this is probably because there are no legal requirements to give BOE adequate notice of auctions, staff would also have to be commented to this.
- Companies selling Franchises should be required to co-sign on BOE resale accounts for new operators, they are in a better position to screen the people involved and if they are responsible, they would raise the standards and improve training. Some franchises position themselves to repossess failed franchises for past due franchise fees, then resell them to another "victim," some franchises have been opened and closed a dozen times over the years.

I thank you for your time.

Proposed by David M Holden

### Operational Suggestion for BOE collections

With the volume of documents requested by BOE employees, there should be document control numbers issued on all documents, too many are lost, miss filed etc.

Outbound and inbound phone calls should be recorded for quality control and review if there is a dispute of what was said and by whom.

All phone logs should be sent to both parties for review and corrections.

Exhibits, evidence should be unmodified by anyone for any reason this includes white out.

All account numbers *in* the collection process should contain an activity log with the name, department of every staff member along with the date, and activity. If file is dropped or transferred the reason is noted with date of transfer, this should trigger the taxpayer being notified in writing of the change of status.

All notices either verbally or in writing should contain a prominent announcement directing the client to the taxpayer's rights office if they disagree, or have any problems with the notice or its contents.

Collections seems to not have a consistent strategy, putting a lien on their only house because they can not afford to pay, destroys their credit and makes it more difficult to pay the tax debt by getting a loan on the property.

The state of California needs to consider an amnesty program in light of the economic collapse of 2007 to 2012. This collection process has prevented them from recovery and starting new businesses, many have fled the state. The federal government not only bailed out the bankers responsible, but very few were held responsible for the reckless practices that led to it.