

**M e m o r a n d u m**

**To** : Mr. Ramon J. Hirsig  
Executive Director (MIC 73)

**Date:** July 26, 2007

**From** : Ms. Randie J. Henry, Deputy Director  
Sales and Use Tax Department (MIC 43)



**Subject** : **Proposed Revisions to Audit Manual Chapter 1,**  
***General Information***

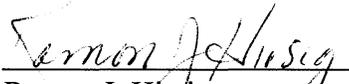
In accordance with the established procedures for audit and compliance manual revisions, I am submitting the following proposed revisions to Audit Manual Chapter 1, *General Information*, for your approval to forward to the Board Proceedings Division. These changes have been reviewed and approved by SUTD management, provided to Board Members, and posted for two months at <http://www.boe.ca.gov/sutax/staxmanuals.htm> to solicit comments from interested parties.

We received no comments from the public. On July 11, 2007, we sent a memo advising Board Members that there were no comments and of our intention to place these revisions on the August 14, 2007 Administrative Agenda as a consent item.

Copies of the proposed revisions are attached for your reference. We request your approval to forward these proposed changes to the Board Proceedings Division for placement on the next Administrative Agenda as a consent item.

If you have any questions, please let me know or contact Mr. Jeff McGuire at 324-1825.

Approved:

  
\_\_\_\_\_  
Ramon J. Hirsig  
Executive Director

*by KCC*

Mr. Ramon J. Hirsig  
Executive Director (MIC 73)

-2-

July 26, 2007

Attachment

cc: (all without attachments)  
Mr. Stephen Rudd (MIC 46)  
Ms. Freda Orendt (MIC 47)  
Mr. Jeff McGuire (MIC 92)  
Mr. Joe Young (MIC 49)  
Ms. Kelly Reilly (MIC 47)

BOARD APPROVED  
At the August 14, 2007 Board Meeting

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Gary Evans, Acting Chief  
Board Proceedings Division

**SUMMARY OF REVISIONS<sup>1</sup>**  
**AUDIT MANUAL CHAPTER 1, *GENERAL INFORMATION***

<b>AM Section</b>	<b>Revisions</b>
0101.10	Adds new section “Audit Manual Revisions” which explains the clearance process and how to obtain Board approval.
0101.57	Deletes procedure for acceptance of payments by tax representatives since the section is for “Acceptance of Payments by Auditors.”
0101.65	Adds reference to BOE-20, “ <i>What You Need to Know About Requests for Information,</i> ” which provides procedures for handling public request for information including Form 700.
0105.00 – 0105.10	Updates guidelines for RTC section 6596 relief.
0110.00 – 0110.06	Adds new section “Educational Consultations” (Operations Memo 1139).
0115.00 – 0115.04	Updates procedure for obtaining and safeguarding information from the IRS and FTB.
0117.00 – 0117.06	Updates guidelines for destruction of files and information from FTB.
 <b><u>Exhibit No.</u></b>	
1	Deletes column for “Acct Char” (account characteristics) in the first box since account characteristics codes are also listed in the second box.
2	Adds new exhibit “Sample of Request for Relief Memo.”

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<sup>1</sup> This summary is limited to substantive revisions only. Grammatical corrections, updating of section name, renumbering of section numbers and other minor changes were made but are not listed in this summary.

# **GENERAL INFORMATION**

**0100.00**

## **INTRODUCTION**

**0101.00**

## **MISSION AND PHILOSOPHY**

**0101.03**

The mission of the State Board of Equalization (Board) is to serve the public through fair, effective, and efficient tax administration.

The ~~State Board of Equalization Board~~ Board is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. The Board's audit program is one of many ways in which we provide assistance and information to the public while, at the same time, providing a fair and firm enforcement program that ensures that taxes are reported properly.

## **PURPOSE OF AUDIT MANUAL**

**0101.05**

~~This~~The Sales and Use Tax Department (SUTD) Audit Manual (AM) manual is a guide in conducting sales and use tax audits. It incorporates procedures and techniques that have evolved over a period of years and ~~that~~ have proved to be sound and practical. ~~Tax~~All members of the auditors staff should carefully study it this manual in order to conduct for audits to be conducted and prepare reports prepared in a uniform manner consistent with approved tax auditing practices.

~~This~~ manual, however, is not ~~cannot be~~ a substitute for experience, training in accounting and auditing, ~~or~~ good judgment and active supervision. The procedures outlined in ~~this~~  manual are not inflexible. *However, all sections of Chapter 2, Field Audit Reports, and the italicized portions of the other chapters are to be followed exactly. The audit supervisor must approve any deviation from these instructions.*

## **AUDIT MANUAL REVISIONS**

**0101.10**

Procedures have been developed to afford the Board the opportunity to review proposed changes to this manual Sales and Use Tax Department (SUTD) Audit Manual and to ensure that taxpayers, their taxpayers' representatives and other interested parties are notified of changes in Board policies and procedures that may affect them. AM Rrevisions to the manuals are generally made to incorporate existing guidance to staff from management, to enhance clarity or to correct errors. All revisions undergo a clearance process. Board approval is obtained via the Business Taxes Committee (BTC) process or via the Board's Administrative Agenda.

### **Clearance Process**

Drafts of suggested revisions to ~~manual~~AM chapters will complete a two-step clearance process, consisting of a preliminary review by all affected Board units and a selection of district offices, and a final review by SUTD management. At

least one district office from each Equalization District will participate in the preliminary clearance process.

### **Board Approval – BTC Process**

If the proposed manualAM revisions involve policy or procedure modifications that would significantly impact the public, a recommendation will be made to the BTC Chair to place the matter on the BTC agenda as a separate topic in order to ensure participation by interested parties in discussing the change. This process will include the customary discussion and issue papers and interested parties meetings.

### **Board Approval – Administrative Agenda**

AM Rrevisions that do not involve policy or procedure modifications that would significantly impact the public will be provided to Board Member staff and posted for two months to the Board’s Internet website located at <http://www.boe.ca.gov/sutax/staxmanuals.htm>. A “pending approval” icon on the website manuals page will identify chapters with pending revisions, and a cover letter attached to the proposed revisions will explain the origin and need for the revisions and invite public comment on these revisions only. Staff will acknowledge and address all comments, and once the final revisions are approved by management, will then schedule the revisions for approval on the Board’s Administrative Agenda. The materials provided to the Board will include a summary of the comments received and actions taken in response to the comments.

## **TAX AUDIT POLICIES**

**0101.20**

Field auditing is of great importance in efficient administration of self-assessed taxes such as those provided by the California business tax laws. It assists in ensuring uniform enforcement and detects and aids in the timely correction of reporting errors. The SUTD audit program of the Sales and Use Tax Department has resulted in the correction of tax underpayments and overpayments of many millions of dollars. In addition, there are educational benefits to the taxpayer which cannot be readily measured in terms of dollars but which undoubtedly are responsible for a large portion of the self-declared tax that would not otherwise be paid. On November 17, 1954, the Board by resolution adopted the original version of the following statement of tax audit policies (A-E below). It should be noted that this resolution has accurately reflected the intent and direction of the Board from 1954 through the present.

### **A. Purpose Of Tax Auditing**

Because most of the taxes administered by the Board are self-assessed by the taxpayers, an audit program is essential ~~to~~ in providing for the following objectives:

- To assure all citizens of the state that the tax is being enforced uniformly;
- To deter tax evasion and carelessness in self-assessments; and
- To promote accuracy in self-assessments through aid extended to taxpayers with respect to the interpretation of the law and rules and regulations adopted thereunder.

## **B. Relationship of Taxpayer and Tax Auditor**

Consistent with the purpose of tax auditing as outlined above, there is no occasion for the tax auditor to harass taxpayers or to give the impression that the object of the audit is to find ~~something wrong~~ errors within their the taxpayers' self-assessments. The taxpayer should be assured that the tax auditor's function is to determine whether the amount of tax has been reported correctly. The tax auditor should aid the taxpayer in gaining a correct understanding of the law and demonstrate that we are as willing to recommend a refund of an overpayment as we are to propose a deficiency determination. Care should be taken to inform taxpayers regarding ~~their taxpayers'~~ rights and privileges in connection with such determinations. The tax auditor should constantly keep in mind ~~constantly~~ that it is our policy to administer the law fairly and uniformly, with minimum annoyance ~~to taxpayers~~ and interference in ~~their taxpayers'~~ business affairs, as well as at the lowest cost consistent with good tax administration.

## **C. Professional Status of Tax Auditors**

Tax auditors are engaged in professional assignments. They are called upon to exercise their highest skill and best judgment throughout the performance of their official duties. All audits should be made in accordance with approved auditing and accounting principles. Sound professional judgment must be exercised in making tests that are representative in scope and character to ensure that the results are representative of the actual business operations during the audit period.

Tax auditors are expected to observe the rules of conduct of their profession and the Board's guidelines set forth in the pamphlet, *Ethics: Guidelines for Professional Conduct*, available in the Board's intranet website (eboe) located at <http://eboe/docs/Forms/Ethics.pdf>. Tax Auditors are also expected to perform their duties with dignity and courtesy regardless of the industry being audited, the size of the business, the sophistication of the records, or any other consideration. The Board can maintain the public's confidence only to the extent that all of our official activities and contacts with the public reflect the highest ethical and moral standards. Tax Auditors must perform their duties with integrity and propriety, and ~~auditors must do~~ all in their power to ensure that their words or actions cannot be interpreted otherwise.

## **D. Evaluation of an Tax Auditor's Skills**

In determining the skills of an tax auditor, the quantity and quality of the work will be evaluated in relation to these questions:

- Is the tax auditor accurate and efficient in the analysis of taxpayer's records to determine whether tax liability has been reported correctly?
- Does the tax auditor explain to the taxpayer in clear terms the amounts of overpayment or underpayment identified by audit and provide a complete set of audit work papers so that the taxpayer is afforded a good understanding of what constitutes correct tax reporting?

- Does the tax auditor use sound professional judgment and exercise alertness to determine the most appropriate type of audit for a specific assignment?

An tax auditor's skill is not measured by the additional understatements and overstatements disclosed in his/ or her audits. Under no circumstances will an tax auditor's performance be rated upon the basis of recovery, which is prohibited by law. Additionally, aged audits and other audit program-level performance measurements established by Board management to evaluate district offices are not designed nor should they be used for evaluating an individual tax auditor's performance. This does not mean that an tax auditor may waste time on assignments by using ineffective audit techniques and performing nonessential tasks and still receive a satisfactory rating. It does mean that if the tax auditor works diligently, uses the kind of verification methods best fitted to the particular assignment, and performs a professional job with a reasonable expenditure of time, the work performance will be satisfactory.

#### **E. Implementation of Auditing Policy**

The Chief, Tax Policy Manager~~Division~~, Chief, of Field Operations~~Division~~, Chief, Collections and Third District Operations Manager~~Division~~, and District Administrators have the responsibility to effectively carry out the policy set forth in this statement. They will issue such instructions as it is deemed necessary to implement this policy.

### **STANDARDS OF COMPETENCY FOR AN EXPERIENCED TAX AUDITOR**

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#### **A. Ability to apply the following Bbasic Kknowledge and the Ability To Apply It Tto Ppractical Ssituations:**

- Thorough knowledge of accounting principles and systems.
- Thorough knowledge of auditing procedures and techniques.
- A general knowledge of business law, practices and procedures.

#### **B. Ability to apply the following Sspecial Kknowledge and the Ability Tto Apply It Tto Ppractical Ssituations:**

- Knowledge of the California Revenue and Taxation Code (RTC) as it pertains to sales and use tax.
- Thorough knowledge of the authorized rules and regulations of the Board of Equalization~~Board~~.
- Knowledge of established administrative policies.
- Knowledge of special techniques peculiar to tax auditing and sales and use tax administration.
- Effective use of tools, manuals, annotations, memorandum opinions and directives.

#### **C. Ability Tto Pprepare Pprofessional Aaudit Rreports Wwith Pparticular Rreference Tto:**

- Use of computers.

- Completeness of reports.
- Clear and concise, well-organized comments with headings and captions.
- A working paper technique which is readily understood by others.
- Use of auditing procedures consistent with acceptable standards.
- Accuracy in comments, facts, and calculations.
- Ability to make decisions commensurate with duties and responsibilities.
- Ability to clearly explain and support, verbally and in writing, audit procedures and findings. Such explanations must be readily understood by supervisors, reviewers, Appeals officers, Division attorneys, taxpayers, and taxpayers' representatives (i.e., accountants, and attorneys, etc.).

**D. Judicious Use of Time By such as:**

- Proper use of audit short-cut techniques.
- Good organization and planning of work.
- Recognition of the "Concept of Materiality" in making audit decisions.

**E. General Work Habits:**

- Good general and business-like appearance.
- Promptness in keeping appointments.
- Promptness in completing and submitting assignments.

**F. Attitude:**

- Enthusiasm in work.
- Willingness to learn.
- Open-minded approach to assignments.
- Ability to accept responsibility.
- Ability and willingness to accept direction.

**G. Use of Initiative, Inquisitiveness, and Ingenuity:**

- Ability to adapt working habits and audit practices to differing environments.
- Alertness to recognize situations involving possible tax liability even though not directly concerned with a specific assignment.
- Willingness and ability to do research work on complex audit problems.
- Willingness and ability to develop alternative approaches to particular problems.

**H. Relationships With People:**

- Ability to get along and work with fellow employees, supervisors, and staff from other districts and units.
- Ability to get along and work with taxpayers and ~~their~~ taxpayers'

employees, accountants, ~~and attorneys~~ and other representatives.

- Ability to instill confidence.
- Ability to maintain an atmosphere of dignity and professionalism consistent with the auditing profession.
- ~~As a representative of the Board, the a~~Ability to discuss with the public such things as:
  - ◆ The structure, history, mission, philosophy, and functions of the Board.
  - ◆ A general overview of Tthe various tax programs, ~~generally.~~
  - ◆ Taxpayer benefits from tax revenues.
  - ◆ Some background knowledge of legislative intent in enacting law changes, exclusions, and exemptions.

## KNOWLEDGE OF THE LAW

0101.30

Tax Auditors must be familiar with the provisions and requirements of the laws they are assisting to administer, which are:

- ◆ **Division 2, Part 1**, of the ~~Revenue and Taxation Code~~RTC, known as the Sales and Use Tax Law.
- ◆ **Division 2, Part 1.5**, of the ~~Revenue and Taxation Code~~RTC, known as the Bradley-Burns Uniform Local Sales and Use Tax Law.
- ◆ **Division 2, Part 1.6**, of the ~~Revenue and Taxation Code~~RTC, known as the Transactions and Use Tax Law.
- ◆ **Division 2, Part 1.7**, of the ~~Revenue and Taxation Code~~RTC, known as the Additional Local Taxes Law.

## REGULATIONS AND PUBLICATIONS OF THE BOARD

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Regulations promulgated by the Board interpret the laws the Board administers and have the force and effect of law. The Board also publishes a number of publications designed to assist taxpayers with ~~their~~ tax questions. Publication 51, Guide to Board of Equalization Services, contains a complete list of Board publications, ~~available to the public, as well as the address for ordering publications for which there is a charge. M~~many Board publications of which are also available on the Internet at [www.boe.ca.gov](http://www.boe.ca.gov).

## BUSINESS TAXES LAW GUIDE

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~~All~~ Tax auditors are provided copies of the Business Taxes Law Guide (BTLG) that contain, in loose-leaf form, the laws, regulations, court decisions and summaries of the conclusions reached in selected legal rulings of counsel (annotations). The ~~Business Taxes Law Guide~~BTLG is also available on CD ROM and at [www.boe.ca.gov](http://www.boe.ca.gov).

The hardcopy volumes are of the BTLG is the property of the Board and its safekeeping is the person to whom they are issued is tax auditors' responsible responsibility for their safekeeping.

## TERMINOLOGY

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The term “taxpayer” includes “seller” or “retailer” as defined in the Sales and Use Tax Law, as well as the person upon whom use tax is imposed.

~~In those cases where it is necessary to distinguish between the laws, the following designations will be used:~~

~~**S** — Sales and Use Tax Law — **TU** — Transaction and Use Tax Law~~

~~**LT** — Local Sales and Use Tax Law —~~

~~In addition, see Exhibit 1, “Tax Code Table,” for a listing of common sales and use tax program codes used to assign tax code account number prefixes. A complete listing of account characteristic codes can be found in Compliance Policy and Procedures Manual (CPPM) Section 325.030.~~

## **EMPLOYEE TAX AUDITORS NOT TO SIGN TAXPAYERS DOCUMENTS**

0101.55

~~Employees Tax Auditors will not sign stipulations, agreements, or other documents offered by taxpayers or their taxpayers’ representatives. Board printed forms or facsimiles thereof will be used.~~

## **ACCEPTANCE OF PAYMENTS BY TAX AUDITORS**

0101.57

~~Tax Auditors must **not** accept payments in the office or field. If a taxpayer in the office wishes to make a payment, he or she the taxpayer must be taken to the office cashier for processing of the funds. In instances where a taxpayer in the field insists on making an immediate payment of an *audit liability just established*, the auditor ~~may~~ should call the field office and request that a tax representative contact the taxpayer and arrange for payment of the liability. ~~To the extent reasonable~~, the tax representative may receipt the payment at the taxpayer’s place of business. If this is impractical, the taxpayer should be given an envelope (not postage paid) bearing the local Board office address. Under no circumstances should a tax representative pick up returns or prepayment forms “as a service to the taxpayer” as it is the taxpayer’s responsibility to file and pay in the prescribed manner.~~

## **TAXPAYERS’ BILL OF RIGHTS**

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The Harris-Katz California Taxpayers’ Bill of Rights, enacted on January 1, 1989, added RTC Sections 7080 through 7099 and Section 7156 to the Sales and Use Tax Law. Effective January 1, 1999, RTC Sections 6593.5, 6832, 6964 and 7094.1 were added. The law guarantees that the rights, privacy, and property of taxpayers are protected during the course of assessment and collection activity. Tax auditors should be familiar with the provisions of the law. Publication 70, Understanding Your Rights as a California Taxpayer, which explains procedures, remedies, rights, and obligations of taxpayers and the Board, must be provided to taxpayers at the beginning of every audit. This publication is available at [www.boe.ca.gov](http://www.boe.ca.gov).

## **CONFIDENTIAL INFORMATION**

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The Civil Code and most of the business tax laws contain provisions making it illegal to divulge to any unauthorized persons information regarding a taxpayer’s affairs obtained through audit investigation or from returns or reports. (This includes information contained in Forms BOE-1164 and BOE-

1032; see AM section 0401.20). Information of this nature contained in Board records must be treated in strict confidence. The only exception is when the Governor, by general or special order, authorizes other state officers, tax officers of another state, the Federal Government (if a reciprocal agreement exists), or any other person to examine the records maintained by the Board. Requests for information of a confidential nature should be referred to a supervisor.

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, status of permit (i.e., active/inactive), and tax area code. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides in part that the Board may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the Revenue and Taxation Code.) You should be aware that nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.–

The procedures for handling public request for information (including requests for Statements of Economic Interests (SEI) – Form 700) are addressed on BOE-20, *What You Need to Know About Requests for Information*,” available in eboe located at <http://eboe/docs/Forms/boe20.pdf>.

Requests by a taxpayer’s representative for information and records under the Information Practices Act (IPA) and the California Public Records Act (PRA) will be guided by the following policy:

A taxpayer’s representative may examine and/or receive copies of the same information the taxpayer is entitled to, provided the representative presents a written authorization from the taxpayer. This includes copies of all correspondence and, if involved with an audit, petition for redetermination or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized.

**Exceptions to the written authorization rule:**

1. Taxpayer directed – Written authorization is not required when supplying copies of audit working papers to the taxpayer’s bookkeeper or accountant when the taxpayer directed the Board to contact ~~his/her~~the taxpayer’s bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.
2. Oral inquiries – Attorneys and ~~CPAs~~accountants may examine and/or receive copies of information without having written authorization if the person is known by the Board to represent the taxpayer. Most oral requests are for an informal review of working papers before the audit is transmitted to Headquarters - generally when the representative has been working with district staff. Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer's business name or account number, but have not been asked by the taxpayer to represent them. Staff should check the taxpayer's file and the appropriate Integrated

Revenue and Information System (IRIS) screens to verify the person has represented the taxpayer in the past. (APL MH and TAR AI have fields for the name of the taxpayer's accountant or representative; audit subsystem screens can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)

Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney's or CPA's-accountant's relationship with the taxpayer. If the only information available on IRIS involves a prior audit, or the representative has recently been added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or CPA-accountant is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff should ask the person to put the request in writing and state specifically that he or she represents the taxpayer in question. Attorneys and CPAs accountants have an ethical responsibility not to misstate their authority to represent their clients.

Requests for copies of district, appeals, and central files must be obtained in writing.

3. Written inquiries - Attorneys and CPAs-accountants may examine and/or receive copies of information without having written authorization from the taxpayer if they request the information in writing and clearly indicate that they are authorized to represent the taxpayer. When copy requests are made for file information, the supervisor should review the appropriate IRIS screen printout indicating the representative's name before the request is approved and copies mailed. As explained in (2) above, staff should review IRIS and the taxpayer's file to screen for speculative inquiries. If staff still has doubts, they should contact the taxpayer to confirm authorization.

## **TAXPAYER CORRESPONDENCE IN GENERAL**

**0101.70**

Correspondence to taxpayers, organizations, and the general public will be on the Board's letterhead. All such correspondence will contain the signature, typewritten name, working title and appropriate telephone number of the authorized signer. In accordance with State Board of Equalization Administrative Manual (BEAM) section 7600, all incoming correspondence (including e-mail correspondence) will be responded to or acknowledged within 12 calendar days of receipt.

Taxpayer correspondence must serve as a complete source of the questions asked, the facts presented, and the answer given. The facts and the taxpayer's question(s) should be restated or briefly summarized. Any additional facts obtained from the taxpayer after receipt of the original letter should be included in the response and should be identified as to the source. Appropriate modification or rescission letters should be sent to the taxpayer when it is determined that the tax advice as applied to the facts given by the Board was incomplete or incorrect. District Administrators and Headquarters' Supervisors will review all letters involving tax questions written by their staff to ensure that

the information is correct and in the proper format.

Taxpayers who verbally request tax information are to be advised that, although ~~an answer to their question~~information is being provided, ~~they~~the taxpayers may also wish to put ~~their such request~~question in writing so that they may ~~to~~receive from the Board a written response that may serve as basis for RTC section 6596 relief. ~~for their records.~~

**SECTION 6596 GUIDELINES FOR TAXPAYER  
CORRESPONDENCE RTC SECTION 6596 RELIEF**

**01001051.7500**

**GENERAL**

**0105.02**

In general, claims of reliance on erroneous advice are ruled upon by the Board Members. On September 30, 1992, the Board approved a Statement of Action delegating to the SUTD Deputy Director, Sales and Use Tax Department, the authority to relieve taxpayers of tax, interest and penalty as provided by RTC section 6596. The SUTD Deputy Director's authority to grant RTC section 6596 relief is limited to cases where the district office and the taxpayer are in full agreement that RTC section 6596 relief applies.

The guidelines provided in this manual apply only in cases where RTC section 6596 relief falls within the limited authority delegated to the SUTD Deputy Director. This is an internal procedure when the district office and the taxpayer are in full agreement that RTC section 6596 relief applies. When the district office does not recommend relief, the taxpayer's request for relief shall follow the normal appeals process (see Publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*, available at [www.boe.ca.gov](http://www.boe.ca.gov)). The Board is empowered to relieve taxpayers of tax, interest, and penalty where the Board finds that the failure to make a timely return or prepayment was due to the taxpayer's reasonable reliance on written advice from the Board. See Regulation 1705 for further information. The following constitutes written advice by the Board:

**QUALIFIED ERRONEOUS ADVICE**

**0105.04**

The erroneous advice must have been provided in writing, either in response to the taxpayer's written inquiry or in a prior audit, and must meet the criteria for qualified "written advice" set forth in Regulation 1705, *Relief from Liability*.

**Advice Provided in A Written Communication.**

Written advice by the Board to a taxpayer in response to a taxpayer's specific written inquiry or from the his or her taxpayer's representative seeking relief from liability will constitute written advice that can be relied on for RTC section 6596. To be considered a specific written inquiry, the taxpayer's representatives must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.

In responding to accountants, attorneys, or other taxpayer's representatives where the name of the taxpayer is not divulged, the writer will ask that the representative divulge the name and permit number of the taxpayer to enable the Board to maintain appropriate records with respect to the information provided. The taxpayer's name and permit number will be referenced in the Board's response.

Tax advice to trade associations, taxpayer's representatives failing to identify their clients, and/or taxpayers whose questions are vague or general in nature must include the following statement:

*The answer given is intended to provide general information regarding the*

*application of the tax and will not serve as a basis for relief of liability under Revenue and Taxation Code section 6596.*

If individual taxpayers are identified, but background information is incomplete, the taxpayer should be encouraged to write again setting forth the specific facts. Staff is encouraged not to make presumptions. However, should it become necessary to do so, they should be clearly identified as such in the letter.

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. The taxpayer's suppliers, customers, or other business associates are not protected under RTC section 6596 by the written advice to the taxpayer. Written advice that may serve for relief under RTC section 6596 must include the following statement:

*The opinion expressed in this letter may only be relied upon for relief under section 6596 of the ~~Sales and Use Tax Law~~Revenue and Taxation Code (RTC) by (state taxpayer's name). If you provide this letter to your customers or vendors, those customers or vendors must write to the Board and obtain their own written opinion in order for them to qualify for relief under RTC section 6596. Any person seeking relief under this section will be required to furnish a copy of ~~their~~ such person's own original written inquiry to the Board along with a copy of the written response ~~they~~ received from the Board.*

A record of the number of letters received and responded to will be maintained by District Administrators and Headquarters' Supervisors. A monthly report along with copies of all letters confirming transactions of an exempt nature, modification/~~recession~~rescission letters, and the taxpayer's original inquiry letter will be forwarded to the Audit and Information Section (MIC 44) for final review of the letters' accuracy. Any correspondence requiring adjustment will be returned to the originating party. Correspondence not providing exemption advice, which would otherwise entitle a taxpayer to relief under RTC section 6596, should *not* be forwarded to the Audit and Information Section.

**Written Advice Provided in A Prior Audit.**

Presentation of a taxpayer's books and records to an tax auditor for examination is considered a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence that demonstrates the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board." The facts and conditions in the current situation at hand must be the same as those during the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the ~~audit work papers~~AWPs which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding of relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

~~Written advice from the Board that was received during a prior audit of a taxpayer under the above conditions may be relied upon by the taxpayer audited or by a legal or statutory successor to that person.~~

~~However, the cursory review of records performed when an audit is waived does not meet the provisions of section 6596. Unlike a no change audit recommendation, a waiver does not represent acceptance of the taxpayer's returns. Similarly, the BOE 79 F, Audit Transmittal Letter—Courtesy Letter to Taxpayer When Account is Field Waived, informing taxpayers that their account is being waived for audit will not qualify as written advice to relieve the taxpayer from tax, penalty, and interest under section 6596.~~

The following are examples of qualified written advice provided in a prior audit:

1. A prior audit's examination of sales invoices, whether on an actual or a sample basis, qualifies as written advice with respect to the charges on those invoices.
2. Prior audit comments or schedules that state that a specific item or charge is exempt or was properly reported constitute written advice with respect to that item or charge.
3. Markings on a no-change audit report indicating the examination of a specific type of transaction generally qualify as written advice with respect to that type of transaction.

The following do not qualify as written advice:

1. Written comments, other than audit comments, that indicate the Board staff provided erroneous advice during a conversation with the taxpayer, either over the phone or in person. Such advice is not in response to a written inquiry from the taxpayer and is verbal, with or without documentation of such conversation.
2. A sales and use tax return accepted by the Board that contains an erroneous deduction is not written advice, whether or not the taxpayer was asked to explain the deduction or provide supporting documentation. To qualify as written advice, the Board staff must have responded in writing to specific facts and circumstances of the deduction in question, as described in writing by the taxpayer.
3. Waiver of an audit does not constitute written advice for RTC section 6596 purposes.
4. Acceptance by the Board staff during an audit, of the percentage used by the taxpayer in reporting taxable or exempt portion of a sale is not misinformation when a different percentage is deemed more appropriate in the succeeding audit. When the taxpayer reports on an estimated basis, the accuracy of that estimate will be tested as part of every audit.

## **REASONABLE RELIANCE ON WRITTEN MISINFORMATION**

**0105.06**

To qualify for RTC section 6596 relief, the taxpayer must have reasonably relied upon erroneous written advice. Such reliance must have caused either of the following:

1. The taxpayer did not charge or collect sales tax reimbursement or use tax for the transaction in question.
2. The taxpayer did not pay use tax on the storage, use, or other consumption in this state of tangible personal property.

## **RESCISSION OF ERRONEOUS ADVICE**

**0105.08**

When a district office determines that erroneous written advice was provided in the prior audit and agrees that the taxpayer is entitled to RTC section 6596 relief, the district office shall notify the taxpayer of the proper application of tax by one of the means described below.

1. Notification by means of a separate letter to the taxpayer specifically stating the correct application of tax to the transactions. The letter may notify the taxpayer of the provisions of RTC section 6596 and the procedures for requesting relief. This separate letter to the taxpayer is the preferred method of notification provided the tax auditor is sure of the correct application of tax and it will be more than one month before a request for RTC section 6596 relief memo will be sent to the SUTD Deputy Director.
2. Notification by means of a copy to the taxpayer of the district administrator's request for relief memo that is sent to the SUTD Deputy Director, provided this memo clearly explains the correct application of tax to the transactions.

The date of the written notification establishes the last day that relief applies. However, for enforcement purposes, a reasonable period should be allowed for the taxpayer to adjust to reporting tax correctly. The period will vary depending on the size and complexity of the taxpayer's operations.

The district office shall send a copy of the written notification to the Taxpayer Records Unit (MIC 36). If the district office is not certain of the application of tax to the transactions in question, the district office shall seek guidance from the Chief, Tax Policy Manager Division prior to notifying the taxpayer by one of the above means.

~~When an opinion has been issued, and it is subsequently determined that the tax advice as applied to the facts given was incomplete or incorrect, appropriate modification or rescission letters should be sent to the taxpayer. Written advice may also be invalidated by a change in statute or constitutional law, a change in the Sales and Use Tax Regulations, or a final decision of a court, rendering the Board's earlier written advice invalid.~~

## **REQUEST FOR RELIEF**

**0105.10**

When the request for relief falls within the authority of the SUTD Deputy Director as described in AM section 0105.02, the District Administrator must submit a memorandum directly to the SUTD Deputy Director. The memorandum shall include, but not be limited to, the following information:

1. Opening paragraph: Taxpayer's name, current audit period, general description of the transaction in question, and the basis of relief.
2. Background: Type of business in which the taxpayer is engaged, detailed description of the transaction(s) in question, and comment regarding consistency in the taxpayer's business operations and applicable laws and regulations. If there were changes in the laws and regulations affecting the taxpayer's business, explain how such changes affect the application of tax to the transaction in question.

3. Current Audit: Findings in relation to the subject of the request for relief, and the measure of tax subject to relief, if available. Attach sample documents from the current audit.
4. Prior Audit: Evidence of misinformation, including, but not limited to, pertinent prior audit comments, sales invoices or paid bills examined in the prior audit, and any other documents that support misinformation. Include audit and test periods. Attach copies of sample documents and pertinent comments and schedules from the prior audit.
5. Application of Tax: Discussion of application of tax. State references, i.e., section of the law, regulation, annotation, etc.
6. Recommendation: District recommendation for RTC section 6596 relief and the date the taxpayer was notified, in writing, of the proper application of tax. Confirm that a copy of the notification letter has been sent to the taxpayer's file in the Taxpayer Records Unit (MIC 36), and that the RTC section 6596 issue will be discussed in the next staff meeting.

See Exhibit 2 for a sample of request for relief memo.

The SUTD Deputy Director will have the request for RTC section 6596 relief and supporting documentation evaluated for consistency with these guidelines and the criteria provided in RTC section 6596 and Regulation 1705. Upon completion of the evaluation, the SUTD Deputy Director will issue a memo to the District Administrator providing approval or denial of the request for relief. If the SUTD Deputy Director does not approve the request for relief and the taxpayer remains in disagreement with the current audit, the taxpayer should be advised to follow the normal appeals process.

The current AWP's shall include a copy of the following:

1. District Administrator's memo requesting section 6596 relief.
2. SUTD Deputy Director's reply.
3. Letter notifying the taxpayer of the proper application of tax.

The RTC section 6596 issue shall be discussed in the district office staff meeting. The district office shall emphasize the importance of the completeness of the field audit examination and the accuracy of audit comments.

## **EDUCATIONAL CONSULTATIONS**

**0110.00**

### **BACKGROUND**

**0110.02**

The Educational Consultation Program (Program) was designed to provide sales and use tax information to new taxpayers during the taxpayers' first year of business to help taxpayers meet the sales and use tax reporting requirements.

Under the Program, the district field offices designate one experienced tax auditor consultant (consultant) who reviews the taxpayers' business operations, record-keeping and tax preparation system. This personal assistance is an educational opportunity for taxpayers to obtain answers to sales and use tax questions, as well as any general questions regarding the Board. The consultations are provided at no charge to the taxpayer and appointments normally last no more than one day.<sup>1</sup>

### **PRE-CONSULTATION ACTIVITIES**

**0110.04**

#### **Headquarters' Responsibilities**

##### Consultation Selection

The Tax Policy Division, Field Support and Evaluation unit (FSE), will select accounts eligible for consultations using the following criteria:

- a. Started a new business within the last twelve (12) months
- b. Filed at least two sales and use tax returns, and
- c. Have a business or North American Industry Classification System (NAICS) code that has historically had reporting problems or is in an industry with recent law or regulatory changes.

FSE staff in Headquarters will create for each of the participating districts a list of the selected accounts twice per year. Taxpayers who meet the first two criteria above, but who do not meet criteria (c), may voluntarily request a consultation. Although outside the guidelines as set forth in criteria a), district offices have the discretion to perform consultations for taxpayers who have been in business for up to 18 months.

Taxpayers who do not meet the consultation criteria, who have been in business for more than 18 months, or who are not registered with the Board do not qualify for an educational consultation. However, such taxpayers may request consultation and amend returns (CPPM section 505.120) within the appropriate statute of limitations. However, the taxpayer must be advised that since the taxpayer does not meet the criteria for an educational consultation, the consultation that the taxpayer will receive may result in the Board conducting a full audit based upon its findings.

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<sup>1</sup> As of December 2006, Equalization Districts One, Two and Four have fully implemented the Program, while the Third Equalization District provides the service upon request only.

**District Responsibilities**Consultation Appointments and Taxpayer Contact

The consultant will contact the taxpayer and schedule an appointment to conduct the consultation at the place of business of either the taxpayer or the taxpayer's representative, or the consultant will make arrangements to have the taxpayer furnish enough records and tax returns so that an in-office consultation can be performed. The consultant will then mail Form BOE-1297, *Taxpayer Education Consultation Program Appointment Confirmation Letter*, to the taxpayer confirming the appointment. The letter should include the appointment date and time, and it should describe the extent of the consultant's anticipated brief examination of the taxpayer's records.

Contact information throughout the consultation process may be documented on Form BOE-414-Z, *Assignment Contact History*.

Examination of Records

At the taxpayer's place of business, the consultant will perform the following:

- a. Discuss the taxpayer's business and type of operation
- b. Examine the business and its facilities
- c. Examine the taxpayer's books and records
- d. Examine the taxpayer's sales and use tax returns and review with the taxpayer how the returns are prepared
- e. Provide the taxpayer with applicable publications and/or regulations
- f. Answer any questions the taxpayer may have with regards to the taxpayer's sales and use tax account or any other Board services.

If an examination of the taxpayer's place of business was not performed (e.g., consultation was conducted at the taxpayer's representative's place of business), a note to that effect will be disclosed in the "Other Comments" section of Form BOE-1300, *Taxpayer Educational Consultation Report*.

**District Responsibilities**

When the consultation is complete, the consultant will discuss findings or concerns (if any) with the taxpayer and give recommendations to remedy or correct the identified issues. The taxpayer will also be advised about the areas that are being handled correctly to reinforce those areas.

1. Material Debit Amount Discovered

If the consultant finds a material debit discrepancy, the consultant will instruct the taxpayer to amend its return(s) and pay the appropriate tax and interest.

2. Material Credit Amount Discovered

If the consultant finds a material credit discrepancy, the consultant will furnish the taxpayer with Form BOE-101, *Claim for Refund or Credit*, and instruct the taxpayer how to properly file the claim.

3. Educational Consultation Report and Consultation Survey

After completion of the consultation, the consultant will complete Form BOE-1300, *Taxpayer Educational Consultation Report (Report)*, and either Form BOE-1298, *Taxpayer Educational Consultation Program Letter (Findings)*, or Form BOE-1299, *Taxpayer Educational Consultation Program Letter (No Findings)* cover letter, depending on the outcome of the consultation. The Report form requires the following information:

- a. Taxpayer's name
- b. Account number
- c. Contact person
- d. Date of consultation
- e. Accountant (if applicable)
- f. Periods of returns previously filed
- g. Consultant's name
- h. Supervisor's name
- i. Reviewer's name
- j. Date of review
- k. Type of business
- l. Hours spent
- m. Type of cover letter sent
- n. Books and records information
- o. Types of sales
- p. Deductions and purchases.

While every consultation varies from taxpayer to taxpayer, district staff shall make an efficient use of time spent on consultations (e.g., 8 hours

per consultation recommended). The consultant will furnish the Report to the district reviewer for review. The reviewer will review the Report for accuracy and related comments, and then enter the date in the section "Date of Review" and sign in the section "Reviewed By" on the Report. Both the Report and the cover letter must be mailed to the taxpayer along with Form BOE-1301, *State Board of Equalization Educational Consultation Survey* (Survey). The account name and number should be listed on the Survey and a self-addressed postage-paid envelope should be included in the mailing. Taxpayers are asked to complete the Survey and mail it back via the self-addressed postage-paid envelope directly to the Audit Support Unit (MIC 44) in Headquarters. Field staff should make two copies of the Report form retaining one copy in the district office file and forwarding the other copy to the Taxpayer Records Unit (MIC 36).

In the "Other Comments" section of the Report, the consultant should record any publications or regulations provided to the taxpayer, along with any errors discovered and the appropriate action taken or discussed to correct them (e.g., amended returns). The cover letter to the taxpayer should explain the purpose of the consultation and that it was not an audit of the books and records. The letter should also instruct the taxpayer to amend its returns, if applicable.

Presentation of a taxpayer's books and records to a tax auditor for examination is considered a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence that demonstrates the issue in question was examined, such evidence will be considered "written advice from the Board" and qualify for relief under RTC section 6596. (AM section 0105.04.) The same holds true for a consultation wherein the consultant examines the taxpayer's books and records and completes the Report form. Consultant staff should be careful to accurately describe the types of transactions and records examined because only those types of transactions and/or records will qualify as written advice from the Board under RTC section 6596. Transactions and records not examined by the consultant will not qualify as written advice from the Board under RTC section 6596 should the taxpayer dispute a transaction at a later date. Therefore, consultants should describe in the Report transactions the taxpayer engages in, but were not examined during the consultation. For example, "Claimed exempt shipping charges were not verified against actual shipping documents."

Consultants should also be aware of transactions the taxpayer may be entering into in the future. Any discussions about future types of transactions should also be described in the "Other Comments" section of the Report form. For example, if the taxpayer does not have sales for resale, the consultant will describe and note that he/she explained to the taxpayer the proper elements of a resale certificate and any other types of records used to support claimed nontaxable or exempt sales, etc. Any (future) transactions explained to the taxpayer should be documented in IRIS.

In the discussion, consultants should explain that advice regarding future transactions constitutes oral advice and does not serve as basis for RTC section 6596 relief. The consultant should also explain the application of RTC section 6596 and Regulation 1705 and stress the importance of obtaining written advice. See AM section 0105.00 for RTC section 6596 relief guidelines.

#### 4. Statistics

On a monthly basis, the district consultant will report his or her educational consultation activity utilizing the District Reports Database (DRD). The District LAN Coordinator, at the direction of the District Principal Auditor (DPA), must grant the consultant or other designated Board staff access to the DRD in their respective district office. The "Education Consultations" button in the DRD will bring the viewer to the first screen prompting him or her to enter the total hours<sup>2</sup> (Time Code 3208) for the Program for the month. If there are no completed consultations to enter, the user will press the "Done" button.

If there are completed consultations to enter, the user will press the button at the bottom of the form, which will take the user to the "Completed Consultations" screen. The "Completed Consultations" screen will require the following data be entered:

- a. Taxpayer account number (numerical portion only). For example: 100-999999
- b. Taxpayer name
- c. Taxpayer's phone number
- d. Consultant name
- e. Date of consultation
- f. Type of Consultation Letter (i.e., N=No Change; C=Change; R=Refund)
- g. Hours spent.<sup>3</sup>

Once the user has entered the required data for a consultation, he or she will press the "Add Record" button, which will allow for other completed consultations to be entered into the DRD. If no other consultations were completed, the user will press the "Done" button. Should staff experience any problems with the DRD, they should contact the FSE unit directly.

The consultant should enter the appropriate comments in IRIS (TAR AI Comments screen) to document that a consultation was offered and completed, rejected, refund recommended, etc. If a consultant elects to send a bulk quantity of letters soliciting consultation appointments and receives no response, each letter

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<sup>2</sup> Total hours for the Program will include all time spent by the consultant to make phone calls, hold consultations, and other administrative duties related to the Program in the respective month.

<sup>3</sup> Hours entered here will pertain only to the consultant's hours spent on this account's specific educational consultation.

to each taxpayer will constitute a contact and “no response” should be noted in IRIS. If the consultant elects to contact the taxpayer via telephone and receives no response, such telephone efforts towards the one taxpayer will also constitute a single contact.

Either the consultant or the consultant’s supervisor should track accounts for which the taxpayer was instructed to amend his or her returns. If the taxpayer has not submitted amended returns after six (6) months from the notification date, the consultant should inform his or her supervisor, who will then flag the account for audit.

#### 5. Consultation Surveys

Any Survey forms received in the district office should be forwarded to the Audit Support Unit (MIC 44) for recording.

### **Headquarters’ Responsibilities**

#### Consultation Surveys and Statistics

Audit Support Unit (MIC 44) staff will accumulate the completed Surveys and statistics from the field staff. A report to management will be prepared semiannually summarizing these statistics and any comments provided by the taxpayer.

## **PROCEDURE FOR OBTAINING AND SAFEGUARDING INFORMATION FROM THE IRS AND FTB**

**0115.00**

### **INTERNAL REVENUE SERVICE (IRS)**

**0115.02**

Requests for hard copies of federal income tax returns or for online information extracted from the returns must be made on Form BOE-33-B, *Request For Federal Tax Information*, available in the Supply Section (MIC WS). The completed form (original and two copies) must be forwarded to the Chief, Tax Policy Division, for processing of the request.

The contents and information on the IRS returns and other federal tax information (FTI) acquired directly from the IRS must be safeguarded under the provisions of the Internal Revenue Service. In order to comply with the IRS information safeguarding requirements, Form BOE-85, *Inspection or Disclosure Limitations (Federal)*, must be attached to the AWP’s to flag any page that includes information obtained directly from the IRS. This includes data that is transcribed from an IRS obtained income tax return into the AWP’s. For example, a sales reconciliation that includes transcribed amounts from a Schedule C, or a schedule of purchases subject to use tax where the assets were found on the income tax return depreciation schedule. It is *not* necessary to attach Form BOE-85 to AWP’s that include information from income tax returns obtained from someone other than the IRS, such as the taxpayer or the Franchise Tax Board (FTB).

When the pages containing IRS returns or other FTI as explained above are no longer a business need, these pages shall be sent to the Tax Policy Division (MIC 92) who will forward them to the IRS for destruction.

## **FRANCHISE TAX BOARD**

**0115.04**

Requests for information from the FTB, must be made using the “External Access Tracking (EAT) System,” program, which is located at <http://eboe/eboe3/checklogin/eattr.cfm>. This location in the eboe also contains the guidelines for requesting information. To access this program, the tax auditor must be authorized to do so by his or her supervisor. Requests for information are processed only by designated resource persons within the requestor’s district office.

Information processed through the EAT System does not include details but is usually sufficient for sales and use tax purposes. Income tax schedules or the complete return not provided through the EAT System must be requested on Form BOE-1144, *Official Request for Return Info*, available in the Supply Section (MIC WS). The completed form must be forwarded to Headquarters Special Procedures Section (MIC 55) for processing.

Information obtained from FTB is confidential information. Tax auditors must not request, access, examine, use or disclose information from FTB unless there is a Board-related, legitimate business purpose to do so. The EAT System keeps track of all requests for information which are periodically reviewed by supervisors for validity. Inappropriate requests for information may result in disciplinary, civil, and criminal actions.

Supervisory guidance on periodic review of requests for information is located at <http://eboe/eat/doc/EATHelp/helpnmanual/index.html>, under “Supervisor Functions.”

## **SAFEGUARDING INFORMATION OBTAINED FROM THE IRS**

**0101.67**

~~In order to comply with Internal Revenue Service (IRS) information safeguarding requirements, Form BOE-85, Inspection or Disclosure Limitations, must be attached to the audit working papers (AWPs) to flag any page that includes information obtained directly from the IRS. This includes data that is transcribed from an IRS obtained income tax return into the AWPs. For example, a sales reconciliation that includes transcribed amounts from a Schedule C or a schedule of purchases subject to use tax where the assets were found on the income tax return depreciation schedule. It is *not* necessary to attach Form BOE-85 to AWPs that include information from income tax returns obtained from someone other than the IRS, such as the taxpayer or Franchise Tax Board.~~

~~As explained in AM 0101.90, AWPs that include information obtained directly from the IRS must be destroyed in the same manner as the actual records obtained from the IRS (see section 0112.04).~~

## **DESTRUCTION OF FILE MATERIAL**

**0101.900117.00**

~~CPPM section 910.000 provides guidelines for the destruction of district account folder information. As explained in that section, audit staff will be responsible for determining if audit reports and audit working papers (AWPs) should be destroyed.~~

## **GENERAL PURGING GUIDELINES**

0117.02

For active accounts, all audit reports and AWP's must be retained in the districts' files. Audit reports and AWP's for closed out accounts may be purged provided there is no tax liability owing from the audit, pending litigation, active liens for written-off liabilities, petition for redetermination, claim for refund, pending request for RTC section 6596 relief, or other similar matter. When audits of closed out accounts have met these purging guidelines, the audit report and AWP's should be destroyed. ~~In the instance where there is a legal~~However, where there is a successor to the closed out account, AWP's of the predecessor should be treated as an audit of the successor and destroyed only when the successor meets the criteria for AWP destruction. the district should decide on a case by case basis whether the AWP's of the predecessor should be retained. These AWP's may serve as basis for RTC section 6596 relief for the successor.

## **INFORMATION FROM THE INTERNAL REVENUE SERVICE (IRS)**

011.04

~~Any page of AWP's that includes information obtained directly from the IRS (including transcribed information) must be destroyed in the same manner as the actual records obtained from the IRS. AWP's that contain IRS information should be identified with an attached Form BOE 85, *Inspection or Disclosure Limitations*. When the audit report and AWP's are ready for destruction, these flagged pages must be removed from the AWP's and sent to the Tax Policy Manager for destruction.~~

## **INFORMATION FROM THE FTB**

0117.06

Generally, copies of FTB returns obtained from the FTB will not be retained in the Board files or AWP's, unless the retention is authorized by the District Administrator. When no longer needed, the FTB returns must be returned to the District Administrator for destruction.

Documents obtained through the EAT System should be returned to the resource person for destruction within 10 days. Documents not returned by the requestor within 10 days will be red flagged for supervisory follow-up.

## **REWARD PROGRAM**

0101-800122.00

### **GENERAL**

0122.02

~~RTC Ssection 7060 of the Sales and Use Tax Law~~ authorizes rewards for information leading to the collection of unreported or underreported sales and use taxes. This program, however, has not been funded.

Individuals occasionally indicate that they have information that would enable the Board to recover sales tax revenues. Tax Aauditors should advise these individuals that there is currently no state funding that would enable us to provide a reward. However, tax auditors may attempt to obtain such information by appealing to the person's sense of duty as a good citizen. The tax auditor should advise ~~anyone~~ the person providing information that he or she may ~~they can~~ request that ~~their~~ his or her identity not be divulged.

The person providing the information should also be made aware that

confidentiality laws prevent the Board from divulging to them the results of any subsequent investigation.

## **INFORMANT CONTACT PROCEDURES**

**0101.850124.00**

### **GENERAL**

**0124.02**

Under the Information Practices Act (IPA)(Civil Code §a 1798 et seq.), all information provided by an informant, as well as the informant's name, may be withheld during the investigation of criminal or non-criminal matters if disclosure of the information would compromise the investigation or a related investigation. **Once the investigation has been completed**, information relating to the identity of the informant may continue to be withheld provided the informant was promised confidentiality. A promise of confidentiality shall be documented in writing. For purposes of this paragraph, the investigation will be considered complete when a determination is issued, regardless of the fact that the taxpayer subsequently petitions for a redetermination. If the informant was not promised confidentiality, then the informant's identity must be divulged upon request by the taxpayer ~~about which the information pertains~~. While the ~~Information Practices Act~~IPA is only applicable to individual taxpayers, as a policy matter, the Board has extended the protection of the ~~Act~~ IPA to all taxpayers.

Whether or not confidentiality is promised, the **information** provided by the informant must be divulged if a request is made by the taxpayer, but only after the investigation is completed. Additionally, staff may provide either an exact copy of the information provided by the informant, with the informant's identity deleted if confidentiality has been promised **or** a comprehensive summary of the substance of the information. If the informant's identity can be readily determined from an exact copy of the information, then it would be preferable to provide a comprehensive summary. If a comprehensive summary is provided, staff should pay particular attention to providing all personal information that could affect the taxpayer's reputation, rights, benefits, or privileges.

Even though an informant is promised confidentiality under the ~~Information Practices Act~~IPA, occasionally other statutes and case law may require disclosure of the informant's name. For example, circumstances involving discovery proceedings related to pending litigation or a defendant's right to confront his/her accuser when criminal charges have been filed may require disclosure of the informant's name. Such matters shall be referred to the Board's legal staff for decision and response.

### **GUIDELINES**

**0124.04**

The following guidelines should be followed to ensure that the informants are aware of their rights:

- **INITIAL CONTACT.** Generally, staff should not encourage informants to request confidentiality. If an informant contacts the Board by phone or in person and asks to remain confidential, that request and the promise of confidentiality should be documented in writing. The informant should be advised that under certain circumstances, such as a court proceeding, the Board may be unable to maintain the informant's

confidentiality.

Where the informant contacts the Board in writing, confidentiality should be maintained if so requested.

The Board may accept information that is provided anonymously.

- **DOCUMENTS.** In those cases where the informant provides his/her name, any documents containing the informant's allegations should clearly state whether or not his/her name was provided with the promise of confidentiality. If the information was provided with the promise of confidentiality, then to ensure against the improper release of the informant's identity it is imperative that staff clearly print in **red "INFORMANT — CONFIDENTIAL"** on the top of such documents. In addition, when the document is prepared by staff, the informant's name as well as other information which should not be released to protect the identity of the informant (i.e., telephone number, address, etc.) should be placed in one central location and circled in red. He or she should thereafter be referred to in the document as "the informant."
- **INVESTIGATION.** During an investigation, if a taxpayer or ~~his/her~~the taxpayer's authorized representative requests file material, ~~then we~~staff must provide ~~him/her~~ with a copy of all ~~items~~documents in the file, with the ~~exception of those with~~ confidential information such as an informant's name or the information received from the informant. However, in doing so, ~~we~~staff must inform the taxpayer that such information exists and is being withheld until completion of the investigation as required by the ~~Information Practices Act~~IPA. Staff should not provide details of the information provided by the informant during the investigation.
- **FOLLOWING THE INVESTIGATION.** Once the investigation is complete, ~~we~~the Board will withhold the identity of the informant if there was a promise of confidentiality; otherwise, we must disclose his/her identity. ~~Regardless of whether~~ or not confidentiality was promised the informant, the taxpayer is entitled to either an exact copy of the information with only such deletions as are necessary to protect the informant's promised confidentiality or a comprehensive summary of the substance of the material.
- **COURT PROCEEDINGS.** When the Board's records are subpoenaed as the result of court proceedings such as a discovery order or a criminal investigation where the defendant has the right to confront his/her accuser, the matter should be referred to the Board's legal staff for action. ~~decision.~~

## **IDENTITY THEFT PROCEDURES — ABSOLVING THE INNOCENT PARTY**

**01010126.00.95**

### **GENERAL**

**0126.02**

Identity theft occurs when someone appropriates the personal information of others without their knowledge with the intent to commit fraud or theft. It is a felony in California to use the personal identifying information of another person without the authorization of that person for any unlawful purpose (Penal Code section 530.5 et.seq.). Specific guidelines should be followed to absolve the innocent party of tax liabilities that occur as a result of identity theft.

### **PROCEDURES**

**0126.04**

In the event a tax auditor uncovers a situation where an individual has assumed another's identity, the tax auditor should collect documentary evidence supporting the identity theft from the innocent party. Supporting documentary evidence includes police and/or court reports. The tax auditor should thoroughly examine the evidence and alert the audit supervisor. The audit supervisor will notify other potentially affected sections (i.e., Centralized Collections, Special Procedures) that may have additional pertinent information (MIC 42). The audit supervisor will also contact the Investigations Division, notifying them a potential identity theft has occurred. Copies of all pertinent documents will be forwarded to the Investigations Division, ~~as they are~~ which is responsible for contacting law enforcement.

Once the tax auditor and audit supervisor are satisfied the provided documents support identity theft, the case should be forwarded to a compliance supervisor. The compliance supervisor will review the case and approve a legal adjustment to the taxpayer's (innocent party) account. This legal adjustment will delete the disputed liability from the taxpayer's account. After the adjustment, copies of the file documents should be sent to the Internal Security and Audit Division (MIC 54).

INTRODUCTION

TAX CODE TABLE FOR SALES AND USE TAXES

EXHIBIT 1

Taxable Activity - Sales Tax Accounts	TAT	TAT ind.	Notes
Regular Sales Tax	SR		
Regular Sales Tax(gasoline retailer)	SR		See Acct char for additional gas attributes
Regular Sales Tax(multiple locations in one tax area code)	SR	X	
Regular Sales Tax(multiple locations)	SR	Y	
Regular Sales Tax with sch b	SR	S	
Regular Sales Tax with sch b(multiple locations)	SR	Z	
Sales Tax Gasoline Distributor	SG		
Sales Tax Exemption	SJ		
Certificate of Registration Use Tax	SC		If voluntary will have Acct char code of 08
Consumer Use Tax	SU		
Consumer Use Tax w/spec rtn	SU	S	
Temporary	SR		
Arbitrary	SR		

Description	Acct. Char Code
Retailer who is temporary	01
Retailer who is part-time	02
Retailer who sells fuel	03
Retailer who sells fuel and is also a fuel broker	04
Retailer who sells fuel and is also a distributor	05
Retailer who sells at swap meets and temporary locations	06
Retailer who has warehouse locations	07
Retailer is voluntary filing(SC)	08
Retailer who is vehicle lessor	09
Retailer who has a manufacturer exemption	10
Government entity that has a permanent 30 day extension	11
Regulation 1802-Sales and Purchases \$500,000 and over	12
Use tax direct pay permit government	13
Use tax direct pay permit non-government	14
Arbitrary account	999

Account Analysis	Code	New Field
Sells Fuel	G	Acct char 03
Sells Fuel and is also a fuel broker	B	Acct char 04
Sells fuel and is also a fuel distributor	D	Acct char 05
Sells at swap meets	M	Acct char 06
Files a simplified return	S	Rtn-type-code 002
Warehouse locations	W	Acct char 07

# Sample of Request for Relief Memo

Exhibit 2

State of California

Board of Equalization

## Memorandum

To : [Insert Deputy Director's Name]  
Sales and Use Tax Department (MIC: 43)

Date :

From : [Insert District Administrator's Name]  
[Insert District Name] District Administrator [Insert (District Code)]

Subject : Recommendation for Section 6596 Relief  
[Insert taxpayer's name]

[Seller's Permit Number]

[Opening paragraph - include current audit period, the subject of request for relief, and the basis of misinformation]. For example:

*The taxpayer requests relief from the payment of tax, interest and penalty related to the current audit period, January 1, 2000 through March 31, 2002. The current audit is assessing tax on merchandise withdrawn from resale inventory for distribution without charge to dealers and end users. The taxpayer claims the understatement of tax is based on misinformation provided in a prior audit and seeks relief under section 6596 of the Revenue and Taxation Code.*

### Background

[Describe taxpayer's business, billing method, etc., in relation to the subject of the request for relief.] For example:

*The taxpayer is a distributor of audio equipment, language laboratories and teaching software to dealers and educational institutions. The taxpayer withdraws items from resale inventory for distribution without charge to dealers, end users, either directly or through the taxpayer's employees, for use in product evaluation or as samples. These items are not returned to the taxpayer. During the periods covered by both the prior and current audits, inventory withdrawals were posted to the general ledger samples expense accounts and were not reported by the taxpayer as subject to use tax.*

### Current Audit

[Describe current audit in relation to the subject of the request for relief. Attach sample documents.] For example:

*During the current audit, the auditor examined the general ledger samples expense accounts on an actual basis. The auditor explained that items given away to dealers and/or end users in state are subject to use tax at cost. The auditor further explained that items delivered by the taxpayer's employees outside the state are not subject to use tax.*

[Insert Deputy Director's Name]

[Date]

### **Prior Audit**

[State prior audit period, documents examined and test period (s). Specify misinformation. Attach sample documents and copy of related prior audit working papers.] For example:

*The taxpayer was previously audited for the period of January 1, 1997 to December 31, 1999. The taxpayer reported from the general ledger for sales and use tax purposes. The prior auditor reviewed the general ledger and reconciled it with the sales tax returns. The auditor also examined purchases subject to use tax on actual basis. Exceptions did not include unreported samples withdrawn from resale inventory. The verification comment states, "No withdrawals from inventory (of significance) for "personal use" were applicable per discussion with the taxpayer."*

### **Application of Tax**

[Discuss application of tax. Include references, i.e., Section of the Law, Regulation, Annotation, etc.] For example:

*Use tax applies to inventory withdrawals of sample merchandise for distribution without charge to other persons in this state or to other persons outside the state when shipped by means of a common carrier. Use tax does not apply when samples are delivered outside this state by means of taxpayer's facilities (section 6009.1 exclusion) provided there is no use in this state prior to delivery and the taxpayer does not relinquish its control over the property in this state.*

*Annotation 570.0435, Withdrawals from Ex-Tax Inventory, states in pertinent part as follows: ...Storage or use includes...the withdrawal of property from resale or other ex-tax inventory (such as property purchased from outside California...) for functional use in this state by the purchaser and for the transfer of title in this state to other persons in transactions that do not constitute sales..."*

### **Recommendation**

[Recommendation to grant section 6596 relief. Include the date of either the separate notification letter or a comment that a copy of this letter to the taxpayer establishes the last day that relief applies.] Following is an example where a separate letter was sent to the taxpayer:

*Based on misinformation provided in the prior audit, I recommend granting the taxpayer section 6596 relief from the payment of tax, interest and penalty added thereto, on sample merchandise withdrawn from resale or extax inventory during the audit period. We further recommend that the relief apply through June 30, 2004, the date we notified the taxpayer, in writing, of the proper application of tax. We have sent a copy of this notification letter to the taxpayer's file in the Taxpayer Records Unit (MIC: 36). The agenda for our next staff meeting will include a discussion of this case and the importance of the completeness of the field audit examination and the accuracy of audit comments.*

[Insert Deputy Director's Name]

[Date]

Attachments: Sample documents from the current and prior audits  
Prior audit working papers