

M e m o r a n d u m

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

Date: July 26, 2007

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

Subject : **Proposed Revisions to Compliance Policy and
Procedures Manual Chapter 7, Collections**

In accordance with the established procedures for audit and compliance manual revisions, I am submitting the following proposed revisions to Compliance Policy and Procedures Manual Chapter 7, *Collections*, 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 at <http://www.boe.ca.gov/sutax/staxmanuals.htm> on the Board's website for two months to solicit comments from interested parties.

We received no comments from the public. On July 18, 2007, we sent a memorandum 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.

RLH:dr

Attachment

Approved:


Ramon J. Hirsig
Executive Director

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)

SUMMARY OF REVISIONS
COMPLIANCE POLICY AND PROCEDURES MANUAL
CHAPTER 7, COLLECTIONS

**CPPM
Section**

Revisions

703.000	Rewritten to clarify the text of the section and renumbered as 702.000.
712.000	Renumbered as new section 703.000 to improve sequencing of chapter material. Reformatted to improve readability.
706.000	Renumbered as new section 722.000 to improve sequencing of chapter. Rewritten to clarify the text of the section.

COLLECTIONS

700.000

GENERAL STATEMENT ON COLLECTIONS

703702.000

IMPORTANCE OF COLLECTION ACTIVITY

703702.010

One of the main responsibilities of the Board is to collect all amounts due under the tax and fee programs it administers. To accomplish that task, it is necessary to have an efficient and effective collection program. The primary objective is to maximize the collection of unpaid tax and fee liabilities while minimizing effort, cost, and time.

To reach this objective, staff in the collections program must be thoroughly familiar with the provisions of the laws pertaining to collections under the Board's various tax and fee programs and there must be proper control of collection assignments. This chapter provides collection staff with basic tools to:

1. Interview tax and fee payers.
2. Locate missing taxpayers and assets, and
3. Perform collection actions as necessary.

The Board uses the Automated Compliance Management System (ACMS) to control all collection assignments. In addition to other functions, ACMS prioritizes collection cases into separate work lists starting with the highest probability of successful collection (the ACCES A work list) and descending to the lowest (the ACCES E work list). New collectors learn about the ACMS system through the ACMS Computer Based Training module.

To advise taxpayers of the Board's collection policies, Publication 54, *Tax Collection Procedures*, is available on the Board's web site at <http://www.boe.ca.gov/pdf/pub54.pdf>. Although each taxpayer should be given a chance to pay voluntarily (except in situations where delay jeopardizes the chance of collection), prompt and effective collection action should be taken when necessary. When promises are broken, the taxpayer should be contacted promptly and advised that appropriate remedies will be taken unless payment is made immediately. Failure to promptly follow-up with appropriate collection action when a promise is broken sends a message to the taxpayer that payments can be easily delayed or avoided and may encourage some taxpayers to procrastinate when future payments become due.

As used in this manual, "full collection efforts" means and includes the entire range of activities pertaining to collecting from delinquent taxpayers. "Passive collection efforts" include contacting the taxpayer by mail and phone, skip tracing and asset location. "Active collection actions" are actions imposed upon the taxpayer such as levying bank accounts, filing liens, etc. In most cases, it is preferable to begin working a collection case by utilizing passive collection efforts first. Whenever possible, staff must speak to the taxpayer before employing active collection procedures.

~~All of the functions performed by the Board are directed toward the collection of all amounts due under the revenue laws the Board administers. An efficient and effective collection program is essential. The primary objective of the collection program is to collect the greatest amount possible in the shortest period of time with the least amount of effort.~~

~~To achieve the highest possible degree of efficiency in the collection program, there must be a thorough familiarity with those provisions of the laws that pertain to collections and a proper control of collection assignment at the district office level.~~

~~Prompt, effective, collection action is necessary, especially on the initial demand billings (see Subsection 712.000). Yet, each taxpayer should be given a chance to make payment voluntarily except in situations where delay will jeopardize the chance of collection. Publication 54, Collection Procedures, has been developed and will be mailed out with all first notices in ACMS.~~

~~Failure to take prompt and effective action encourages some taxpayers to procrastinate when future payments become due since our failure to act gives the impression little will happen except the taxpayer will be required to pay additional penalty and interest.~~

~~When promises are not kept, the taxpayer should be contacted promptly and advised appropriate remedies will be used unless payment is made immediately. Failure to follow up promptly with effective action impresses the delinquent taxpayer with the ease with which he/she can delay or avoid payment.~~

COLLECTION ASSIGNMENT CONTROL

703702.020

Control of collection assignments is the responsibility of each compliance supervisor, branch office supervisor, and district administrator. However, it is also the responsibility of each collector to ensure that all assignments are given appropriate attention in a timely manner.

~~Control of collection assignments is a responsibility of each compliance supervisor, branch office supervisor, and district administrator.~~

SOURCES OF LIABILITY AND WHEN TO PROCEED

703.000

SOURCES OF LIABILITY

703.010

All sales and use tax liabilities are either self-assessed or Board-assessed.

1. SELF-ASSESSED. A self-assessed liability is an amount that the taxpayer declares is owed to the Board. This type of liability occurs when the taxpayer files:
 - a. A sales and use tax return without payment (“no remittance” or “NR” return).
 - b. Return(s) accompanied by a payment that is subsequently dishonored by the bank or other type of financial institution.
 - c. A return without full payment (“partial remittance” or “PR” return), or
 - d. A return after the due date with payment for tax but not penalty or interest.

2. BOARD-ASSESSED. A Board-assessed liability is an amount that staff determines is due from the taxpayer. The source of the amount determined to be due may be any of the following:
 - a. Audit.
 - b. Examination of taxpayer records from which a compliance assessment (CAS) or a field billing order (FBO) is prepared.
 - c. Computation errors in a return filed by a taxpayer showing an underpayment of tax due, or
 - d. Information received from other sources such as county Assessor’s offices, the Department of Motor Vehicles, Federal Aviation Administration, United States Coast Guard, vehicle dealers or Information Use Tax returns disclosing a liability.

WHEN TO PROCEED ON SELF-ASSESSED LIABILITIES

703.020

Full collection efforts may commence immediately for tax liabilities resulting from “no remittance” or “partial remittance” returns, provided the due date for filing the return has passed. As indicated in section 702.010, in most cases it is preferable to locate and contact the taxpayer prior to taking active collection actions. All penalty and interest charges resulting from the late filing of a return or the late payment of amounts shown to be due on a return are also subject to collection effort at the time the return becomes delinquent. The fact that a return was filed after the due date, or was filed but not fully paid, creates a “delinquent – pay immediately” situation and collection action should begin without delay. It is not necessary for Headquarters to issue a demand notice to the taxpayer before initiating collection efforts or actions.

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES

703.030

Taxpayers are formally notified of a Board-assessed liability with Form BOE-1210, Notice of Determination. RTC section 6486, and similar statutes for the Board's special taxes programs, state that "the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer or person storing, using, or consuming tangible personal property at his or her address as it appears in the records of the Board." If a notice is served personally by delivering it to the person to be served, service is complete at the time of delivery.

All Board-administered tax and fee program determinations, except for determinations made under the Cigarette and Tobacco Products Tax and Jeopardy Determinations, become final 30 days after service of the Notice of Determination upon the taxpayer. Under Cigarette and Tobacco Products Tax Law (RTC section 30174), a determination for failure to pay for cigarette tax stamps becomes final 10 days after service of a Notice of Determination upon the distributor, unless the distributor files a timely petition for redetermination and posts a security deposit within the 10-day period. Jeopardy determinations have the same requirements.

As in the case of self-assessed liabilities, a demand notice does not need to be issued prior to taking collection action. Passive collection efforts may commence before the finality date. Active collection action may be initiated immediately after a determination becomes final and passive efforts have not been successful in resolving the matter. A "finality" penalty, which is an additional penalty of 10 percent of the unpaid tax, is added to the liability if payment is made after the "finality" date stated on the Notice of Determination, unless the taxpayer files a timely petition for redetermination.

For sales and use tax determinations and most special taxes determinations, a person against whom a determination is made, or any person directly interested, may file a petition for redetermination within 30 days after service of a Notice of Determination. (See Publication 17). The filing of a petition must be in writing and state the specific reasons why the taxpayer believes the amount determined to be due is incorrect. Receipt of a timely petition for redetermination begins the appeal process and, as provided by RTC section 6561, prevents the deficiency determination, as provided by RTC sections 6481 or 6511, from becoming final within the initial 30-day period.

When a taxpayer files a timely petition for redetermination, the original Notice of Determination is superseded by a Notice of Redetermination at the conclusion of the Appeal process. Only passive collection efforts should be taken until the Notice of Redetermination becomes final.

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES

(CONT.) 703.030

The general policy is that no active actions should be taken on determinations not yet final since approximately three-fourths of these determinations are paid before any action becomes necessary. Except as noted in the following paragraphs, active collection action, e.g., mailing levies, filing liens, serving a *Notice to Withhold*, etc., may not be taken until after the finality date of a determination.

In cases where all of the tax is paid and a claim for refund has been filed, accounts with billed, final amounts are placed in an appeal status and the IRIS DIF DI Stop Demand field is populated by the Audit Determination and Refund Section (ADRS). This action prevents demand billings from being issued and removes the account from ACMS. No action to collect the remaining interest and penalty is to be taken until the account is removed from Stop Demand status. If the claim for refund is denied, the Stop Demand flag will not be removed for at least 180 days pending verification that a suit for refund of tax has not been filed by the taxpayer. If the taxpayer files a suit for refund of tax and the court rules in favor of the Board's counter-claim for the remaining penalty and interest due, the ADRS will record a comment in IRIS and remove the Stop Demand flag.

In the majority of cases, collection efforts before a determination becomes final are restricted to passive activities. However, when a jeopardy determination is issued, the statutes governing the Board's collection program allow active collection action to be taken, on the tax portion only, before the finality date. Therefore, use of active collection action, prior to the finality date of a determination, is limited to cases where immediate action is necessary to protect the interest of the state, i.e., where a determination has been converted to a jeopardy determination or a jeopardy determination has been issued. Note: For jeopardy determinations, if the principal is not paid within ten days of the billing date, the delinquency penalty and interest attach to the tax amount determined after the finality date (ten days) has expired.

A person against whom a jeopardy determination is made may file a petition for redetermination within 10 days if they post adequate security as required by the Board. (See CPM section 445.000). The person against whom a jeopardy determination is made may request an administrative hearing within 30 days to:

1. Establish that the determination is excessive,
2. Establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person,
3. Request release of all or a part of property to the person, or
4. Request a stay of collection activities.

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CONTACT AND INTERVIEW

706722.000

EXAMINATION OF FILE

706.010

~~Before making contact with the taxpayer, thoroughly review the taxpayer's records (ACMS, on line registration and district file if any) to have available all details pertinent to your collection case.~~

~~The basis for the liability must be thoroughly understood in order to answer any questions the taxpayer may have regarding the amounts due. The taxpayer's past record should be studied to determine what to anticipate and how to deal with the taxpayer. The file might also disclose information on assets, sources of income, financial status, as well as other general information.~~

~~Any attempt to discuss payment of a liability with a taxpayer without having all of the details of the matter will almost always create an unfavorable impression and have a direct influence on the success of the interview.~~

THE COLLECTION INTERVIEW

706722.020

All assignments will be performed in a professional manner. It is the Board's policy to administer its laws and policies fairly and efficiently, with the expectation that employees will conduct themselves with dignity, integrity and courtesy. In addition, discretion must be exercised to avoid disclosing confidential information to unauthorized parties. (See Publication 58).

To a considerable degree, collection productivity will be controlled by the manner in which the collection interview is conducted and by the impression the collector makes on the taxpayer. Whether the interview is conducted in a Board office or elsewhere, the interview will be conducted with courtesy and professionalism; but at the same time, the collector should be firm and direct.

The most successful collection case, aside from a paid-in-full account, is one where the taxpayer fully understands the consequences of failing to pay the liability promptly. If the taxpayer perceives that the collector is inexperienced or uncertain or the collector does not convey a sense of urgency to resolve the situation, the taxpayer may attempt to postpone payment of the liability through excuses or insincere promises. Therefore, the impression the collector should strive to create is one where the taxpayer understands that the interviewer is a trained professional who:

1. Is knowledgeable about the situation.
2. Is able to apply pertinent laws and regulations to the situation.
3. Will treat the taxpayer fairly, but
4. Will follow through, if necessary, with actions to compel payment.

The collector must always be prepared to answer taxpayer questions about collection procedures and taxpayer rights. Publication 54, *Tax Collection Procedures*, and Publication 70, *Understanding Your Rights as a California Taxpayer*, contain excellent information covering both areas. At the time of the initial interview, the collector must provide both publications to the taxpayer. If the initial interview is by telephone, both publications must be mailed to the taxpayer at the conclusion of the conversation. Be sure to document that these publications were provided to the taxpayer in the collection notes.

~~An important part of any collection effort is the contact and interview with the delinquent taxpayer. To a considerable degree, collection productivity will be controlled by the manner in which the interview is conducted. Whether the interview is conducted in the Board office or elsewhere, there is no basic difference in the way the interview should be handled.~~

~~The attitude should be professional and courteous. While extending to the taxpayer proper courtesies, the interviewer must be firm and direct. To create an impression of inexperience, uncertainty or indifference may encourage the taxpayer to attempt to postpone payment through excuses or insincere promises.~~

~~The impression the representative should create is one that will cause the taxpayer to realize the interviewer is a trained professional, fully familiar with the matter, well-informed on the provisions of the law, who will negotiate fairly, and will follow through, if necessary, to compel payment. If the representative is successful in this regard, collections will reflect this success.~~

**CONTACT WITH TAXPAYERS REPRESENTED
BY COUNSEL OR OTHER REPRESENTATIVE**

722.025

**BOE CONTACTS WITH TAXPAYERS REPRESENTED
BY COUNSEL OR OTHER REPRESENTATIVE**

706.025

A taxpayer may be represented by legal counsel, Certified Public Accountant, or other representative when a power of attorney appoints a representative and the collector receives a power-of-attorney document signed by the taxpayer. Although the taxpayer may provide another person with power-of-attorney to act on the taxpayer's behalf, the collector is under no obligation to exclusively conduct discussions regarding the taxpayer's case with the assigned representative. Unless the taxpayer or the taxpayer's representative has obtained a restraining order forbidding the Board to contact the taxpayer without the representative being present, the collector may contact the taxpayer directly, especially in those cases where compliance is being delayed. However, contacting the taxpayer directly, despite the taxpayer's or the representative's request to the contrary, should only occur after consulting with the collector's supervisor. The decision to contact the taxpayer directly should be based on the representative's degree of cooperation with Board staff and the taxpayer's compliance with the Board action(s) that are requested through the representative. Such requests must be fully documented in the appropriate file or record. In addition, all subsequent contacts with the taxpayer should be documented in ACMS case notes to protect against potential claims or allegations of harassment.

In circumstances requiring personal contact with the taxpayer, a supervisor or lead person may participate in a conference call with the collector and the taxpayer or may accompany the collector when meeting with the taxpayer to assist in conducting difficult negotiations.

If the taxpayer, or his or her representative, has obtained a restraining order forbidding contact by the Board without the taxpayer's representative being present, the order must be complied with and the Chiefs of the Field Operations Division, the Internal Security and Audit Division, and the Chief Counsel must be notified of the restraining order.

~~Most BOE employees are not required to refrain from speaking with taxpayers who happen to be represented by legal counsel, CPA, or other representative, even in those situations in which the representative has requested that the employees not do so. Disregarding a representative's request should be done only after consulting the employee's supervisor and be based, in part, on the representative's degree of cooperation with BOE staff and that the taxpayer does not timely comply with the BOE action requested through the representative.~~

~~If the taxpayer or his or her representative has requested that no contact with the taxpayer be made without the taxpayer's representative present, notify your direct supervisor and fully document the request in the appropriate file or record. In addition, all subsequent contacts with the taxpayer should be documented in the record to protect against potential claims or allegations of harassment. A supervisor or lead person may also accompany the employee for difficult negotiations.~~

~~If the taxpayer or his or her attorney has obtained a restraining order forbidding contact by the BOE without the attorney present, the BOE employee must comply with the order. In such cases the Chief of Field Operations, Internal Security and Audit Division, and the Chief Counsel should be notified of the order for appropriate action.~~

CONDUCTING THE INTERVIEW

706722.030

The objective of every contact with the taxpayer is to obtain full payment of the liability. Therefore, the representative must be in firm control of the interview from the very start. The representative should impress upon the taxpayer the seriousness of failing to pay immediately and apprise the taxpayer of the consequences for nonpayment. If payment is not forthcoming, the collector does not need to disclose the specific collection action(s) that will occur to enforce compliance.

If, after discussing the case with the taxpayer, the collector is certain that full payment cannot be obtained immediately, direct questions need to be asked to secure as much information as possible regarding sources of income, available assets, and ability to pay. This information is always documented for future reference, for reporting purposes, or for the use of another staff person should reassignment of the case become necessary.

If the taxpayer cannot pay the liability in full, attempt to obtain a substantial payment on account, or a definite promise to pay at an early date. The collector must stress to the taxpayer that if payment is not made as promised, collection action will be taken to compel compliance. When a promise of full or substantial payment is obtained, the representative has an obligation to follow up with the taxpayer to make sure payment is made as promised. Failure to conduct timely follow-up actions will give the taxpayer the impression that the situation is not important to the collector.

If the taxpayer insists that payment cannot be made in full and is reluctant to enter into an installment payment agreement, do not attempt to provide the taxpayer with any legal alternatives. It is never appropriate for Board employees to offer advice regarding filing a petition in bankruptcy or to give any legal advice other than an interpretation of the tax laws administered by the Board. Instead, the taxpayer should be encouraged to seek the expertise of a CPA, attorney, or other paid professional who is qualified to address the taxpayer's specific situation.

~~The representative should always take command of the situation at the outset. The representative should impress the taxpayer with the seriousness of failing to pay taxes and apprise the taxpayer of the consequences without disclosing contemplated action to be taken if necessary. It is never appropriate for Board employees to offer any advice regarding filing a petition in bankruptcy or any other legal advice other than interpretation of the tax laws administered by the Board.~~

~~If payment cannot be obtained, direct and leading questions should be asked to secure as much information as possible regarding sources of income, available assets and ability to pay. The facts developed should always be recorded for future reference, for reporting purposes, or for the use of another person should reassignment of the case become necessary.~~

~~The object of any contact is to obtain full payment of the liability immediately. If this cannot be done, the representative should attempt to obtain a substantial payment on account or at least a definite promise of payment at a very early date. When a promise of full or substantial payment is obtained, the representative then has an obligation to timely follow up to make sure payment is made. Failure to follow up timely will send an unfavorable message to the taxpayer. If payment is not made as promised the representative must attempt to make the taxpayer fully understand payment is expected as promised and failure to make payment invites more direct action.~~

UNCOOPERATIVE TAX DEBTORS

706722.040

Taxpayers who are argumentative or uncooperative with regard to discussions of their tax liability should be dealt with in a firm and professional manner, and without resorting to, or assuming, a similar attitude. The collector should inform the taxpayer of:

1. The basis for the liability,
2. The taxpayer's rights, and
3. The time frame for making payment to avoid immediate collection action.

If the taxpayer remains uncooperative or argumentative, politely terminate the discussion and shift to an approach of compelling payment through appropriate active collection action(s). Be sure to note the taxpayer's uncooperative attitude in ACMS case notes and, if necessary, notify your supervisor of the situation.

In the event that the situation escalates to the point where a threat is issued by a taxpayer, or his or her representative, refer to the procedures outlined in the Board's Threat Policy. (Board of Equalization Administrative Manual (BEAM) section 5194).

~~When contact is made with an uncooperative, argumentative taxpayer, avoid allowing this to adversely influence the manner of handling the situation. Be careful not to assume a similar attitude toward the taxpayer. To do so, will result in an unproductive interview. In a firm businesslike manner, the situation should be clearly explained. The taxpayer should be informed of (1) the basis for the liability; (2) the taxpayer's rights; and (3) payment must be made to forestall immediate collection action. If the taxpayer remains adamant in this uncooperative attitude, take no further time in trying to convince the taxpayer voluntary payment should be made and notify your supervisor of the situation. Your approach to collections should now be shifted to one of compelling payment through appropriate action.~~

INABILITY TO PAY IN FULL

706722.050

If a taxpayer indicates an inability to pay the amount due in full, the collector should stress the advantages of making immediate full payment. The following points are often helpful in convincing a taxpayer to make payment in full immediately:

1. Not having to pay a 10 percent failure to file timely penalty if the tax amount is paid in full on or before the due date of the return.
2. Saving an additional 10 percent by not having to pay a finality penalty on a Board-assessed liability, if the tax amount is paid in full on or before the thirtieth day after the date on the notice of determination.
3. Saving accruing interest every month on the unpaid tax balance.
4. The negative effect on the taxpayer's credit standing if a Notice of State Tax Lien or Abstract of Judgment is filed (see CPPM Section 760.000), or
5. The loss of personal property as a result of liens, levy, and seizure and sale procedures.

The collector may point out that, in addition to making a loan application with legitimate lending institutions such as banks and credit unions, taxpayers often have other sources of money available that may clear the liability. Some avenues include, but are not limited to, borrowing from friends and family members, borrowing against the equity in real estate owned by the taxpayer, refinancing vehicles, vessels or aircraft owned by the taxpayer, or taking a cash advance on existing credit cards.

~~Whenever a taxpayer indicates an inability to pay the amount due in full, explain the advantages of making immediate full payment. Points to be stressed are the possible saving of penalty, the saving of interest, effect on credit standing caused by the recording of a Notice of State Tax Lien or Abstract of Judgment, or the loss of personal property. Although not necessarily an advantage to the taxpayer, the fact should be stressed that arrangements for a loan should be made through a legitimate lending institution to clear the liability.~~

~~Although credit cards may be used to pay tax with returns (see CPPM 505.115), accounts receivable balances may not be paid with a credit card. Fees for cash advances may be more expensive than a conventional loan. Taxpayers should be advised not to overpay returns with a credit card to create an unapplied credit so that the unapplied credit can be applied to an accounts receivable balance.~~

PAYMENTS TO OTHER CREDITORS

706722.060

A taxpayer may refuse to pay the Board because payments are due to other creditors, for example, employees, vendors, other government agencies, etc. The taxpayer should not be given the impression that payments to other creditors are a higher priority than payments due to the Board.

The taxpayer should be informed that:

1. Failure to pay sales and use tax at the time the tax becomes due and payable creates a perfected and enforceable state tax lien that includes the tax, penalties, interest, and any additional costs. (RTC section 6757).
2. Payment to other creditors will result in collection action being taken without delay, and
3. If the taxpayer is a corporation, LLC, etc., payment to other creditors can lead to the officers or other responsible parties being held personally liable. (RTC section 6829).

~~If there is a refusal to pay on the basis of pressure from other creditors, the taxpayer should be informed immediate collection action will be taken. Since the Board is also a creditor, the taxpayer should be made to realize payments to the Board are equally as important as payments to others.~~

NOTIFICATION TO ATTORNEY GENERAL

706722.070

The Office of the Attorney General of the State of California is the legal counsel for the Board and represents the Board as its attorney in most cases before a court. The Headquarters Special Procedures Section (SPS) may refer certain types of collection matters to the Attorney General's Office for action when requested to do so by the district offices or the Centralized Collection Section (CCS). These matters include filing a notice of lien on cause of action, objection to a third party claim or a claim of exemption, filing a suit for tax for collection against a surety or guarantor, spousal earnings withholding orders for taxes, out-of-state collection accounts, foreclosure on Board lien, and seizures and sales of property.

To maintain a good working relationship between attorney and client, the Attorney General's Office must be notified whenever there is a change in the status of an account that the Board has referred to it. For example, a payment received from a delinquent taxpayer in a district office must be reported to SPS so that the Attorney General's Office may be notified. The district offices and CCS will maintain controls to ensure that SPS is notified of any status changes in all accounts that have been referred to the Attorney General's Office.

~~Some collection accounts are referred to the Attorney General for actions such as filing a lien on cause of action or examination of judgment debtor. The Attorney General acts as an attorney for the Board and, in order to maintain a good working relationship between attorney and client, the Attorney General's Office must be notified of any change in status of an account previously referred.~~

~~The districts will maintain controls so the Headquarters Special Procedures Section is notified of any changes in the accounts referred for forwarding by the section to the Attorney General. Payments on account on referred cases will be flagged by Headquarters Special Procedures Section for notification to the Attorney General.~~

RETENTION OF LEGAL DOCUMENTS

706722.080

Whether received in a district office by mail, or through personal delivery, legal documents or documents that could have legal ramifications should be forwarded immediately to SPS for review. These types of documents include, but are not limited to, notification of an assignment for benefit of creditors, probate notice, information regarding receivership proceedings, and bankruptcy notices. After review by SPS, the documents may be referred to the Board's legal staff or the Attorney General's Office for appropriate action. (The above statement should not be construed to conflict with the instructions contained in BEAM section 7700 covering service of legal process, summons, restraining orders, subpoenas, etc.)

~~Whenever legal documents or documents that could have legal ramifications, such as assignments, etc., are received in the district offices, whether by mail, through service, or by acceptance by an employee, such documents should be forwarded immediately to the Headquarters Special Procedures Section for review and possible referral to the legal staff and the Attorney General's Office for appropriate action. (The above statement should not be construed to conflict with the instructions contained in Section 7700 of the Board of Equalization Administrative Manual that covers service for legal process, summons, restraining orders, subpoenas, etc.)~~

EVALUATION OF COLLECTION PROGRAM

706722.090

The Chief of the Tax Policy Division is responsible for evaluating the effectiveness of the statewide collection program and determining whether the cumulative collection efforts of the district offices and CCS meet the projected work goals set by the Sales and Use Tax Department.

~~The Tax Policy Manager in the Tax Policy Division (TPD) has the responsibility, to evaluate the effectiveness of the statewide collection program and to determine whether the results of the efforts of the districts meet the projected work goals of Sales and Use Tax Department Management.~~

REPORTING EXTRAORDINARY SITUATIONS OR TECHNICAL COLLECTION PROBLEMS

706722.092

Whenever extraordinary situations or technical problems that require a legal opinion are encountered in a collection case, the Supervisor of SPS must be notified. When this type of guidance is necessary, the District Administrator, District Principal Compliance Supervisor, or delegated supervisor should make the contact with the Supervisor of SPS and the Legal Department. The Supervisor of SPS will keep the Chief, Tax Policy Division, informed of these occurrences so that they may be included in the evaluation of the Collection Program.

~~The supervisor of the Headquarters Special Procedures Section must be kept informed of extraordinary situations or technical problems on collection cases. Where questions of a legal nature are encountered regarding application of procedures or law to collection cases, the Headquarters Special Procedures Section should be contacted by a District Principal Compliance Supervisor or District Administrator or similar level manager for guidance. This will prevent duplication of legal questions submitted to attorneys and provide a level of uniformity consistent with effective collection work. The supervisor of the Headquarters Special Procedures Section will keep the Tax Policy Manager informed of any of these occurrences for inclusion in the Collection Program evaluation.~~

BOARD-ASSISTED SEARCHES OF THE PREMISES OF TAXPAYERS ON JUDICIAL PROBATION

722.100

~~BOE-ASSISTED SEARCHES OF TAXPAYERS ON JUDICIAL PROBATION 706.100~~

In some instances, Board staff may be asked to accompany a probation department officer who conducts a search of a taxpayer's business and/or residence. Although rare, these situations can occur, for example, as the result of misdemeanor or felony cases where the taxpayer must pay court-ordered restitution to the Board.

When a field office receives a request for this type of assistance, the request needs to be sent to the Investigations Division. The probation department officer should be instructed to contact the appropriate Area Administrator in the Investigations Division by telephone. The Southern Area Administrator is responsible for Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, and Imperial counties, while the Northern Area Administrator is responsible for all other counties. If the field office is requested to provide assistance or advice in a search, the Area Administrator of the Investigations Division will send the request to the Chief of Field Operations, or the Chief, Collections and Third District Operations Division.

~~In some instances, Board staff may be requested to accompany a probation department officer who conducts a search of a taxpayer's business and/or residence. While such occurrences are generally rare, they can arise, for example, as the result of misdemeanor or felony cases where there is court ordered restitution that is to be paid to the BOE by a taxpayer.~~

~~Requests for search assistance by Sales and Use Tax Department field offices will be directed to the Investigations Division. Field office staff should instruct the probation department officer to contact the appropriate Area Administrator in the Investigations Division by telephone. The Southern Area Administrator is responsible for Ventura, Los Angeles, San Bernardino, Orange, San Diego, and Imperial counties while the Northern Area Administrator is responsible for all other counties.~~

~~**BOE-ASSISTED SEARCHES OF TAXPAYERS ON JUDICIAL PROBATION — 706.100**~~

~~Field office staff may also be requested to provide assistance/advice. Requests for field office staff involvement in a search should be directed to the Chief of Field Operations by the appropriate Area Administrator of the Investigations Division.~~

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TAXES COLLECTED BY OTHER AGENCIES **709.000**

VEHICLE, VESSEL OR MOBILEHOME USE TAX COLLECTIONS **709.020**

The Board is responsible for administration of the Sales and Use Tax Law and is responsible for the collection of these taxes. The only exception is in the collection of the use tax on vehicles, vessels or mobilehomes required to be registered or are subject to identification by the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD) and were sold by other than a licensed motor vehicle dealer, manufacturer, dismantler or, in the case of vehicles/mobilehomes, subject to identification by a licensed manufacturer, dealer, or dismantler, or a person required to hold a seller's permit or a person regularly engaged in the sale of vessels. The use tax will be collected by DMV or HCD at the time the vehicles, vessels or mobilehomes are registered.

The Board will continue to be responsible for the collection of the use tax on other vessels and vehicles (as defined in the Vehicle Code) and mobilehomes (as defined in the Health & Safety Code) not registered or subject to identification with DMV or HCD.

For further information, refer to Pamphlet 23, Occasional Sales of Vehicles, Vessels, and Aircraft.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT **709.030**

Mobile Home Registration Information

Ownership and registration information for mobilehomes not registered with DMV may be obtained from HCD. Ownership information is filed by license, serial or decal number, but may also be available by name and address of the owner.

A formal title search may be requested by completing Form No. HCD 491.1. The form is available from HCD and the fee will be waived. Once the title report is obtained, you will be notified of any changes filed with HCD for the following 120 days.

MOBILEHOME DEALER REPORT OF SALE BOOKS **709.040**

Effective July 1, 1981, the Department of Housing and Community Development (HCD) took over the registration and titling of mobilehomes. Mobilehome dealers are now required to release their Report of Sale books to HCD when they close out their business. The Board of Equalization and HCD have established an agreement that allows for mutual notification when a dealer terminates his or her business.

When HCD finds that a mobilehome dealer is out of business or has not renewed his or her dealer's license, the Board office having jurisdiction over the dealer's place of business will be notified by telephone. If the Board wishes to audit the business and requires the Report of Sale books, they will be delivered to the Board (see new Report of Sale book sample attached). When the Board has no further need for the books, they will be returned to:

- Department of Housing and Community Development
- Division of Codes and Standards
- Occupational Licensing Section
- PO Box 31
- Sacramento CA 95801

If the Board does not require the Report of Sale books, they will be subsequently

~~destroyed by HCD.~~

~~When HCD is reviewing dealer Report of Sale books and finds evidence of noncompliance, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board office.~~

~~When this Board finds that a mobilehome dealer has closed out or sold his or her business, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323-9803 or ATSS 8-473-9803. If Report of Sale books are required, they can be requested at this time.~~

~~The Board will also provide the close out date and location of books and records if known. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board or destroy them, depending upon the Board's requirements.~~

~~To determine a dealer's financial stability and ensure subsequent public protection, the Board will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts:~~

- ~~1. A mobilehome dealer has an outstanding liability that requires a field assignment.~~
- ~~2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:~~
 - ~~a. Based on the audit, it does not appear the business is properly financed to clear the probable liability.~~
 - ~~b. There is factual information produced through our audit that the business is in financial trouble.~~
 - ~~e. The district administrator approves the telephone call.~~

~~A notation that HCD has been contacted should be entered on the compliance or audit assignment.~~

SOURCES OF LIABILITY AND WHEN TO PROCEED **712.000**

SOURCES OF LIABILITY **712.010**

~~All liabilities arise from two sources:~~

- ~~a. SELF-ASSESSED. Delinquent self-assessed liability subject to collection is what the taxpayer declares as owing, but has not paid. Self-assessment develops because of the filing of "no remittance" returns; filing returns that are accompanied by checks that are dishonored by the bank; filing "partial remittance" returns or late payment of returns without penalty and interest included in the remittance.~~
- ~~b. BOARD-ASSESSED. Board-assessed liabilities are billed originally on notices of determination. Except in those cases where a petition for redetermination is filed, determinations are followed by a demand for payment issued after the liability becomes final. The source of the determination may be any of the following:~~
 - ~~1. Field audits;~~

SOURCES OF LIABILITY

712.010

2. Examination of records from which a field billing order is prepared;
3. Computation errors by taxpayers on various returns required to be filed showing an underpayment of tax due; or
4. Information received from sources such as Department of Motor Vehicles or Information Use Tax returns disclosing a liability.

WHEN TO PROCEED ON SELF-ASSESSED LIABILITIES

712.020

Delinquent liabilities resulting from "no remittance" or "partial remittance" returns are immediately subject to full collection effort at the time of filing provided the returns are past due. A demand for immediate payment is issued when returns are filed with less than full payment.

If delinquent "no remittance" or "partial remittance" returns are filed at the district office, a demand billing is not necessary to initiate collection action. The fact a return was filed after the due date and was not fully paid creates a delinquent pay immediately situation and collection action should begin immediately.

All penalty and interest charges resulting from the late filing or late payment of amounts due on returns are subject to collection at the time the return becomes delinquent.

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES

712.030

Except in cases where a timely petition for redetermination is filed, amounts due on determinations become final and delinquent 30 days from the date on which notices are issued after which an additional penalty of 10 percent of the unpaid tax must be added for failure to pay the amount of the determination on or before the due date. Petitions must be filed within 30 days after a notice of determination is mailed.

Determinations for failure to pay for stamps under the Cigarette and Tobacco Products Tax Law become final 10 days after service of the determination upon the distributor, unless a timely petition is filed and the required security is posted within the 10 day period.

Collection action may be initiated immediately after a determination becomes final. A demand billing need not be issued before collection action begins. Advance work, with the exception of summary collection action, may be done before the finality date if collection may be impaired by delaying the gathering of information.

Based on *Agnew v. State Board of Equalization* (1999) 21Cal. 4th 310, beginning January 1, 2003, accounts with billed final amounts, where all of the tax is paid and a claim for refund has been filed, are placed in an appeal status and the IRIS DIF DI Stop Demand field is populated by the Refund Section. This action prevents demand billings and removes the account from ACMS. No collection action of the remaining interest and penalty is to be taken until the account is removed from Stop Demand status. If the claim for refund is denied, the Stop Demand flag will not be removed for at least 180 days pending a verification that a suit for tax has not been filed by the taxpayer. If the taxpayer files a suit and the court rules in favor of the board's counter claim for the remaining penalty and interest due, the Refunds Section will record a comment in IRIS to that effect and remove the Stop Demand flag.

With the exception of amounts due under the Sales and Use Tax and Cigarette and

~~When To Proceed On Board Assessed Liabilities — 712.030~~

~~Tobacco Products Tax Laws involving jeopardy determinations, action before the item becomes final can only be for the purpose of trying to induce payment or to develop leads. The Sales and Use Tax and Cigarette and Tobacco Products Tax Laws permit the service of notices to withhold before jeopardy determinations become final. Service of notices should be limited to those situations where immediate action is imperative to protect the interest of the state. The persons against whom a jeopardy determination is made may petition for redetermination within 10 days if they post security as deemed necessary. See CPPM Section 445.000 for more information on Security. They may also request an administrative hearing within 30 days to do the following:~~

- ~~a. — To establish that the determination is excessive.~~
- ~~b. — To establish that the sale of property that may be seized after issuance of the jeopardy or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.~~
- ~~e. — To request the release of all or a part of the property to the person.~~
- ~~d. — To request a stay of collection activities.~~

~~Outside of the exceptions noted in the preceding paragraph, no action to enforce collection through the use of summary procedures may be used until after the finality date of the determination. The general policy is no action should be taken on determinations not yet final since approximately three fourths of these items are paid without any action being necessary. Ground work before the item is final may be done when indicated and through the use of proper discretion.~~

~~If a timely petition for redetermination is filed, the determination will, in due course, be superseded by a notice of redetermination. Notices of redetermination, for collection purposes, will be handled in the same manner as notices of determination. No action to enforce collection through the use of summary procedures should be taken under any of the laws during the pendency of a petition for redetermination.~~