

Memorandum

To: Honorable Betty T. Yee, Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable Jerome E. Horton
Honorable John Chiang

Date: September 21, 2009

From: Kristine Cazadd
Chief Counsel

Kristine Cazadd/RMF

Subject: **Chief Counsel Matters – Rulemaking – Item J 1.**
Policy for Staff Compliance with Public Record Requirement for Refunds Over \$50,000.

On May 27, 2009, the Board voted to delegate authority to Board staff to grant or deny credits, cancellations, and refunds (for ease of expression, hereafter, collectively, refunds) authorized by Revenue and Taxation Code sections¹ 6901, 6981, 8126, 8191, 9151, 9196, 11551, 11596, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 45801, 46501, 46551, 50139, 50151, 55221, 55281, 60521, and 60581 unless the refunds exceed \$100,000. Board staff proposed amendments to Regulations 5237 and 5266 to incorporate the Board's May 27, 2009, delegation.²

During the August 31, 2009, public hearing on the proposed amendments, the Board noted that sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521 require proposed decisions to grant refunds in excess of \$50,000 to be available as public records for at least 10 days before the decisions are effective. The Board directed staff to make sufficiently related changes to Regulations 5237 and 5266 to ensure that the Board's staff complies with the public record requirements and staff will be asking the Board to adopt the revised regulations on October 6, 2009. The Board also asked for more background information regarding the public record requirements in order to establish a consistent policy for staff compliance and determine whether the Board should recommend that the public record requirements be amended or repealed. The remainder of this memorandum contains the background information regarding the public record requirements and recommends that staff's public records of refunds over \$50,000 contain:

1. The taxpayer's name;
2. The taxpayer's appeal case identification number;
3. The type of action (refund, credit, or cancellation);
4. The relevant program (Sales and Use Tax or Special Taxes); and

¹ Subsequent section references are to the Revenue and Taxation Code unless otherwise indicated.

² Regulations 5237 and 5266 are not being amended to reflect the Board's delegation of authority to Board staff to grant or deny refunds under the Private Railroad Car Tax Law because neither regulation applies to such refunds.

5. The department office code, when relevant. This is the same information currently provided in the Public Agenda Notice, the “10-day public record” of the Board’s proposed decisions to grant refunds over \$50,000. This memorandum also recommends that the Board continue its current policy and that “10-day public records” of Consumer Use Tax Section cancellations over \$50,000 involving vehicles, vessels, and aircraft contain the taxpayer’s account number, the taxpayer’s appeal case identification number, and the amount of the proposed cancellation.

Background Information on Public Record Requirements

Prior to 1994

Prior to 1994, the Board was not authorized to approve refunds in excess of \$50,000 pursuant to sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521. If the Board decided that a refund in excess of \$50,000 was warranted, the Board was required to “certify to the State Board of Control³ the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid.” Then, if the Board of Control (BOC) approved the refund, the Board was authorized to cause a refund to be issued to the taxpayer.⁴

The Legal Department has not been able to find historical documentation explaining exactly how the Board complied with the certification and BOC approval requirements. However, we understand that section 19302 previously imposed the same certification and BOC-approval requirements on the Franchise Tax Board (FTB) and that the certification and approval process worked as follows:

- The FTB submitted refund schedules to the BOC at least 20 days before a scheduled BOC meeting;
- The refund schedules listed the amounts over \$50,000 the FTB decided to refund, provided the names and FTB account numbers of the taxpayers who would receive the refunds, and certified that the refunds were true, correct, and in accordance with the law;
- The BOC consistently approved the refund schedules based on the FTB’s certification because the BOC could not independently verify whether refunds were true or correct and the BOC did not have express authority to independently refuse to approve properly certified refunds; and
- The BOC approved the FTB’s refund schedules during public meetings and the refund schedules became disclosable public records as a result.⁵

Based upon this information, the Legal Department believes that the Board complied with its certification and BOC-approval requirements by preparing similar refund schedules and that the Board’s refund schedules also became disclosable public records.

Assembly Bill 3069 (1993-94 Reg. Sess.)

³ The Board of Control is now called the Victim Compensation and Government Claims Board.

⁴ See, for example, Attachment A: Section 6901 Prior to 1994 Amendments.

⁵ See Attachment B: Section 19302 as approved on June 15, 1993; and Attachment C: FTB Analysis of Assembly Bill 3069 (1993-94 Reg. Sess.), p. 8.

The BOC's budget was significantly cut for fiscal year 1992-1993 and this reduced the BOC's staff from 24 to 15 persons. To make the BOC more efficient, the Legislature sought to eliminate any nonessential BOC functions and introduced Assembly Bill (AB) 3069 (1993-1994 Reg. Sess.) on February 22, 1994.⁶ As relevant here, AB 3069 proposed to: (1) eliminate the requirement that the Board and the FTB obtain BOC approval for refunds over \$50,000; (2) require the Board to make a proposed decision to grant a refund over \$50,000 "available as a public record for at least 10 days prior to" its effective date;⁷ and (3) prohibit the FTB from issuing refunds over \$50,000 until:

[the FTB] certifies that the amount of the refund is true, correct, and in accordance with law, and makes the taxpayer's name, refund amount, the purpose of the appropriation, and the statutory authority for the disbursement available as a public record, at a place designated by the executive officer, at least 10 days prior to the date upon which the amount is to be refunded.⁸

Statutes 1994, Chapter 726

The final version of AB 3069 was enacted as Statutes 1994, chapter 726. The final version of AB 3069 included the proposed provisions to: (1) eliminate the requirement that the Board and the FTB obtain BOC approval for refunds over \$50,000; and (2) require the Board to make a proposed decision to grant a refund over \$50,000 "available as a public record for at least 10 days prior to" its effective date.⁹ However, the final version of AB 3069 did not include the provisions prohibiting the FTB from issuing refunds over \$50,000 until it complied with the certification and public record requirements quoted above¹⁰ because they were opposed by the FTB.

The legislative history reflects that in opposition, the FTB argued that it was prohibited from disclosing confidential taxpayer information in the assessment of deficiencies regardless of their size and that the return of taxpayers' "money should not be an issue subject to public disclosure."

The FTB further asserted that it did not have to disclose confidential taxpayer information to grant refunds of \$50,000 or less, that refunds over \$50,000 were no different from smaller refunds, and that the FTB could not see any reason the larger refunds should be made public. The FTB also questioned the purpose of disclosing confidential taxpayer information pertaining to refunds over \$50,000 because the required disclosure would not give the public enough information to review the FTB's decisions and the law did not provide the public with any means to question the FTB's decisions to grant refunds over \$50,000 or prevent the FTB from issuing refunds over \$50,000.¹¹

⁶ AB 3069 reintroduced provisions of AB 2051 (1993-94 Reg. Sess.), which was originally vetoed for unrelated reasons.

⁷ See, for example, AB 3069, section 23, as introduced on February 22, 1994, available at: http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_3051-3100/ab_3069_bill_940222_introduced.

⁸ See AB 3069, section 35, as introduced on February 22, 1994.

⁹ See, for example, Statutes 1994, chapter 726, section 23 available at: http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_3051-3100/ab_3069_bill_940922_chaptered.

¹⁰ See Statutes 1994, chapter 726, section 35.

¹¹ See Attachment C: FTB Analysis of Assembly Bill 3069 (1993-94 Reg. Sess.), pp. 8 and 9.

Staff Recommendation for Compliance with Public Record Requirements

Scope of Public Record Exception

The Board is prohibited from disclosing confidential taxpayer information pursuant to a number of program-specific Revenue and Taxation Code provisions,¹² and is even prohibited from disclosing the fact that certain taxpayers are registered with the Board.¹³ The Government Code prohibits the Board from disclosing certain information concerning the business affairs of companies that report to the Board.¹⁴ In addition, the Board-specific confidentiality provision in the Information Practices Act¹⁵ limits the personal information the Board may disclose to the public concerning individual taxpayers.

The statutes requiring the Board to make decisions to grant refunds over \$50,000 available as public records for at least 10 days prior to their effective dates expressly authorize the disclosure of some taxpayer information and represent express exceptions to the above-referenced confidentiality statutes where applicable. The Legal Department has reviewed the legislative history for AB 3069 and tried to determine whether the Legislature expressed any intent about the information that should be included in the Board's public records of decisions to grant refunds over \$50,000, but could not find any documentation specifying the type of public records the Legislature wanted. Therefore, the Legal Department believes that it is within the Board's discretion to interpret the public record requirement in light of the state's overall policy in favor of taxpayer confidentiality.

Current Public Records

The Board currently uses two "10-day public records" to comply with the public record requirement. The primary "10-day public record" is the Public Agenda Notice, which contains the taxpayer's name and appeal case identification number, the type of action (refund, credit, or cancellation), the relevant program (Sales and Use Tax or Special Taxes), and the relevant department office code.¹⁶ The other "10-day public record" is a memorandum from the Petitions Section to the Board Proceedings Division listing the Consumer Use Tax Sections' (CUTS) proposed decisions to cancel consumer use tax determinations over \$50,000 involving vehicles, vessels, and aircraft,¹⁷ which is prescribed by Operations Memorandum 1110 for public release.¹⁸ The CUTS memorandum contains the taxpayer's account number,¹⁹ the taxpayer's appeal case identification number, and the amount of the proposed cancellation and protects the identity of consumers who are not required to register with the Board.²⁰ Both documents represent permissible interpretations of the public record requirement and illustrate ways in which the Board has interpreted the public record requirement in light of the strong policy considerations in favor of preserving taxpayer confidentiality whenever possible.

¹² See, for example, section 7056.

¹³ See, for example, section 55381.

¹⁴ Government Code section 15619.

¹⁵ Civil Code section 1798.69.

¹⁶ For sales and use tax matters, the relevant district office is referenced (e.g., BH, KH, OH, etc.). For special taxes and fees matters, the office codes are: Environmental Fees (EF), Excise Taxes (ET), and Fuel Taxes (MT).

¹⁷ See Attachment D, example of CUTS public record.

¹⁸ See Attachment E, Operations Memorandum 1110 for public release.

¹⁹ Note: These taxpayers are not required to register with the Board. Because their account numbers are created solely for purposes of the CUTS determinations the public cannot use the account numbers to identify specific taxpayers.

²⁰ The identity of registered taxpayers and fee payers is generally disclosable. (See, e.g., § 7056.)

Staff Recommendation

In order for Board staff to comply with the public record requirement without unnecessarily disclosing confidential taxpayer information, the Legal Department now recommends that Board staff's public records for the newly delegated refunds contain:

1. The taxpayer's name;
2. The taxpayer's appeal case identification number;
3. The type of action (refund, credit, or cancellation);
4. The relevant program (Sales and Use Tax or Special Taxes); and
5. The department office code, when relevant.

The Legal Department also recommends that the Board continue its current policy with regard to CUTS cancellations over \$50,000 involving vehicles, vessels, and aircraft.

This recommendation is consistent with the level of detail provided in the Board's current "10-day public records" for the same types of refunds. For illustrative purposes, Attachment F to this memorandum contains a draft public record of sales and use tax refunds, credits, and cancellations and includes a brief explanation of the terms refunds, credits, and cancellations.

Pros and Cons of Public Record Requirement

Because it appears to be a matter of public policy with administrative, but no direct legal implications, the Legal Department does not have an opinion regarding whether the Revenue and Taxation Code should continue to contain public record requirements for refunds (or cancellations) over \$50,000. However, it should be noted that:

- The public record requirements provide the public with the only information they can see regarding refunds over \$50,000 that are approved with regard to a number of otherwise confidential tax and fee programs (e.g., sales and use taxes, timber yield tax, etc.); but
- There does not appear to be any compelling legal justification for disclosing taxpayer information with regard to some, but not all refunds, and the public record requirements do not provide the public with sufficient information to make substantive public oversight possible, even if such oversight were appropriate.

Conclusion

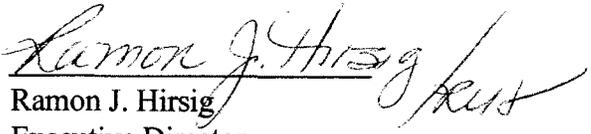
The Legal Department recommends that the Board adopt the revised versions of the proposed amendments to Regulations 5237 and 5266, which incorporate the public record requirements for refunds over \$50,000. The Legal Department recommends that Board staff's public records for the newly delegated refunds contain:

1. The taxpayer's name;
2. The taxpayer's appeal case identification number;
3. The type of action (refund, credit, or cancellation);
4. The relevant program (Sales and Use Tax or Special Taxes); and
5. The department office code, when relevant.

The Legal Department also recommends that the Board continue its current policy with regard to CUTS cancellations over \$50,000 involving vehicles, vessels, and aircraft. The Legal Department does not have an opinion regarding whether the Revenue and Taxation Code should continue to contain public record requirements for refunds (or cancellations) over \$50,000.

If you need more information or have any questions, please contact Tax Counsel III (Specialist) Bradley Heller at (916) 324-2657.

Approved:


Ramon J. Hirsig
Executive Director

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Attachments

cc: Mr. Ramon Hirsig MIC: 73
Ms. Randie Henry MIC: 43
Mr. David Gau MIC: 63
Mr. Randy Ferris MIC: 82
Mr. Bradley Heller MIC: 82
Ms. Deborah Cooke MIC: 82

Attachment A: Section 6901 Prior to 1994 Amendments

1992 REGULAR SESSION
CHAPTER 708 (Assembly Bill No. 3225)

Approved by Governor September 14, 1992.

Relevant Text: The people of the State of California do enact as follows:

SECTION 1. Section 6901 of the Revenue and Taxation Code is amended to read:

If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify to the State Board of Control the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the State Board of Control the excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors.

The board, however, without obtaining approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors, if a determination by the board is made in any of the following cases:

- (a) An amount of tax, interest, or penalty not exceeding fifty thousand dollars (\$ 50,000) was not required to be paid.
- (b) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.
- (c) Any amount that is approved as a settlement pursuant to section 7093.5.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to Article 1 (commencing with Section 6201) of Chapter 3 shall be credited or refunded by the state to the purchaser.

Attachment B: Section 19302 as Approved on June 15, 1993

1993 REGULAR SESSION
CHAPTER 31 (Senate Bill No. 3)

Approved by Governor June 15, 1993.

Relevant Text: The people of the State of California do enact as follows:

[¶] . . . [¶]

SECTION 26. Part 10.2 (commencing with Section 18401) is added to Division 2 of the Revenue and Taxation Code, to read:

[¶] . . . [¶]

§ 19302.

(a) Except as provided in subdivision (b), if the Franchise Tax Board determines that the taxpayer paid an amount not required to be paid under this part, the Franchise Tax Board without obtaining the approval of the State Board of Control, shall set forth that fact in its records and may either credit the amount on any amounts then due and payable under this part from the taxpayer by whom the amount was paid or refund the amount or the balance to the taxpayer or the taxpayer's successors, administrators, or executors.

(b) No refund exceeding fifty thousand dollars (\$ 50,000) shall be allowed or made until approved by the State Board of Control. Notwithstanding the preceding sentence, State Board of Control approval shall not be required with respect to a refund resulting from withholding, payment of estimated tax, or prepayment of taxes, or a rate determination pursuant to Section 23186.1 (relating to bank and financial corporation rates) for the taxable year, or from a settlement approved pursuant to Section 19442.

BILL ANALYSIS

Author: _____ Analyst: _____ Bill Number: _____
 Related Bills: See Legislative Telephone: _____ Amended Date: _____
 History Attorney: _____ Sponsor: _____

SUBJECT:

<p>Frazee</p> <p style="text-align: center;">Gloria McConnell</p> <p style="text-align: right;">AB 3069</p> <p style="text-align: center;">369-4336</p> <p style="text-align: right;">Orig.</p> <p style="text-align: right;">02/22/94</p> <p style="text-align: center;">Geoff Way</p> <p style="text-align: right;">Board of Control</p> <p style="text-align: center;">Functions Affecting the Board of Control</p>

DEPARTMENTS THAT MAY BE AFFECTED:

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Department Director Position:	Agency Secretary Position:	GOVERNOR'S OFFICE USE																
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Department Director Date	Agency Secretary Date																	

Board of Equalization

INTRODUCTION

Under this bill, as it impacts the Franchise Tax Board (FTB) and the Board of Control (BOC), the following would occur. Each provision is discussed separately in this analysis on the page indicated:

- 1) If the authority is delegated by the BOC, the FTB could negotiate and pay or reject certain money or damage claims for contracts or injuries associated with the FTB. The amount paid or rejected could be negotiated based on equity but under the delegated authority could not exceed \$1,000.....page 2

- 2) If authorized by BOC, FTB could increase from \$50 to \$250 the dollar amount it can refrain from collecting (write-off). The amounts at issue are taxes, fees or other money owed the state.....page 4
- 3) Prior year homeowners/renters assistance (HRA) refund claims filed with FTB would be paid by the Controller from current year funds without approval by BOC.....page 5
- 4) The FTB would certify and make public for at least 10 days prior to issuance, certain personal income tax (PIT) and bank and corporation tax (BCT) refund determinations, instead of BOC approving and publicly disclosing the refund determination (Amendments are attached as further discussed).....page 5
- 5) The FTB, itself, would approve PIT and BCT binding closing agreements, instead of the BOC.....page 8

EFFECTIVE DATE

Because this bill is an urgency measure, the above provisions would be effective upon enactment.

LEGISLATIVE HISTORY

AB 2051 (Frazee, 1993/94)

POSITION

Support if amended to remove the provision that requires the FTB to publicly disclose tax refund information (Above item 4; see page 9).

- 1) Payment/Rejection of Money or Damage Claims.

SUMMARY

The FTB could negotiate and pay or reject money or damage claims for contracts or injuries associated with FTB. The negotiation could be based on equity but under the delegated authority could not exceed \$1,000.

SPECIFIC FINDINGS

Currently, refund claims filed by taxpayers under the Personal Income Tax Law (PITL) or Bank and Corporation Tax Law (BCTL) are acted on by the FTB based on the law. If the claim is denied, the Government Code permits the taxpayer to file a claim against the State with the BOC.

When employees of the State or other persons bring a damage action against the State (e.g., damages to personal cars parked in a State parking lot, or damages to clothing while on the job, or unpaid moving expenses),

the employee or other person files a claim against the State with the BOC.

Claims are filed with the BOC because it is authorized to consider equity issues in making its determination. During the equity claim process, BOC asks for FTB's recommendation. Although this is an equity procedure, FTB staff is required to make "equity" recommendations based on law, without regard to equity. According to BOC staff, even though an FTB recommendation does not take into account equity issues, the BOC generally follows the agency's recommendation, and the claimant's recourse from a denial of the claim is litigation through the appropriate court.

Under current law, BOC can delegate to any state agency the authority to adjust and pay any claims where the adjustment is under \$100. FTB does not act on claims under this authority.

Under this provision, BOC could authorize FTB to negotiate and pay or reject money or damage claims for contracts or injuries where the payment or rejection is \$1,000 or less. This delegation includes BOC's authority to make decisions based on equity. The FTB may be required by BOC to report to it annually concerning the claims it resolves under this authority.

Under current law and this bill, any claims associated with a particular agency that are allowed based on the law are paid by that agency through its budget. If a claim is allowed based on equity, the payment is appropriated through a legislative claims bill as a General Fund expenditure, but the particular agency's support budget is reduced by a corresponding amount.

Considerations

- oIt appears that this provision merely shifts a workload and the associated administrative costs from one agency to another.
- oThis additional delegation of authority increases the potential for inconsistent decisions on claims that may result from similarly situated circumstances.
- oAccording to BOC staff, this provision removes an unnecessary step in the claim process. Neither FTB's existing role nor administrative costs should significantly change under this provision. BOC staff indicates that claims involving tax law would continue to be sent to FTB for recommendations only; BOC does not intend to forward tax matters to the FTB for resolution even if the claim is framed as an injury/damage claim.

This provision is intended to affect only those claims resulting from other than tax matters. In these non-tax cases rather than make recommendations based on law, as the FTB currently does, the FTB would make the final decision based on equity. Payment of approved claims would continue to be charged against the department's budget, but without the legislative claims bill process.

Implementation

This bill could be implemented by FTB; however, staff is inexperienced in making decisions based on perceived equity, rather than a strict interpretation of law.

FISCAL IMPACT

Administrative Costs

FTB's administrative costs would increase according to the workload shifted to FTB and the claims that are paid that would not have been paid under the current processing of these claims. The amount of the increase is unknown.

Tax Revenue Estimate

There is no identifiable tax revenue impact.

2) Increase write-off amount to \$250.

SUMMARY

Under this provision, the amounts that FTB could write-off would increase from \$50 to \$250.

SPECIFIC FINDINGS

Under current law, FTB is authorized to write-off \$50 or less in taxes, fees or other amounts owed the State. Based on past collection experiences and the associated administrative cost of collection, when a balance-due is \$50 or less it is written-off once FTB determines that further action is unwarranted. This determination is based on numerous factors, including the potential for and cost of collection.

Under this provision, FTB's write-off amount could increase to \$250. The BOC would have the discretion to authorize the increased dollar amount. The FTB, in turn, could set its write-off level up to the amount authorized and determine at what point in the collection process the write-off would occur.

Considerations

oThis provision appears to be a good government law change. It is presumed FTB would continue its current practice of pursuing any collection that it determines to be cost effective and in the best interest of the State.

oOne of FTB's collection responsibilities is the collection of the penalty imposed by the Secretary of State against corporations for failure to file corporate officer statements. This penalty is \$250. FTB also collects fees and penalties from tax exempt organizations that are less than \$250. It may be viewed as non-productive to impose these amounts on the taxpayer yet turn around and write them off if they are not paid timely.

Implementation

This provision could be implemented without causing significant changes to FTB's programs or systems.

FISCAL IMPACT

Administrative Costs

This provision would not significantly impact the department's administrative costs.

Tax Revenue Estimate

Any potentially forfeited revenue due to this discretionary authority is unknown but probably would be minor.

3)HRA Claims No Longer Approved By BOC.

SUMMARY

Prior year HRA refund claims filed with the FTB would no longer be forwarded to the BOC for approval before they are submitted to the Controller for payment from current year funds.

SPECIFIC FINDINGS

Under current law/practice, subsequent to an appeal, FTB may recommend a refund of a HRA claim that it previously denied. Because of the delay in the recommendation, the claim may relate to a prior year but will be paid from current-year revenues. In this event, the refunds must be approved by the BOC before they are forwarded to the Controller for issuance of the refund.

Under this provision, the BOC would not approve the claims schedule before the Controller issues the refund. FTB would send the claims schedule directly to the Controller for issuance of the refund.

Consideration

According to FTB staff, the BOC has not rejected any claims of this nature, nor does the law provide any grounds or basis for rejecting a claim. Therefore, this provision would eliminate an apparent unnecessary step in this refund process.

Implementation

FTB's operations or programs would not have significant changes as a result of this provision. Rather than submit a claim to the BOC for approval, the Controller would receive the claim directly from the FTB.

FISCAL IMPACT

This bill would not impact the FTB's administrative costs or tax revenue.

4)FTB to Make Public Certain Refunds over \$50,000.

SUMMARY

Under this provision, BOC would no longer approve and make public FTB's determination as to certain PIT and BCT refunds in excess of \$50,000. Instead, FTB's determination would be made public for at least 10 days prior to issuance of the refund.

SPECIFIC FINDINGS

Under current law, any PIT and BCT refund determinations in excess of \$50,000 as a result of amended tax returns or audit adjustments must be

approved by BOC. To receive approval, FTB provides BOC with a claim schedule. On the schedule, FTB certifies that the amount of the refund is true, correct and in accordance with law. The schedule includes the taxpayer's name, taxpayer's account number, amount of refund, the purpose for the appropriation and the statutory authority for the disbursement. This information must be forwarded to the BOC approximately 20 days before its scheduled meeting. To accommodate this requirement, FTB computes interest on the refund amount to the applicable BOC hearing date plus five days to allow for internal processing. According to FTB staff, the BOC has not disapproved any refunds under this procedure, nor does the law provide grounds for rejection or rules in the event of rejection.

Under current law, tax matters are generally confidential and are not disclosed to the public. Exceptions to this rule are: 1) settlements of tax disputes approved by FTB and (2) tax matters requiring the approval of the BOC (e.g., these amended-return or audit-adjustment refunds in excess of \$50,000 or binding closing agreements).

Both the BOC and FTB must meet in public in accordance with the Open Meeting Act. FTB has the authority to hold a closed session within the public meeting to act on confidential tax matters. BOC does not have the same authority with respect to confidential tax matters; for this reason, any tax matter requiring BOC approval is subject to public disclosure.

The BOC is not required to approve the following:

- .any refunds as a result of original-filed tax returns regardless of amount,
- .refunds of \$50,000 or less as a result of amended tax returns or audit adjustments,
- .tax deficiencies regardless of amount, or
- .overpayments that are offset against tax deficiencies regardless of amount;

therefore, these tax matters are not public record.

Under this provision, instead of public disclosure through the BOC approval process, FTB would certify any refund determinations that exceed \$50,000 as a result of amended returns or audit adjustments and make its determination a public record for at least 10 days prior to the issuance of the refund.

Considerations

oAmended-return or audit-adjustment refunds of less than \$50,000 and all refunds claimed on original-filed tax returns are made without public disclosure of otherwise confidential taxpayer information. Except for the dollar amount and/or whether it was self-assessed on an original return, the refunds that go to the BOC for approval are no different than the other refunds FTB issues. When refunds result from amended tax returns or audit adjustments, taxpayers have made mistakes and overpaid their taxes. It is unclear why the record should be public, whether through the BOC's current law/practice or this bill. In these situations, taxpayers are receiving a return of their money because of the facts and law. This return of their money should not be an issue subject to public disclosure.

- oTax deficiencies are made and paid without public disclosure of confidential taxpayer information. Amended-return and audit-adjustment refunds of over \$50,000 should be as confidential as tax deficiencies, amended-return and audit-adjustment refunds of less than \$50,000 and refunds from original-filed returns.
- oThe BOC approval for these refunds is basically a "rubber-stamp" process. There is no basis for the BOC to reject or disapprove a refund; the law does not allow the public to intercede in the issuance of the refund.

These refunds are based on facts and law and the tax return information is protected by FTB's confidentiality laws. Neither the BOC nor the public can technically prevent the issuance of the refund or obtain any additional information about the refund. Therefore, the BOC/public oversight process under current law and the 10-day public notice required by this bill serve little useful purpose and is an invasion of the taxpayer's confidential tax information.

- oAn efficient and effective tax system relies on self-compliance. Confidentiality of tax information is the cornerstone to self-compliance. While disclosure of tax return information may be appropriate when a right and need to know the information exists and can be demonstrated, staff is concerned that the right and need for the public to know the information under this provision is not demonstrated under this bill. Therefore, disclosure of this information is inappropriate.

- oThe FTB voted on July 19, 1993, to support a similar bill (AB 2051) if it were amended to remove the disclosure provision that requires public disclosure of taxpayer refund information. Attachment A contains the suggested amendments to remove this disclosure requirement.

Implementation

Minor changes to current practice and FTB's automated systems would be required. The FTB would hold the claim schedule for 10 days before submitting it to the Controller. The existing claims schedules (forms FTB 828 and 829) would continue to be used and could be the disclosed document as it contains the taxpayer's name, refund amount, the purpose of the appropriation, and the statutory authority for the disbursement information. However, the taxpayer's account number would need to be deleted for purposes of disclosure. During the 10-day period, the claim schedule would be at FTB central office (as designated by the executive officer) and disclosed upon request.

Technical Concern

The suggested amendments to resolve the following technical concerns are attached as Attachment B. However, if the policy amendments provided on Attachment A are made to remove the disclosure requirement, the technical concerns identified here would no longer exist and Attachment B should be disregarded.

oOn page 24, lines 9 and 10, the amendment is incorrectly placed. It should be deleted from lines 9 and 10 and a comparable amendment should be added to line 16.

oUnless authorized under Article 2 of Chapter 7 of Part 10.2 of the Revenue and Taxation Code, it is a misdemeanor for the FTB to disclose otherwise confidential tax information. It should be made clear under this article that the public disclosure of this refund information is authorized.

FISCAL IMPACT

Administrative Costs

This provision should not significantly impact FTB's administrative costs.

Tax Revenue Estimate

This provision would accelerate the issuance of refunds and eliminate some interest payments. Any potential savings on reduced interest payments in any given year is unknown.

5)Under the PITL and BCTL, the BOC would not have to approve closing agreements to be final and conclusive (binding). Approval by the FTB, itself, would bind the agreement.

SUMMARY

Under this provision, closing agreements entered into under the PITL or BCTL would be binding if approved by the FTB, itself, rather than the BOC.

SPECIFIC FINDINGS

Under current law, for PIT and BCT closing agreements to be binding, the BOC must approve the closing agreement. According to FTB staff, the BOC has not disapproved any closing agreements. Closing agreements are contracts between the FTB and taxpayers whereby tax disputes, current and prospective, are settled. Although the statutory authority for closing agreements appears broad, the authority has never been interpreted by the FTB to confer general settlement authority. Closing agreements are used to conclude matters for estates or trusts or other relatively rare situations where it is in the best interest of the state to permanently and finally close a tax dispute.

Under this provision, binding closing agreement would be approved by the FTB members, instead of the BOC.

Consideration

State of California

Board of Equalization

M e m o r a n d u m

To : Ms. Diane Olson
Board Proceedings Division (MIC:80)

Date : August 14, 2009

From : Philip Spielman
Supervisor, Petitions Section (MIC: 38)

Subject : Cancellation of Consumer Use Tax Determinations over \$50,000.00
Involving Vehicles, Vessels, and Aircraft

The listing of cancellations of consumer use tax determinations over \$50,000 involving vehicles, vessels, and aircraft to be available as a public record for at least 10 days prior to the effective date of cancellation are as follows:

<u>Account Number</u>	<u>Appeals Case Number</u>	<u>Amount</u>
Redeterminations: (to zero)		
1. SP UT 84-053993	384846	\$334,934.65

Please inform the Department of the date the above referenced cases are made public record via e-mail to my attention with a cc: to Mr. Steve Adams.

Philip Spielman

Public Record-CUT Cancellation Listings.dotCC:

Mr. Steve Adams, Supervising Tax Auditor (MIC:38)
Ms. Catherine Wurst, Business Taxes Appeals (MIC:80)

M e m o r a n d u m**State Board of Equalization
OPERATIONS MEMO
For Public Release****No: 1110**

Date: December 26, 2003

**SUBJECT: Consumer Use Tax Vehicle, Vessel, and Aircraft Determination Cancellations
in Excess of \$50,000****I. GENERAL**

On June 25, 2003, the Board delegated to the Sales and Use Tax Department (SUTD) the authority to cancel or redetermine to zero all vehicle, vessel, and aircraft individual determinations (billings) in excess of \$50,000. The Board also ordered that the Board Reference Manual be amended to reflect the revised levels of delegation and to require that the public records on those items above \$50,000 that are canceled or redetermined to zero be retained in the Board Proceedings Division.

II. PROCEDURES

A. Approvals for all vehicle, vessel, and aircraft Consumer Use Tax (CUT) billing cancellations in excess of \$50,000 will be sent to the SUTD and will no longer be heard on the Board's non-appearance Consent Calendar.

B. The Petitions Section will coordinate sending all such cancellations in excess of \$50,000 to the Deputy Director, SUTD, or designee for approval.

C. The Petitions Section will notify the Board Proceedings Division of the account number, appeals case number, and cancellation amount to be included in the public record ten days before the effective date of the approval pursuant to Revenue and Taxation Code sections 6901 and 6981.

In general, with the exceptions noted above, the current review process and workflow related to such cancellations of CUT billings in excess of \$50,000 will remain unchanged.

II. HEADQUARTERS RESPONSIBILITY

A. Deputy Director, SUTD, or Designee: The Deputy Director, SUTD, or designee, shall approve cancellations of all vehicle, vessel, and aircraft billings in excess of \$50,000 when tax is

determined not to be due. The approval becomes effective ten days after the cancellation is made available as a public record.

B. Petitions Section: The Petitions Section will coordinate approval of cancellations of all vehicles, vessels, and aircraft CUT billings in excess of \$50,000. The Petitions Section will forward for approval to the Deputy Director, SUTD, or designee, all such CUT cancellations in excess of \$50,000 when tax is determined not to be due. The Petitions Section will continue to review cancellation recommendations received from the Centralized Collection Section or received pursuant to petitions for redetermination. Case files of pending approvals are to be maintained in the Petitions Section.

The Petitions Section will notify Board Proceedings of the account number, appeals case number and cancellation amount at least ten days before the effective date of the approved cancellation and maintain a record of such notification. The Petitions Section will process approved cancellations on the Integrated Revenue Information System (IRIS) and issue appropriate notices or statements to taxpayers to reflect the cancellation of billings following the ten day public record period and approval of the cancellation.

The Petitions Section will notify the Audit Determination and Refund Section when approved cancellations involve a resulting refund in excess of \$50,000 following the ten day public record period. The resulting refund in excess of \$50,000 will require scheduling on the non-appearance Consent Calendar for Board member approval.

C. Board Proceedings Division: The Board Proceedings Division will amend the Board Reference Manual to reflect the revised levels of delegation and make as a public record cases referred to it from the SUTD. The public record will consist of the account number appeals case number, and amount of cancellation and will be retained for a period of one year. The Board Proceedings Division will notify the SUTD of the date such cases were made a public record. The Board Proceedings Division will respond to inquiries regarding the public record.

Board Proceedings will forward to the SUTD all CUT cancellation cases involving vehicles, vessels and aircraft where an oral hearing request was previously acknowledged by the Board Proceedings Division. Recommended cancellations will not be presented to the Board members for hearing.

D. Audit Determination and Refund Section: When cancellation of the billing results in a refund of payments in excess of \$50,000, the refund will continue to require approval by the members of the Board and will be scheduled on the Board's non-appearance Consent Calendar. The Petitions Section, after preparing the case summary for the Consent Calendar, will forward cancellations resulting in a refund in excess of \$50,000 to the Audit Determination and Refund Section for further processing. The Audit Determination and Refund Section is responsible for scheduling refunds in excess of \$50,000 on the non-appearance Consent Calendar for Board approval and the issuance of the approved refund. The Petitions Section will issue a closing notice or statement only after Board approval of the refund.

E. Centralized Collection Section: The Centralized Collection Section will continue to forward all recommendations to approve CUT billing cancellations over \$50,000 to the Petitions Section for final approval and cancellation.

F. Consumer Use Tax Section: The CUT Section will issue the original use tax billing, as is current practice. The CUT Section will refer claims for refund, including refunds in excess of \$50,000, to the Audit Determination and Refund Section for processing.

IV. OBSOLECENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

Ramon J. Hirsig
Deputy Director
Sales and Use Tax Department

Distribution:

Labeled

Memorandum

To: Ms. Diane Olson, Chief
Board Proceedings Division (MIC:80)

Date:

From: Steven P. Sisti, Supervisor
Audit Determination and Refund Section (MIC:39)

Subject: Refunds, Credits, and Cancellations of Sales and Use Tax Over \$50,000

Below is a listing of proposed decisions to refund, credit, or cancel sales and use tax amounts over \$50,000, including decisions to relieve penalties and/or interest and redeterminations. This listing is a public record and must be made available to the public if requested after the date of this memorandum.

	Name	Appeal Case ID	Category	Office Code
1	ABC Store	09-XXXX	Refund	GH
2	Speedy Gas	08-XXXX	Credit	AP
3	Jim's Garage	09-XXXX	Cancellation	UT

The Audit Determination and Refund Section (ADRS) has proposed to refund or credit the above amounts because they were overpaid or paid as a result of an error. ADRS has proposed to cancel the above taxes, penalties, and/or interest because they were determined in error or qualified for relief under provisions of the Sales and Use Tax Law. The refunds, credits, and cancellations may be completed 10 days after the date of this memorandum.

SPS:xx

cc: Mr. Kevin Hanks, Chief (MIC:49)
Ms. Catherine Wurst, Business Taxes Appeals (MIC:80)
Ms. Shirley Marte, Disclosure Officer (MIC:82)



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JOHN CHIANG
State Controller

STEVE SHEA
Acting Member
Fourth District, Los Angeles

RAMON J. HIRSIG
Executive Director

September 18, 2009

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Revised Amendments to California Code of Regulations, Title 18, Sections:

**5237, BOARD APPROVAL REQUIRED FOR REFUNDS OVER \$50,000; and
5266, APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION;
REQUESTS FOR ORAL HEARINGS**

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 has proposed to amend California Code of Regulations, title 18, section (Regulation) 5237, *Board Approval Required for Refunds Over \$50,000*. The proposed amendments to Regulation 5237 will implement, interpret, and make specific Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, and 60521, which authorize the Board to grant refunds of specified taxes and fees.

The Board, pursuant to the authority vested in it by Government Code section 15606 and Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, and 60601 has also proposed to amend Regulation 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*. The proposed amendments to Regulation 5266 will implement, interpret, and make specific Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404,

32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. These Revenue and Taxation Code sections authorize the Board to grant or deny petitions, refunds, and requests for relief, and cancel previously assessed taxes and fees.

A public hearing on the proposed amendments to Regulation 5237 and 5266 was held in Room 121, 450 N Street, Sacramento, California, on August 31, 2009. No interested parties asked to speak at the public hearing or submitted written comments on the proposed amendments.

However, the proposed amendments to Regulations 5237 and 5266 authorized Board staff to approve refunds and cancellations over \$50,000. Revenue and Taxation Code sections 6901, 6981, 8126, 8191, 9151, 9196, 12951, 12977, 30361, 30421, 32401, 32440, 38601, 38631, 40111, 40121, 41100, 41107, 43451, 43491, 45651, 46501, 46551, 50139, 50151, 55221, 55281, 60521, and 60581 require the Board to make a public record of decisions to grant refunds, credits, and cancellations over \$50,000 available for at least 10 days before the decisions are effective. Also Revenue and Taxation Code section 45801 requires the Board to make a public record of decisions to cancel amounts over \$15,000, which were determined under the Integrated Waste Management Fee Law, available for at least 10 days before the decisions are effective. Therefore, the Board referred the proposed amendments to Regulations 5237 and 5266 to the 15-day file and directed staff to add language incorporating the public record requirements.

Enclosed are revised versions of the proposed amendments to Regulations 5237 and 5266. The original proposed amendments are still noted with single underscore and strikeout. The revisions to the proposed amendments, which incorporate the public record requirements, are noted with double underscore. In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The revised versions of the proposed amendments will be placed on the October 6, 2009, Board meeting agenda for the Board's consideration and potential adoption. Interested persons may present or submit oral or written statements, arguments, or contentions regarding the revised versions of the proposed amendments. In addition, if the Board receives written comments prior to its consideration of the proposed amendments on October 6, 2009, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 5237 and 5266. Furthermore, any written comments received

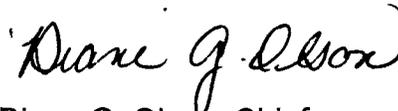
September 18, 2009

prior to October 6, 2009, regarding the revised versions of the proposed amendments must be responded to in the final statement of reasons required by Government Code section 11346.9.

Questions regarding the substance of the revised versions of the proposed amendments should be directed to Bradley M. Heller, Tax, Counsel III (Specialist), by telephone at (916) 324-2657, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Toya Davis, Regulations Coordinator, by telephone at (916) 327-1798, by fax at (916) 324-3984, by e-mail at Toya.Davis@boe.ca.gov, or by mail at State Board of Equalization, Attn: Toya Davis, MIC:81, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,

A handwritten signature in black ink that reads "Diane G. Olson". The signature is written in a cursive style with a large initial "D".

Diane G. Olson, Chief
Board Proceedings Division

DO:tpd
Enclosure

**Proposed Amendments to California Code of Regulations,
Title 18, Sections 5237 and 5266**

**5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER ~~\$50,000~~
\$100,000.**

(a) If Board Staff in the assigned section or group determines that a refund in excess of ~~\$50,000~~ \$100,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of ~~\$50,000~~ \$100,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If Board Staff in the assigned section determines that a refund in excess of ~~\$50,000~~ \$100,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

(g) If Board Staff determines that a refund in excess of \$50,000 should be granted and the determination is not required to be submitted to the Board, the proposed determination must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

- (i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and
- (ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds ~~\$50,000~~ \$100,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

(g) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds \$50,000 be refunded, credited or canceled and the recommendation does not require Board approval, the proposed determination to refund, credit, or cancel such amount must be available as a public record for at least 10 days prior to its effective date. If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that an amount that exceeds \$15,000, which was determined pursuant to the Integrated Waste Management Fee Law, be canceled and the recommendation does not require Board approval, the proposed determination to cancel such amount must be available as a public record for at least 10 days prior to its effective date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference:

Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

Regulation History

Type of Regulation: Sales and Use Tax

Regulations: 5237 and 5266

Title: 5237, *Board Approval Required for Refunds Over \$50,000*; and 5266, *Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings*

Preparation: Bradley M. Heller

Legal Contact: Bradley M. Heller

Staff request for adoption of proposed amendments to Regulations 5237 and 5266 to make them consistent with the current delegation of authority to staff to grant or deny refunds.

History of Proposed Regulation:

October 3, 2009: 15-day public comment period ends
September 18, 2009: 15-day public comment letter and revised text e-mailed & mailed to Interested Parties; start of public comment period
August 31, 2009: Public hearing - Board requested sufficiently related changes; submitted 15-day file (vote 5-0)
August 24, 2009: 45-day public comment period ends
June 26, 2009: OAL publication date; 45-day public comment period begins; IP mailing
June 15, 2009: Notice to OAL
May 27, 2009: Other Administrative Matters, Board authorized publication (vote 5 -0)

Sponsor: NA

Support: NA

Oppose: NA

State of California
M e m o r a n d u m

Board of Equalization
Board Proceedings Division
MIC:80

To: Honorable Betty T. Yee, Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable Jerome E. Horton
Honorable John Chiang

Date: October 5, 2009

From: Diane G. Olson, Chief
Board Proceedings Division

Subject: J1. Proposed Amendments to Rules of Tax Appeals Regulation 5237, Board approval required for refunds over \$50, 000; Refund Approval Process Flow Chart
October 6, 2009, Sacramento Board Meeting

Attached is a flow chart showing the processes the Sales and Use Tax Department and the Property and Special Taxes Department will follow to obtain approval of refunds covered by the Board's May 27, 2009, delegation. Once a refund in excess of \$50,000 is fully approved, staff will prepare a public record of the proposed refund and transmit it to the Board Proceedings Division.

DGO:td
Attachments

cc: Mr. Alan LoFaso – MIC: 71
Ms. Barbara Alby – MIC: 78
Mr. Lou Barnett
550 Deep Valley Drive, Suite 355, Rolling Hills Estates, CA 90274
Mr. Steve Shea – MIC: 72
Ms. Marcy Jo Mandel
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Mr. Ramon J. Hirsig – MIC: 73
Ms. Kristine Cazadd – MIC: 83
Ms. Randie L. Henry – MIC: 43
Mr. Kevin Hanks – MIC: 49
Mr. David Gau – MIC: 63
Mr. Randy Ferris – MIC: 82
Mr. Lee Williams – MIC: 78
Ms. Margaret Pennington – MIC: 78
Mr. Bradley Heller – MIC: 82
Ms. Toya Davis – MIC: 80

Staff Procedures for Approving Delegated Refunds
Prior to Preparation of Public Record for Refunds Over \$50,000

