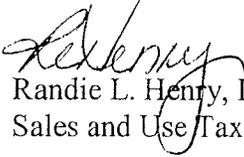


M e m o r a n d u m

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

Date: November 25, 2008

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

Subject : **Proposed Revisions to Compliance Policy and Procedures Manual Chapter 4, Security.**

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 4, *Security*, 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 November 19, 2008, we sent a memorandum advising Board Members that there were no comments and of our intention to place these revisions on the December 17, 2008 Administrative Agenda as a consent item.

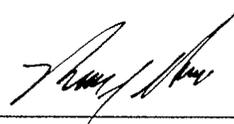
Copies of the proposed revisions are attached for your reference. We request your approval to forward these proposed changes to the Board Proceedings Division for placement on the next Administrative Agenda as a consent item.

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. Robert Buntjer (MIC 49)
Ms. Kelly Reilly (MIC 47)
Ms. Erin Little (MIC 46)

M e m o r a n d u m

To : Honorable Judy Chu, Ph.D., Chairwoman
Honorable Betty T. Yee, Vice Chair (MIC 71)
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable Michelle Steel, Member, Third District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

Date: November 19, 2008

From : Jeffrey L. McGuire, Chief 
Tax Policy Division, Sales and Use Tax Department (MIC 92)

Subject : **Proposed Revisions to Compliance Policy and Procedures Manual, Chapter 4, Security.**

Proposed revisions to Compliance Policy and Procedures Manual Chapter 4, *Security*, were sent to you on August 27, 2008 and then posted on the Board's website on September 17, 2008, for 60 days to solicit comments from interested parties. We received no comments from the public. Copies of the proposed revisions are attached for your reference.

In accordance with established procedures for audit and compliance manual revisions, we will submit the proposed revisions to the Board Proceedings Division for placement on the December 17, 2008, Administrative Agenda as a consent item.

If you have any questions about the changes or the manual revision process, please contact me at (916) 324-1825.

JLM:dr:lsc

Attachment

cc (all with attachments)

Mr. Steve Shea, Board Member's Office, Fourth District (MIC 72)
Mr. Alan LoFaso, Board Member's Office, First District (MIC 71)
Mr. Lee Williams, Board Member's Office, Second District (MIC 78)
Mr. Ken Maddox, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Ms. Randie L. Henry (MIC 43)
Ms. Susanne Buehler (MIC 40)
Mr. Richard Reger (MIC 40)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Hellmuth (MIC 50)
Mr. Dave Rosenthal (MIC 50)

SECURITY **400.000**

GENERAL STATEMENT ON SECURITY **405.000**

POLICY **405.005**

The Board of Equalization is required to obtain or authorized to impose a security deposit from a permit or license applicant subject to certain limitations. The various tax and fee programs administered by the Board of Equalization have unique security deposit requirements. The table in CPPM section 405.030 summarizes the applicable minimum and maximum security deposit amounts for other than the sales and use tax program.

Revenue and Taxation Code (RTC), section 6701 authorizes the Board of Equalization to require "any person" subject to sales and use tax law to post a security deposit to help ensure compliance. For sales and use tax accounts, the minimum amount for a security deposit is \$2,000. The maximum amount by statute may not exceed \$50,000. The security deposit requirement follows the person, not the account. Therefore, if a person has posted a security deposit or deposits totaling \$50,000 and opens another business under a new seller's permit, no additional security may be requested.

The security provisions for tax and fee programs where security is not mandatory, must be judiciously administered. All relative factors will be considered when setting the amount of security to be posted and unusual or excessive demands should not be made. (See CPPM 405.020 for security deposit policy for new accounts.)

When a security deposit is required, the taxpayer is given a copy of Form BOE-598-LZ, *Notice of Security Requirements*, and from the types listed, allowed to select the security deposit best suited to the taxpayer's circumstances. The taxpayer should be given a reasonable length of time (normally 30 days) to post the deposit. A security deposit may also be made in installments (CPPM 410.010). In these cases, the 30-day period may need to be extended. However, if the taxpayer fails to post the deposit within the timeframe allotted, the account will be scheduled for revocation (See CPPM 340.000). Issuing a seller's permit will not be delayed pending receipt of a security deposit.

~~For each tax program administered, the Board is either required or authorized to obtain security, within certain limitations, to ensure payment of any tax that might become due or delinquent. When security is deemed necessary, minimum security of \$2,000 has been set by Board policy for sales and use tax accounts, and the maximum is set by law. The maximum for sales and use tax accounts is determined for each account by using the "estimated average tax liability" and may not exceed \$50,000.~~

~~The security provisions, particularly under sales tax laws where security is not mandatory, must be judiciously administered. Unusual or excessive demands will not be made. (See CPPM 405.020 for security deposit policy for new accounts.)~~

SECURITY AUTHORIZED

405.015

~~As specified by Revenue and Taxation Code (RTC) section 6701, the Board is authorized to require security when deemed necessary.~~

~~All relevant factors must be considered in setting the amount of security, and care must be taken to be sure that demands do not exceed the limits set by law.~~

SECURITY — NEW ACCOUNTS/NEW OWNERS/EXISTING ACCOUNTS

405.020

General Guidelines

In general, the Board of Equalization will not require an applicant for a seller's permit to post a security deposit unless:

1. The applicant has previously established a history with the Board of Equalization of late payments or delinquencies, or
2. The applicant is a corporation or LLC.

In determining whether or not security is necessary to protect the interest of the State, consideration should be given to such factors as:

1. The applicant's payment history, if any, with the Board of Equalization. If the applicant has held prior permits, his or her prior history may very well indicate future actions. A poor payment history includes such acts as multiple delinquent returns and/or multiple liabilities.
2. Type of ownership. Sole proprietor and partnerships consisting of individuals are generally a lower risk than other types of ownership. Any decision to either conditionally waive or release security for other entities should be weighed carefully with special attention given to the State's interest, balanced with sound public policy, good judgment, and the specific facts and history of the taxpayer.
3. A corporation's financial condition. A recent financial statement is often helpful in making this determination.
4. The history of the individual forming a new closely held corporation. If the individual forming the closely held corporation has established a prior good payment history with the Board of Equalization, then the security may be waived.

The above list is not all inclusive but should be helpful in implementing the Board of Equalization's security policy.

In cases where an existing account has been revoked twice, security will be required presuming the account meets the required minimum security amount.

The security will be obtained after the account has been reinstated.

~~Initial security will not be required from applicants for seller's permits (excluding corporations), except when the applicant has previously established a history with the Board of multiple late payments, dishonored checks, partial or no remittance returns or similar problems. Certificate of Registration Lender (SL) accounts are not required to provide a security deposit.~~

Non-Corporate Owners

As noted above, for sales and use tax purposes, if the owner(s) of the business (sole proprietor, partnership, joint venture, fraternal associations, etc.) does not have a history of payment problems with the Board of Equalization, no initial demand for security will be made unless required by statute. However, the applicant will in every instance be advised that failure to meet the requirements of correct and timely payment and reporting may result in security being demanded to the maximum amount allowed by law. The taxpayer should also be advised that failure to post security when required may result in revocation of the seller's permit. (Note: Certificate of Registration-Lender (SL) accounts are not required to post a security deposit).

~~If the owner(s) of the business (sole proprietor, partnership, joint venture, fraternal associations, etc.) does not have a history of payment problems with the Board, no initial demand for security will be made. The applicant will, however, in every instance be advised that failure to meet the requirements of correct and timely payment and reporting may result in security being demanded to the maximum allowed by law, and the failure to place security when demanded will result in revocation of the seller's permit.~~

Corporations

Posting a security deposit is generally required of corporations and LLCs. The requirement to post a security deposit may be waived if the corporation or LLC has sufficient interest in real property in this state or if the facts and circumstances indicate that posting a security deposit is not necessary.

~~In regard to corporate ownership, including Limited Liability Companies (LLCs), security will generally be required unless the corporation has sufficient interest in real property in this State to obviate that necessity or facts and circumstances encountered do not warrant the requirement of security for a corporation. Security should only be imposed when warranted based upon the facts and circumstances.~~

General Guidelines

~~In determining whether or not security is necessary to protect the interests of the State, consideration should be given to such factors as:~~

- ~~1. The applicant's payment history, if any, with the Board. If the applicant has held prior permits, his or her prior history may very well indicate future actions. A poor payment history includes such acts as multiple~~

~~late payments, dishonored checks, EFT non payments not resolved by a section 6592 or 6593 request, partial or no remittance returns, revocations or fraud assessments.~~

- ~~2. Type of ownership — Sole proprietor and partnerships consisting of individuals are generally a lower risk than other types of ownership. Any decision to either conditionally waive or release security for other entities should be weighed carefully with appropriate weight given to the State's interest, balanced with sound public policy, good judgment, and the specific facts and history of the taxpayer.~~
- ~~3. A corporation's financial condition. If the corporation owns real estate in which there is sufficient equity to secure future tax obligations, security may be waived. A recent financial statement will be of assistance.~~
- ~~4. History record of the individual forming a new closely held corporation. If the individual forming the closely held corporation has established a prior good payment history with the Board, then the security may be waived.~~

~~The list is not meant to be all inclusive, but should be useful in implementing the Board's security policy.~~

~~BOE 1000, Notification of Conditional Security Requirement~~

~~The applicant will, in every instance, be advised that failure to meet the requirements of correct and timely payment and reporting may result in security being required to the maximum allowed by law. Form BOE 1000, Notification of Conditional Security Requirement, will be prepared and signed by a Board of Equalization employee in every case when security is waived at the time of the original application. The signed original will be given to the taxpayer and a notation made on the on-line registration system.~~

~~Issuance of Permit When Security is Required~~

~~Issuance of the permit will not be delayed merely to obtain security. A reasonable length of time in which to post the required security should be given (30 days recommended). A security deposit may be made in installments. See CPPM 410.010.~~

~~Revocation for Failure to Post Security~~

~~Should the taxpayer fail to post the required security, the account should be scheduled for revocation. (Refer to CPPM 340.000 et. seq. for policy and procedure in citing an account for failure to post security.)~~

MAXIMUM AND MINIMUM SECURITY POLICY

405.030

The current maximum security for sales and use tax is \$50,000 pursuant to RTC section 6701. Except as noted below, the maximum amount of security for persons filing returns for quarterly periods is twice the estimated average quarterly tax liability, or for persons required to file monthly tax returns, the maximum amount of security is three times the estimated average liability. The maximum amount of security for a person who has been given a notice of hearing pursuant to RTC section 6070 to show cause why his or her permit should not be revoked, or a person whose permit has been revoked, is three times the average quarterly tax liability or five times the average monthly tax

liability. If an applicant applies for a new permit but previously had an account that was cited or revoked, the security required would be three times the average quarterly tax liability or five times the average monthly tax liability, as the taxpayer has established a poor payment history.

Per ~~Board~~-Board of Equalization policy, the amount of security for prepayment accounts is one quarter's estimated tax liability. Board of Equalization ~~Board~~ policy states that the maximum amount of security for a prepayment account which has been given a notice of hearing to show cause why the permit should not be revoked or for a person whose permit has been revoked is twice the average quarterly tax liability.

The ~~Board~~-Board of Equalization has established a minimum security policy of \$2,000 unless set by statute for sales and use tax accounts. Therefore, if the amount of security required is computed to be less than \$2,000, security should ~~generally~~will be waived. ~~Security amounts less than \$2,000 should be requested in rare instances and only with the prior approval of the District Administrator.~~

The following table summarizes the applicable minimum and maximum security required for taxes and fees administered by the ~~Board~~-Board of Equalization other than sales and use taxes.

<u>Tax/Fee Program</u>	<u>RTC</u>	<u>Minimum Security</u> (Set by Policy Unless Noted)	<u>Maximum Security</u>
<u>Motor Vehicle Fuel Tax</u>	<u>7486</u>	<u>\$2,000</u>	<u>See Note 1</u>
<u>International Fuel Tax Agreement</u>	<u>60401</u>	<u>\$2,000</u>	<u>See Note 1</u>
<u>Use Fuel Tax</u>	<u>8951</u>	<u>\$2,000</u>	<u>None</u>
<u>Diesel Fuel Tax</u>	<u>60401</u>	<u>\$2,000</u>	<u>See Note 1</u>
<u>Underground Storage Tank Fee</u>	<u>50108.2</u>	<u>\$2,000</u>	<u>None</u>
<u>Oil Spill Fees</u>	<u>46401</u>	<u>\$2,000</u>	<u>None</u>
<u>Childhood Lead Fee</u>	<u>43102</u>	<u>\$2,000</u>	<u>None</u>
<u>Disposal Fee</u>	<u>43102</u>	<u>\$2,000</u>	<u>None</u>
<u>Generator Fee</u>	<u>43102</u>	<u>\$2,000</u>	<u>None</u>
<u>Facility Fee</u>	<u>43102</u>	<u>\$2,000</u>	<u>None</u>
<u>Environmental Fee</u>	<u>43102</u>	<u>\$2,000</u>	<u>None</u>
<u>Occupational Lead Fee</u>	<u>43102</u>	<u>\$2,000</u>	<u>None</u>
<u>Ballast Water Management Fee</u>	<u>55022</u>	<u>\$2,000</u>	<u>None</u>
<u>Integrated Waste Management Fee</u>	<u>45102</u>	<u>\$2,000</u>	<u>None</u>

<u>Tire Recycling Fee</u>	<u>55022</u>	<u>\$2,000</u>	<u>None</u>
<u>Electronic Waste Recycling Fee</u>	<u>55022</u>	<u>\$2,000</u>	<u>None</u>
<u>Water Rights Fee</u>	<u>55022</u>	<u>\$2,000</u>	<u>None</u>
<u>Cigarette and Tobacco Products</u>	<u>30142</u>	<u>\$1,000 (See Note 2)</u>	<u>None (See Note 3)</u>
<u>Alcoholic Beverage Tax</u>	<u>32103</u>	<u>\$500 (See Note 2)</u>	<u>None (See Note 4)</u>
<u>Energy Resources Surcharge</u>	<u>40036</u>	<u>\$2,000</u>	<u>None</u>
<u>Emergency Telephone Surcharge</u>	<u>41041</u>	<u>\$2,000</u>	<u>None</u>
<u>Natural Gas Surcharge</u>	<u>55022</u>	<u>\$2,000</u>	<u>None</u>
<u>Timber Yield Tax</u>	<u>38501</u>	<u>\$2,000</u>	<u>\$10,000</u>

Note 1: The amount of security shall not be more than three times the estimated average monthly tax liability, however, the total amount of security shall not be in excess of \$1,000,000 where the person has established to the satisfaction of the ~~Board~~ Board of Equalization that it has equity in real property to which a lien imposed by either Section 7872 or Section 60445 would attach.

Note 2: Set by statute.

Note ~~2~~ 3: If a distributor desires to defer payments for stamps or meter register settings, the ~~Board~~ Board of Equalization shall require a security deposit equal to not less than 70, 50, or 25 percent of the amount and no more than twice the amount (based on the deferred payment plan elected), and no more than twice the amount, as fixed by the Board of Equalization, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

Note ~~3~~ 4: The maximum amount will be not more than twice the taxpayer's estimated monthly tax for taxpayers reporting ~~monthly~~ monthly or not more than twice the taxpayer's estimated tax for the tax reporting period for taxpayers reporting for periods longer than one month.

RELEASE AND REFUND OF SECURITY — ACTIVE ACCOUNTS

405.035

RTC section 6701, effective January 1, 1997, states in part:

"Security held by the Board shall be released after a three-year period in which the person has filed all returns and paid all tax to the State or any amount of tax required to be collected and paid to the State within the time required."

Similar language to RTC section 6701 can be found in RTC sections 7486 (Motor Vehicle Fuel Tax Law), 60401 (Diesel Fuel Tax Law), 40036 (Energy Resource Surcharge), and 4101 (Emergency Telephone Surcharge).

The above includes all types of ownership. Security held by the Board for three years shall be released in a timely manner if the taxpayer meets the provisions of section 6701. As a matter of policy, unless statutorily prohibited, the Board of Equalization will release security deposits that meet the following criteria:

1. The security deposit has been held for at least three years.
2. The account has no current accounts receivable (includes both final and non-final liabilities, but does not include unbilled differences).
3. The account has no current delinquent return(s).
4. The account has no more than two instances within the last twelve months of non-compliance with items two and three above. For this criteria, staff will use the Statement date, Demand date or the Notice of Determination date for accounts receivable. If a liability has both a Notice of Determination date and a Statement date or Demand date, staff will use the Statement date or Demand date. For delinquencies, the delinquency established date will be used.

For accounts in which the security deposit is paid in installments, look at the effective date of the first payment to determine the start of the three year period. If the first payment is three years old and the account meets the other release criteria, all of the security deposit will be released.

A list of accounts with security held for three years which appear to meet the criteria for refunding is produced from the Security System each month. The list is e-mailed to the district offices and applicable divisions within the Property and Special Taxes Department (PSTD) at the beginning of each month. The eligible deposits must be released before the end of each month.

A denial letter will be mailed to taxpayers if the security deposit does not meet the release criteria. The denial letter informs the taxpayer of the reason the security deposit is not eligible for release and that their account will be reviewed again in six (6) months. A contact name for each district and PSTD division is provided in case a taxpayer has questions regarding the release of the security deposit. The denial letters will be automatically generated by IRIS.

As part of the security review process for accounts with a three-year good record, the release (termination) of guaranties and surety bonds may now be initiated by the Board of Equalization with an immediate effective date. In cases where the Board of Equalization initiates a release of security, the release of security is not contingent upon receipt of a written request received by the taxpayer.

~~However, this change does not affect the law and current policy and procedure for guarantors and bonding companies that wish to terminate a guaranty or surety bond. Guarantors and sureties must notify the Board, in writing, of the intention to terminate the guaranty or surety bond. The cancellation is effective~~

~~30 days from receipt of the request.~~

~~Lists of accounts with security posted for three years, which appear to meet the criteria for refunding, are produced from the Security System each year in April and October. The refunding and releasing of security should be handled timely.~~

~~Personal guaranty-guaranties and surety bonds cancellations that are Board initiated should be marked (i.e. highlighter, red line, circle, or checkmark) on a copy of the three-year list that are eligible for release must have the security requirement ended in the Security System. For each of the marked accounts, the requirement listed on the Security System must be ended. This is done by ending the security on line by entering an "E" in the action field on the SEC RQ screen. The taxpayer should then be notified of the cancellation by sending a Form BOE-168-B, Notification of Surety Bond Non-Renewal, or BOE-168-C, Release of Personal Guaranty, depending on the type of security released. The marked list and a memorandum or an e-mail must be sent signed by the District Administrator or designated District Principal Compliance Supervisor or District Administrator must be sent to the Registration and Security Control Team Unit in the Local Revenue Allocation Unit (LRAU) Allocation Section (LRAS) requesting to end the security record to cancel the security record.~~

~~When the list is received by the Registration and Security Control Team Unit in LRAS, staff will update the cancellation information on the Security System by entering an end date for the surety bond or personal guaranty. The effective date will be the date of the memorandum or e-mail.~~

~~-For divisions within the PSTD, the division Administrator or designated supervisor will send an e-mail or memorandum to PSTD staff handling security deposits requesting to end the security record. When the list is received, the cancellation information will be updated. Only accounts marked will be canceled. The effective date of cancellation will be the date of the memorandum or e-mail.~~

~~The surety bond should not be exonerated unless the Board of Equalization receives a request from the bonding company and the account meets the requirements as stated in CPPM 410.025.~~

~~These changes do not affect the law or current policy and procedures for guarantors and bonding companies that wish to terminate a guaranty or surety bond. Guarantors and sureties must notify the Board of Equalization, in writing, of the intention to terminate the guaranty or surety bond. The cancellation is effective 30 days from receipt of the request.~~

INCREASING SECURITY REQUIREMENTS

405.040

It is the policy of the Board of Equalization not to increase security unless the increase is necessary for the protection of the State's interest. The amount of security required at the time the application is filed should not be increased merely because the amount of tax later reported is greater than originally anticipated. However, in some instances, a reasonably accurate estimate

cannot be made at the time of application, and it is necessary to re-examine the security requirements after the business has operated for several months. In such cases, the applicant must be made aware that security requirements are subject to a later review. After review, the security should ~~then be properly~~ adjusted accordingly ~~either upward or downward~~. This procedure should be necessary only in a limited number of cases. Where applicants have made extremely conservative estimates relating to sales volume ~~to minimize the amount of security~~, the amount may be increased without delay.

When a taxpayer files a "no remittance" return, ~~submits a dishonored check, or presents a~~ ny collection problem, the adequacy of security should be reviewed. If it is found that security is not the maximum permitted under the law and it is determined that additional security should be posted, ~~the~~ additional amount should be demanded (See CPPM 405.030).

If, after giving the ~~person~~ taxpayer notification of the additional security amount required, and the security is not posted within thirty (30) days ~~a reasonable period of time~~, the taxpayer should be cited for revocation of the permit for failure to post security (See CPPM 340.000 et. seq.).

SECURITY UNDER BANKRUPTCY

405.043

Trustees or debtors who operate businesses after the debtor has filed for protection under the Bankruptcy Code are required to conduct the operation according to the laws of the State in which they operate the business. A person's filing for protection under the Bankruptcy Code is not a basis for increasing or demanding security. Any security on deposit should remain on deposit as the security is being held in trust for the sales and use tax and for property and special taxes (except for the Fee Collection Procedures Law). ~~However, if the security is released, it will be released to the trustee.~~ The Board of Equalization may increase security under appropriate circumstances as provided in CPPM 405.040.

SECURITY ADJUSTMENTS AND CHANGE OF REPORTING BASIS

405.045

Additional security is not required when the reporting interval of an account (reporting basis) is shortened or extended, unless the change is necessary to address an unsatisfactory reporting or payment record of the taxpayer.

DISTRICT AND PSTD DIVISIONS RESPONSIBILITY FOR SECURITY

405.050

The districts and PSTD divisions ~~is~~ are responsible for determining the amount of security required of the taxpayer and ~~has~~ have full control over the establishment of the security account, the preparation of security receipt advice documents, and the preparation of forms to correct, transfer, release or terminate a security account record.

Each district and PSTD division will maintain a file that ~~will~~ contains a copy of each Form BOE-487-C, Cash/Liquid Security Deposit Advice, with corresponding certificates attached. The file will be kept in terminal digit order. Security measures in accordance with policy established for controlled forms will be taken to ensure safekeeping of these files.

Cash security is refunded by the district office or PSTD division. Each office and PSTD division has an allotted number of ~~Board~~ Board of Equalization

checks. These checks are written for ~~both~~ refunds to the taxpayer ~~and for~~ releases to the Board for payment of liabilities. Each check is reconciled by the Accounting Section to verify the check numbers issued and amounts issued by the district or PSTD division. If excess cash security is released in error, the district or PSTD division must recover the funds. Once the funds are recovered, the district or PSTD division needs to send an explanatory memorandum and the funds to the Accounting Section for deposit in the security deposit bank account, and re-deposit them into the security deposit bank account.

Comments in IRIS

Staff should be adding comments in the IRIS system when the following occurs:

- The security documents (i.e. TCD's) are mailed to the tax/fee payer after the security has been released.
- The security deposit is released outside the release guidelines.
- The returned check, TCD or bond/guaranty is mailed to a different address.
- The BOE-168B, *Notification of Surety Bond Non Renewal* or the BOE-168C, *Release of Personal Guaranty* has been mailed.
- The taxpayer calls with questions regarding the release of his or her security.
- The mailing address has been confirmed on closed out accounts when mailing the security deposit check or other security documents.
- The security deposit is not being released on a closed out account.

Inter-district Cooperation

If the taxpayer mails the security document (i.e. TCD/Bond) to the incorrect district, the document will be forwarded to the district of control. However, cash deposits will be processed at the district where it was received. Walk-ins will be processed at any district and the documentation will be forwarded to the district of control and, when applicable, to the Local Revenue Allocation Unit. Comments will be added in the IRIS system documenting the transactions.

HEADQUARTERS RESPONSIBILITY — SECURITY

405.055

Registration and Security Control Team in ~~Local Revenue~~Return Analysis and Allocation Section (LRAS)

The district office is responsible for establishing, transferring and releasing security transactions while the Registration and Security Control Team ~~Unit in~~ LRAS is responsible for overseeing the processes of, correcting, terminating and approving security deposit record transactions. Periodic security inventory listings and other pertinent data are produced from the information in the system for both the district offices and Headquarters.

PSTD divisions handle all aspects of security maintenance for their accounts.

Accounting Section

The Accounting Section is responsible for the Security Trust Fund accounting and preparation of financial statements for submission to control agencies. It is also responsible for the bank account maintained for the exclusive use of Security Trust deposits and disbursements. This also includes ing the issuance of the blank check stock to district offices and PSTD divisions and overseeing the blank check stock accountability.

The Accounting Section reconciles the security processed by the ~~Registration and Security Control Team in LRAS~~ district offices and PSTD divisions to the actual cash received, as reported by the Cashier Unit. All security transactions are recorded to reflect the ~~Board's~~ Board of Equalization's liability for the security collected from taxpayers or refunded to taxpayers. The liability is specific to the type of security collected, i.e. time certificates, cash, etc. Financial statements are prepared to reflect the status of this fund.

The Accounting Section is solely responsible for issuing replacement (in-lieu) checks to taxpayers whenever the original checks are lost. Whenever checks are returned, the Accounting Section determines when disposition to the Unclaimed Trust Fund is warranted.

UNIFORM SECURITY — SUBSIDIARY CORPORATIONS AND FRANCHISED OUTLETS

405.075

No action will be initiated by any district or branch office to establish a uniform statewide security policy for subsidiary corporations or franchisees unless a request is received from the parent corporation or the district office determines that inequities in the treatment of the taxpayer exist.

When such cases are discovered, they should be referred to the district in which the home office is located or to the district where the person with authority to act on behalf of the parent corporation is located. That district will investigate and decide the appropriate security requirements.

The decision made by the district of control will represent the Board of Equalization's policy in connection with the overall operations of the subsidiaries or franchisees. If it is decided that all subsidiaries or franchisees shall be required to post security, then security in an amount provided for in RTC section 6701 will be required by any district in which an application is filed. If the district of control concludes that the parent corporation is to be allowed to ~~guarantee~~ guaranty the tax of its subsidiaries or franchisees, then each district in which an application is filed will accept the guaranty of the parent corporation. The guaranty should contain a penal sum conforming to the guidelines of RTC section 6701, but not less than \$5,000. The penal sum of a bond is the maximum amount specified in the bond for which a surety can be held liable.

Determination of Acceptability

By careful analysis of their financial documents, the district office of control should determine the franchisor's or parent corporation's ability to satisfy its outstanding guaranties.

District Office Procedure

The district issuing the seller's permit will verify the acceptability of a parent corporation or franchisor's guaranty by contacting the district of control. It will be the responsibility of the controlling district to keep their files current and to notify the parent corporation or franchisor when the Board of Equalization will no longer accept it as a guarantor for their subsidiaries or franchisees.

TYPES OF SECURITY

410.000

TAXPAYER'S CHOICE OF SECURITY

410.005

When security is required, the applicant is given a copy of Form BOE-598-LZ, *Notice of Security Requirements*, and allowed to select the type of security he or she prefers. *Under no circumstances will the taxpayer be referred to a specific bank, saving and loan association, credit union, or bonding agent which may provide the security.*

Form BOE-598-LZ, *Notice of Security Requirements*, is automatically printed by the on-line security system when the requirement is added, and is used to notify the taxpayer that initial security, ~~and~~ additional security, or replacement security is required. A copy is retained by the district office or PSTD division and used as a follow-up system and reminder to cite the account on-line when security is not posted.

Subject to specific conditions, ~~five-six~~ types of security are acceptable for purposes of fully complying with the security requirements of the Board of Equalization. These are:

1. Cash Deposits
2. Deposit accounts in banks, savings banks, and savings and loans including Insured Accounts, Fully Paid Investment, Bonus Investment Certificates and Accumulative Investment Certificates
3. State and Federal Credit Union Shares
4. Surety Bonds
5. Guaranties
6. Letter of Credit (applicable only for Cigarette Distributor accounts on deferred payment issued by the Excise Taxes Division)

There are two "types" of deposits that indicate why the security is taken and under what conditions it is to be refunded.

1. **Regular** — A continuing deposit which may be any ~~one~~ of the acceptable ~~kinds-types~~ of security to cover any ~~one~~ of the tax programs. This is the normal security deposit posted by the taxpayer to ensure payment of tax liability. After the security has been held for three years and it meets the release criteria, the security will be released (See CPPM 403.035). However, if the account has-is closed out, this type-of-the deposit is applied to any unpaid liability-liability before it is or released to the

depositor.—

- 2. 3rd Party** — A deposit made by a “third party” such as a finance company, dealer or some person other than the taxpayer to obtain a tax clearance. The deposit is refunded to the person who made the deposit when the tax is determined and payment made by the taxpayer or when the deposit is made for an offer in compromise and the offer is not accepted. If collection cannot be made from the taxpayer, the deposit will be applied to amounts due to the date of deposit. For instructions on application of Third Party Deposits ~~(—sSee CPPM 410.080) and 430.000.~~

CASH DEPOSITS — TAXPAYER’S CHOICE

410.010

Cash deposits may be made by cash, money order, cashier’s check, or personal check and may be accepted in installments (see On-Line Security User Manual pages 1–6). When the taxpayer is unable to post the full amount, a security deposit installment payment agreement may be established for a maximum of twelve payments. A security requirement which can not be completed in twelve months will be reviewed after the 12th month. ~~When the taxpayer is unable to post the full amount, the installment arrangement should generally not extend over ninety (90) days.—~~

Cash is not considered available for application until the date of closeout, or until security is no longer required. If a cash deposit is to be released while the account is still ~~active,~~ active, ~~and~~ and is to be applied entirely or partially to any liability, ~~#the security is considered~~ reconsidered available as of the date the ~~Board~~ Board of Equalization determines it is no longer needed. Cash deposits do not earn interest as these funds are held by the Office of the State Treasurer, who lacks the statutory authority to pay interest on deposit. Therefore, staff should encourage taxpayers to post security in interest bearing accounts such as time certificate of deposits. A cash deposit posted by personal check cannot be refunded until sufficient time has elapsed to allow for clearance of the check by the bank.

DEPOSIT ACCOUNTS

410.015

To be accepted as security, deposit accounts in banks, savings banks, and savings and loans that are submitted as security must:

1. Be issued by a bank insured by the Federal Deposit Insurance Corporation.
2. Have the State Board of Equalization as the account holder (for example: State Board of Equalization, F.B.O. depositor’s name).
3. Must be automatically renewable at the date of maturity and may include a right of cancellation clause.
4. Have any interest earned paid to the depositor, not to the Board of Equalization.

In most cases, deposit accounts are accepted only from financial institutions will only be accepted from branches located in California. Taxpayers should not

be required to post a time certificate of deposit in an amount less than \$2,000, except for installments in amounts less than \$2,000 (The Cigarette and Tobacco Products Law requires minimum security of \$1,000).

An exception to the "in-state branch" rule exists for security deposits posted for out-of-state Wine Direct Shipper accounts. Business and Professions Code section 23661.2 provides that an individual or licensee in a state that affords California licensees or individuals an equal reciprocal shipping privilege, may ship, for personal use and not for resale, no more than two cases of wine (no more than nine liters per case) per month to any adult resident in this state. The out-of-state wine direct shipper must apply with the Board of Equalization and obtain a seller's permit. Under the Sales and Use Tax Law, such a seller may be required to post a security deposit. It is permissible to accept a security deposit from an out-of-state bank to avoid the unnecessary complication of having out-of-state wine direct shippers open a bank account with a California financial institution for the sole purpose of posting a security deposit. Although not issued by the Board of Equalization, the out-of-state wine direct shipper must also obtain a Type 82 license and post a \$500 security deposit with the Department of Alcoholic Beverage Control.

The original evidence of deposit, such as the certificate or deposit receipt (when a certificate is not issued) must be submitted to the Board of Equalization. The name of the depositor on the deposit account should agree with that of the taxpayer(s) on the application (not the firm name or DBA). An exception may be made in rare instances, such as ~~husband and wife~~ married co-ownership situations or partnerships, but in no case should an An original evidence of deposit should not, be taken accepted when naming as the sole depositor is not listed a person who is not as an owner, partner, or wife or husband spouse of the owner. However, it may also include DBA's, or names of others having an interest in the security as a protection of their interests.

Financial Institution Acknowledgement

The Board of Equalization will request authorized representatives of savings institutions to complete the acknowledgement portion of the second page of Form BOE-598. The signed acknowledgement portion shows that the savings institution understands its liability for funds transferred or released without a Board of Equalization release endorsement. The signed acknowledgement is to be kept with the original evidence of deposit in a Board of Equalization district office or PSTD division.

Waiver of Early Withdrawal Penalty

The Board of Equalization will request authorized representatives of savings institutions to agree to waive the early withdrawal penalty agreement and complete the agreement portion of the second page of Form BOE-598.

SURETY BONDS

410.025

These are bonds executed by the taxpayer as principal and issued by a surety corporation that is authorized to conduct business in this State. Surety bonds

have an effective starting date and the surety has no liability for amounts incurred prior to that date. A surety can be held liable only for that amount which is measured by transactions occurring during the period the bond was in effect.

Surety bond forms must be signed by the principal (i.e., an individual, a member of a partnership, an officer for the corporation, or one of the managing members for an LLC, one of the general partners for an LLP, the trustee for an Unincorporated Business Trust), or signed by an attorney-in-fact or by a representative of the bonding company.

Taxpayer Named on Surety Bond

Surety bonds *must* be written indicating the name of the principal substantially as shown on the permit or license.

In this regard, ~~if~~ for an individual or partnership account, the first name, an initial or initials are acceptable, provided the surname or surnames are correct. Initials only, however, with certain common names, i.e., Smith, Jones, Johnson, may pose an identification problem in the Registration and Security Control Team Unit in LRAS when the surety bond is received directly with no identifying account number. Districts may be asked to assist in the identification of such bonds if the need arises. All names, in the case of partnerships, must be shown.

~~if~~ For a limited partnership, the names of the general partners and the name of the limited partnership will be shown.

Surety Bond Verification

Upon receipt of the bond, staff must verify the bond contains the following information:

1. The correct taxpayer's name.
2. The physical address of the business must be listed. Addresses listing a PO Box will not be accepted.
3. The penal sum is the same as the amount requested by the Board of Equalization.
4. The date the bond became effective.
5. An original signature of the attorney-in-fact or a representative of the bonding company.

~~The firm name and business address will not be shown.~~

Surety Bond Termination and Principal Sum Reduction Riders

Surety terminations are directed to the Board of ~~by~~ Equalization by surety companies in writing and they must be signed by the attorney-in-fact. ~~Notices received from insurance agents are not acceptable, as these must be authorized by the insurance company to be effective.~~ Properly executed termination notices become effective thirty (30) days after receipt by the Board of Equalization. The penal sum of any bond, which is the maximum amount specified in the bond for which a surety can be held liable, can be changed only

by a rider executed by the surety. A rider decreasing the principal sum of the bond becomes effective thirty (30) days after its receipt by the Board of Equalization.

Successor's Liability

Unlike other types of security, a surety can never be held liable for an amount of sales or use tax due from its principal under successor's liability.

Surety Bond Exoneration

Requests from surety or taxpayers for the exoneration of a bond will involve a cooperative effort on the part of the ~~D~~district, the Registration and Security Control ~~Team Unit in LRAS~~, and the Special Procedures Section.

Surety bond exoneration requests, which accompany payments from surety companies as a result of a demand on a surety bond, will be processed by the Special Procedures Section. The Special Procedures Section ~~retains~~has responsibility for notification to surety, demands on bonds and other activity with respect to collection from surety.

Surety bond exoneration requests received in Headquarters will be sent to the Registration and Security Control ~~Team Unit in LRAS~~ for an account number search only. When the district of control has been established, the request will be forwarded to that district for action. District offices may also receive requests directly from surety companies. The district office must confirm that there are no accounts receivables or delinquent periods and no current or future audit activity is planned for the period in which the bond is in effect. ~~Unilateral exoneration's for surety bonds appearing on three year security release lists may be processed after the preceding review is completed. (See CPPM 405.035)~~

The district will enter exoneration information into the on-line ~~S~~security system. If the exoneration is approved by the district, Form BOE-1152 will be printed and mailed to the surety company. If the exoneration is denied, Form BOE-322 will be printed and mailed to the surety company. The system will require an on-line comment for either of the preceding two actions.

PSTD divisions will process the exonerating requests for their accounts.

Districts and PSTD are reminded that once a bond is exonerated it is no longer available for demand.

SURETY BOND TRANSFERS

410.026

Occasionally, riders or endorsements are received from sureties that would transfer a bond from one entity to another. This usually occurs when a partner is being added or dropped.

Such riders or endorsements transferring the bond from one entity to another are not acceptable if the predecessor is delinquent in reporting or paying or there is the potential for an audit-generated liability. The bond is issued for a specific penal sum and should demand be made for predecessor's liability, the penal sum available for security under the successor's amount is reduced by the amount demanded on account of the predecessor.

When a district elects to accept a rider or endorsement transferring a bond from

one account to another, it will provide a statement to the effect that the predecessor's account is clear and no audit-generated liability will be incurred. The statement will be signed by the District Principal Compliance Supervisor.

SAVINGS AND LOAN INSURED ACCOUNTS

410.030

There are various types of savings and loan insured accounts that the Board of Equalization will accept as security. The three types of insured accounts most widely accepted are the fully paid investment certificate, accumulative investment certificate, and the bonus certificate. Fully paid investment certificates are issued for \$100 only or multiples thereof. The savings and loan institution is required to pay directly to the depositor the interest that accrues on the funds on deposit.

Accumulative investment certificates are issued for any amount and are not restricted to multiples of \$100. The interest that accrues on these deposits is credited to the account and is paid to the depositor upon request and as a withdrawal. The passbook, savercard or passcard is not relinquished by the Board of Equalization to either the taxpayer or the association for purposes of posting interest accruals, interest withdrawals, or posting increases to the amount of the insured account. If the amount of the insured account is to be increased, the taxpayer will furnish the Board of Equalization with a deposit receipt in the amount of the increase and a new assignment form in the new total amount of the account. The deposit receipt will be held with the account passbook until such time as the insured account has been cashed or reassigned to the taxpayer.

If nothing is owing when an insured account is to be released, the Board of Equalization's interest in the funds on deposit is assigned back to the taxpayer. If, however, there is a liability owing, the evidence of the account (certificate, or deposit receipt and/or passbook, savercard or passcard) must then be sent to the savings and loan institution to be cashed. The savings and loan institution will then forward a check payable to the Board of Equalization for the proper amount.

ASSIGNMENT OF CERTIFICATE TO BOARD, FORM BOE-597 (FORM #1)

410.032

The assignment Form BOE-597 (Form #1) is furnished by the Savings and Loan Association, not by offices of the Board of Equalization. However, copies may be obtained from the Supply Unit. An applicant who elects to purchase an investment certificate is instructed to contact an insured savings and loan association of his/her choice, where he/she will purchase the certificate and complete an assignment form. The certificate and the original and two copies of the assignment form are delivered to ~~the~~ a Board of Equalization office. The third copy is retained by the association so immediate effect can be given to the assignment. An authorized Board of Equalization representative accepts the certificate and assignment, and signs the "Receipt for Certificate and Direction to Pay Earnings." The original copy of the assignment and one copy of the Form BOE-487-C, Cash/Liquid Security Deposit Advice, are attached to the certificate. These are filed in the district security file. The first copy is returned to the issuing association and the second copy given to the applicant.

STATE AND FEDERAL CREDIT UNION SHARES

410.035

State and federal credit union shares may be accepted as security for the various tax programs administered by the Board of Equalization. The deposits are insured by the National Credit Union Administration (NCUA), an agency of the U.S. government. Credit union deposits that are not insured by the NCUA may otherwise be insured by American Share Insurance. Any questions on the acceptability of a particular credit union should be referred to the Registration and Security Control ~~Team Unit~~ in LRAS.

~~Deposits are insured to a maximum of \$100,000 by either the National Credit Union Administration, an agency of the U.S. government, or the California Credit Union Share Guaranty Corporation, an entity administered by the California Department of Corporations.~~

The California Credit Union League will print and provide the assignment Form BOE-597-CU to their members. They are also providing instructions to their members on this procedure.

If nothing is owed when the account is to be released, the Board of Equalization's interest in the funds will be assigned back to the taxpayer. If there is a liability, evidence of the account, or a copy of the assignment, will be sent to the credit union. The credit union will then forward a check payable to the Board of Equalization for the amount requested.

ASSIGNMENT OF STATE AND FEDERAL CREDIT UNION SHARES TO BOARD

410.036

As with Savings and Loan Associations, the assignment Form BOE-597-CU will be furnished by the credit unions, not by offices of the Board of Equalization. The applicant should be instructed to contact the credit union of his or her choice to initiate the assignment of the credit union shares to the Board of Equalization. The completed assignment form and two copies are then delivered to the Board of Equalization office. If possible, some additional evidence of the account (i.e., passbook, I.D. cards, etc.) should accompany the assignment. However, the completed assignment form will be sufficient documentation to approve and to process the security. The third copy of the assignment form is retained by the credit union. The same procedures are then followed as with the assignment of savings and loan certificates (Form BOE-487-C).

THRIFT AND LOAN ASSOCIATIONS

410.037

Thrift and loan associations are chartered by the ~~Department of Corporations~~ Office of Thrift Supervision and are federally insured. However, these institutions do not meet all of the requirements of the Board of Equalization and merger tracking information is not published or readily available. Therefore, security deposits issued by thrift and loan associations *are not acceptable* to the Board of Equalization.

GUARANTIES

410.040

Guaranties are a form of security ~~under the Sales and Use Tax Law~~, and subject to uniform guidelines.

Before accepting any guaranty, information should be obtained regarding the

prospective guarantor's financial condition, past record and general stability. Staff should use available collection tools to confirm the guarantor has adequate assets. Non-liquid assets, such as ownership of real property, are required for approval of a guaranty.

WHEN TO ACCEPT GUARANTIES

410.045

In general, guaranties should be used only in the case of small, closely held corporations. They should not be accepted regularly from this type of entity in preference to other forms of security. Neither should they be accepted merely as an expedient method to overcome the taxpayer's reluctance to post other forms of security. Guaranties from officers of corporations who live out-of-state should not be accepted unless their financial statements show adequate assets within the State. The penal sum of the guaranty will be included with other security in complying with the maximum limits allowed by RTC section 6701. Guaranties for less than \$5,000 should not be accepted.

WHO MAY GUARANTY

410.050

Subject to the guidelines set forth in CPPM 410.040, guaranties *may be* accepted from:

- a. Officers of a corporation to personally guarantee the corporate liability. Form BOE-140 and financial statement should be obtained from all corporate officers of record unless it appears more desirable to accept a guaranty from the principal officer(s) and/or principal stockholder(s).
- b. A corporation to guarantee the liability of individuals, partnerships or other corporations. A current financial statement of the guarantor corporation and a certified copy of the minutes of the guarantor corporation authorizing the binding of said corporation must be submitted. (Some consideration, other than mere friendship, should be evident between principal and guarantor.)
- c. An individual to personally guarantee the liabilities of other individuals or entities (to be used in rare cases, e.g., a father to guaranty the liability of a minor child).

Personal guaranties *may not* be accepted from:

- a. Any entity, corporation or otherwise, to guaranty its own liability.
- b. One or more partners to guaranty the liability of other partner(s).

APPROVAL OF GUARANTIES

410.055

Personal guaranties will be accepted only with the approval of the District or PSTD Division, Administrator, Principal Compliance Supervisor or Branch Office Supervisor. A current financial statement of the proposed guarantor should be submitted for approval. If the Form BOE-140 and the financial statement are submitted simultaneously, it must be made clear to the potential guarantor that acceptance is dependent upon examination of his/her financial statement and approval by the reviewing authority.

If, during the period of a guaranty, it is determined that the guarantor is no longer suitable, appropriate security in some other form should be obtained. Also, if after three years of the guaranty being held, the taxpayer's account still

has a bad payment history, the taxpayer will be required to post another type of security. Once the security is replaced, the guaranty will be released. The taxpayer should be informed of this policy at the time of inquiry or at the time the guaranty is posted.

LIMITATION ON AMOUNT AND EFFECTIVE PERIOD

410.060

The limitation as to the amount for which a guarantor can be held liable will be the penal sum shown on the Form BOE-140 or Form BOE-140-A, if one is filed.

The limitation as to the amount for which a guarantor who has executed an old type of Guaranty, Form BOE-140, Rev. 8 or prior, can be held liable will not exceed the maximum amount of security allowed under the law under which the guaranty was taken. The limitations of RTC section 6701 apply.

~~A guaranty becomes effective as of the date the form is signed. Although guaranties are valid until revoked in writing by the guarantor, staff must review all information provided to ensure that the personal guaranty is valid if the security is not to be released after three years and every three years thereafter. Staff should ensure that the guarantor is still willing to provide a guaranty and has adequate resources to do so. If the guarantor does not have adequate resources to provide a guaranty, staff will require security to be provided in another form. If the guarantor is no longer willing to provide a guaranty, the guarantor should be instructed to provide written notification of his or her intent to terminate the guaranty.~~

A guaranty becomes effective as of the date the form is signed. A guarantor may terminate his or her guaranty by notifying the Board of Equalization in writing of his or her intention to terminate. The termination becomes effective thirty (30) days after its receipt by the Board of Equalization.

Requests for termination, when received in the district offices, should promptly be forwarded to the Registration and Security Control Team Unit in LRAS. Headquarters will acknowledge the ~~taxpayer's guarantor's~~ termination by mail with a copy to the district office. Action to secure replacement security, if necessary, should be taken promptly by the district. ~~The guaranty record will be deleted from the semiannual security report.~~

PSTD divisions will process the guaranty termination request for their accounts.

GUARANTIES, FORM BOE-140 — PREPARATION AND DISTRIBUTION

410.065

Form BOE-140 will be prepared in triplicate. Form BOE-487-G, Guaranty Receipt Advice, will be printed automatically when posting the guaranty on-line. Districts will send ~~The original of Forms BOE-487-G and BOE-140 will be attached and sent~~ to the Registration and Security Control Team Unit in LRAS for verification. The duplicates of Form BOE-487-G and BOE-140 are the guarantor's copies.

Neither the business address of the seller nor his/her DBA will be shown on the guaranty.

Two or more Forms BOE-140 from different guarantors accepted simultaneously will carry the same "penal amount" determined to be required as maximum security to be demanded by the district.

Depending on whether the guarantor is an individual or a corporation, the appropriate box at the bottom of the Form BOE-140 should be completed in full.

In accepting corporate guaranties, a certified copy of corporate minutes will be obtained showing authorization by the Board of Directors for the corporation to engage as a guarantor. If the "Witness to Signature" is not a member of the staff of the Board of Equalization, the signature of the guarantor should be acknowledged by a notary public.

The "Notice to Guarantor" section will be brought to the attention of the potential guarantor so that he/she is fully aware of his/her obligations.

DISTRICT CONTROL

410.070

- a. Records.** A separate guaranty file need not be kept by the district. Headquarters will maintain a record of all Forms BOE-140.
- b. Review.** Whenever the attention of a district is drawn to an account secured by personal guaranty where dishonored checks, late payments, revocation or information of financial instability are involved, a review of the guaranty should be made. This review would include ascertaining if the guarantor(s) connection with the firm remains the same and to what extent, if any, the firm's financial position may have changed. It may become necessary as a result of this review to demand another type of security, ~~or obtain a new guarantor(s).~~

SALES AND USE TAX SPECIAL SECURITY

410.080

Under RTC sections 6811 and 6813, security may be deposited in order to obtain a Certificate of Payment, Form BOE-471. This form, commonly known as a "clearance," relieves a successor of any potential tax liabilities incurred by a predecessor. The certificate may be issued after all amounts due, including amounts not yet ascertained, are secured to the satisfaction of the Board of Equalization. This security is not subject to the limitations contained in RTC section 6701. However, the selling/purchase price of the business or stock of goods is the maximum amount of security that can be requested.

The sale of a business or stock of goods is required for security deposits to be taken under RTC sections 6811 and 6813. The security for this section should be limited to cash type deposits, including Third Party deposits.

Discretion and good judgment should be used ~~at all times~~ when determining the amount of security required. Existing liabilities, delinquencies, ~~file history~~ ~~on prior audits~~ and payments history, and person making the deposit (seller, buyer, and third party) are some of the things that should be considered.

The security should only be held for a reasonable period of time ~~sufficient~~ needed to establish the amount due. It should then be applied. The difference, if any, should be immediately refunded to the person making the deposit.

When applied, the security will be considered available as of the date deposited.

SECURITY FORMS 415.000

LIST OF FORMS USED 415.010

The forms listed below establish, transfer, change or terminate a security account record:

- a. Form BOE-454 — Assignment of Cash Security (e.g., from predecessor to successor)
- b. Form BOE-487-C — Cash/Liquid Security Deposit Advice
- c. Form BOE-487-G — Guaranty Receipt Advice
- d. Form BOE-487-S — Surety Bond Receipt Advice
- e. Form BOE-700 — Request for Conversion of Security
- f. Form BOE-1234 — Form Letter to Issuer Requesting Distribution of Certificate Amount

MISCELLANEOUS SECURITY INFORMATION 420.000

SECURITY FORMS BY TYPE OF DEPOSIT 420.005

The appropriate form is printed automatically on-line when security is received from the taxpayer and posted to the system.

Never allow taxpayers to take form BOE-487-C to the cashier for processing. Taxpayer must not receive any portion of the Form BOE-487-C for cash deposits.

RECEIPT OF SECURITY 420.010

~~The entries for receipt of sSecurity deposits received as surety bonds, liquid security deposits, and guaranties are from information entered on the posteding screen of the on line on the Security Deposit system. Cash security deposits are posted using the Cashiering Enter Remittance Online (CSH RO) screen. When payment is cash, the BOE-602 or MICR receipt number must be entered on the cash maintenance screen for the deposit in the Security Deposit system.~~

~~Each type of security must be posted in the Security Deposit system separately. Each item of security must also be posted separately.~~

MULTIPLE SECURITY 420.015

Two or more sales and use tax accounts, related to each other by an identical Client/Taxpayer ID (TIN), are covered by the same item of security (e.g., John Doe has two separate sole ownership accounts. The cumulative maximum security is \$50,000. However, if John Doe is also in a partnership, the partnership could also be required to post up to \$50,000 on this account).

SEPARATION OF DUTIES IN DISPOSITION OF CASH DEPOSITS 420.020

Care must be taken to ensure proper separation of duties upon disposition of cash deposits. The State Administrative Manual (SAM) contains detailed information regarding separation of duties in all activities connected to funds processing. SAM section 8080 specifically provides that no one person may authorize disbursements and also sign checks.

Releases of all security deposits are performed using the on-line Security Deposit system. Since the approval in the Security Deposit system constitutes authority to disburse the deposit, cashiering personnel and the person who approved the refund may not prepare or sign the checks.

No one person in the district office should be authorized to perform more than one of the following functions in the preparation and processing of refund checks:

1. Receive and/or deposit remittances
2. Authorize release of security (BOE-487-CR)*
3. Prepare refund checks*
4. Sign refund checks**

* The person authorizing release of security or preparing the checks should not be the same person who mails the checks.

** A ~~specimen copy~~ of both a manual and facsimile signature, if a facsimile signature is to be used to sign checks, will be retained on file in the ~~Administrative Services Division, Accounting Section~~ when adding and/or deleting a person from the Authorized Signatures File.

A similar separation of duties applies to savings and loan certificates and time certificates of deposit.

CANCELLATIONS OF SURETY BONDS

420.045

A notice of cancellation from the surety company received by the district will be sent immediately to the Registration and Security Control ~~Team Unit in LRAS.~~ PSTD divisions will process the cancellations for their accounts. Upon receipt of the notice, two copies of the notice are made. Both copies are imprinted with a rubber stamp to show the effective date of cancellation. The original is filed in the Headquarters Taxpayer Records Unit account folder, one copy is sent to the surety company as an acknowledgment of the cancellation, and one copy is sent to the district. The cancellation becomes effective thirty (30) days after its receipt by the Board of Equalization. In the event that a cancellation is received by both headquarters and the district office, the earlier of the two dates will be used to determine the effective date of cancellation. If security is required by the taxpayer, the district has the responsibility to request replacement security from the taxpayer.

CORRECTION OF SECURITY RECORDS

420.050

Procedures to correct security records established in error vary according to the type of security. Corrected security documents will be prepared through maintenance functions of the on-line Security Deposit system. Time certificates of deposit and savings and loan certificates must be released and new security obtained in correct form. Surety bonds will be corrected by obtaining a rider to the surety bond indicating the correct information (See CPPM 425.040.)

ASSIGNMENT OF SECURITY DEPOSIT

421.000

GENERAL

421.005

Of the ~~five-six~~ types of security acceptable to ensure compliance with the laws administered by the Board of Equalization, only cash may be transferred by assignment between taxpayers. Time certificates of deposit and fully paid investment certificates are issued to a specific entity and are not transferable.

Surety bonds are also issued to a specific entity, but may be transferred by a rider, in which case a new Form BOE-487-S, Surety Bond Receipt Advice, is prepared. The acceptance of such a rider is not normally considered good practice since the penal sum of the bond remains at its original amount. That is, if the bond were originally \$~~1,000~~2,000 under Account A and later transferred by rider to Account B, and a liability were developed under both accounts in excess of \$~~1,000~~2,000 each, the surety company would be liable for only \$~~1,000~~2,000. Instead, the district should request a new surety bond for Account B.

PURPOSE OF ASSIGNMENTS

421.010

The procedures outlined in this section provide for assignments of cash deposits posted as security under the Sales and Use Tax Laws and Property and Special Taxes Laws where there has been a change of ownership under all the following conditions:

1. The taxpayer has transferred or is in the process of transferring the business to the purchaser.
2. All of the original security deposit is to remain as security for payment of tax by the purchaser of the business.
3. Assignment of Security Deposit, Form BOE-454, assigning the deposit to the purchaser has been executed.
4. Final audit has been determined and verified and all taxes paid.

CONDITIONS UNDER WHICH THIS PROCEDURE SHOULD NOT BE USED

421.015

When a portion of the deposit is to be returned to the original depositor or applied to a liability of the original depositor, and the remainder transferred to the purchaser's account, the regular established procedure for refund of deposits should be used. The transfer should then be effected by endorsement of the refund warrant by the original depositor to the Board of Equalization.

ASSIGNMENT OF SECURITY, FORM BOE-454

421.020

Assignment of the seller's interest in a cash deposit to the purchaser of the business must be effected by completion of Form BOE-454. In no case should Form BOE-454 be prepared unless all tax has been determined and paid by the outgoing individual or partnership. The form is to be distributed as follows;

- Original — to Taxpayer Records ~~Section~~Unit for the buyer's account.
- Copy — to Taxpayer Records ~~Section~~Unit for the seller's account.
- Copy — retained in district office for buyer's account.
- Copy — to seller.
- Copy — to buyer.

PREPARATION OF FORM BOE-454

421.025

~~In the blocks a~~At the top of the form, enter the account numbers of ~~the~~ accounts from and to which transfer of security is being made. The balance of the information required on the form is self-explanatory.

If the deposit being transferred was originally posted under more than one account number, a separate assignment form should be prepared for each deposit.

Ordinarily, when the transferor account is a partnership, all partners should be available for signing the assignor portion of Form BOE-454. Care should be exercised in all ~~possible~~ cases to obtain signatures of both the assignor(s) and assignee(s) or their authorized representatives, on all copies of the forms. This may be done through the use of carbon paper rather than having all copies signed individually.

When the assignor account is a partnership and all partners are not available to sign Form BOE-454, the available partner(s) ~~winding up the affairs of the partnership~~ may sign the form, provided there is no doubt in the Board of Equalization representative's mind of the remaining partner's-(s) full authority to dispose of the security deposit. When doubt does exist, full particulars should be sent to the Headquarters Legal ~~Division~~-Department requesting a decision on the legality of the remaining partnership to sign on behalf of the partnership.

SECURITY DEPOSIT RECORD, FORMS BOE-487-C

421.030

A complete set of security deposit records forms will be prepared for the assignee. The comment "Form BOE-454 obtained" should be made in the comments system program when the security item is released from the seller's account and another comment made in the buyer's account. In the event an assignee has also deposited additional security, a separate posting of security deposit must be completed in the Security Deposit system for the additional security.

DEPOSIT MADE IN INSTALLMENTS

421.035

If the transferor's original deposit was made in installments, one assignment form, BOE-454, may be prepared for the total deposit transferred. Each deposit will be released and transferred separately in the on-line Security Deposit system with comments.

FOR HEADQUARTERS RECORDS

421.060

Form BOE-487-C for the transferee's account should be forwarded to Headquarters Taxpayer Records ~~Section~~-Unit with the assignment form.

TRANSMITTAL OF SECURITY OR SECURITY DOCUMENTS

425.000

CASH DEPOSITS — FORMS BOE-487-C

425.010

Forms BOE-487-C are produced by posting cash on the CSH RO screen or liquid deposits in the on-line Security Deposit system. Only a copy of the BOE-487-C for cash deposits is transmitted to Headquarters Cashier with the district's daily transmittal.

SURETY BONDS AND RIDERS

425.040

Usually bonds and riders are received by the district. The Form BOE-487-S and the bond or rider must be transmitted to the Registration and Security Control ~~Team Unit in LRAS~~ in the regular mail. No transmittal form is necessary.

Should the bond be received directly by the Registration and Security Control ~~Team Unit in LRAS~~, Form BOE-487-S will be prepared and a copy forwarded to the taxpayer.

If the original bond is in error and needs a rider for correction, the effective date of the rider must be the same as the original effective date. All riders with corrections to the Board of Equalization number, effective date or dollar amount should be sent to the Registration and Security Control ~~Team Unit in LRAS~~ for processing. The PSTD staff handling the security deposits will process the rider for their accounts.

Riders to existing bonds where there is a change of entity should not be accepted unless the district or PSTD division has determined there is no existing or potential future liability on the closed-out account.

GUARANTY, FORM BOE-140 AND ENDORSEMENT TO GUARANTY, FORM BOE-140-A

425.050

Form BOE-487-G is prepared in duplicate to record receipt of a guaranty or endorsement to guaranty. The original is sent to the Registration and Security Control ~~Team Unit in LRAS~~ -with the guaranty (Form BOE-140) or endorsement (Form BOE-140-A) attached. No transmittal form is necessary. The copy is for the district file. Form BOE-140-A is used as a rider to a guaranty (Form BOE-140) for the purpose of increasing or reducing the amount of the guaranty.

DECREASES IN SECURITY OR PARTIAL REFUNDS

430.000

GENERAL

430.010

Occasions may arise when investigation of an account reveals security is in excess of that required ~~to properly secure the State's interest or when a taxpayers request that the security deposit amount be re-evaluated. If the security deposit amount is more than required to properly secure the State's interest, or, a portion of the security is to be refunded to the depositor. However, if the account has a contingent liability, the security deposit should be applied to the contingent liability -and any remaining the balance will be refunded to the taxpayer retained as security to cover a contingent liability.~~

DECREASE OF CASH DEPOSIT AMOUNT

430.020

If a portion of a cash deposit is refunded and the balance retained, ~~that the~~ information is entered in the retain/release screen and released on the disbursement screen of the on-line Security Deposit system.

DECREASE OF CERTIFICATE

430.030

Reduction in the amount of time certificates and fully paid investment certificates is an expensive procedure and is not encouraged. However, should

it become necessary, it can be accomplished by cashing the certificate, posting the proceeds in the Security Deposit system and releasing the entire amount by issuing two checks for the amount received, one for the purchase of the new security and the other to refund the balance to the taxpayer. A preferred procedure is for the taxpayer to deliver a certificate for the reduced amount to the Board of Equalization. The former certificate is then immediately released to the taxpayer.

DECREASE OF SURETY BOND

430.040

A surety bond is not refunded, but merely reduced. The surety company must send the district a "rider" to decrease the amount of the bond. The district will "date stamp" each rider showing the date it was received. Decrease riders are approved by district offices and sent to the Registration and Security Control ~~Team Unit in LRAS~~ for processing. The Registration and Security Control ~~Team Unit in LRAS~~ adds an end date to the active surety bond record. The Registration and Security Control ~~Team Unit in LRAS~~ posts the bond to the account again for the decreased amount. A new BOE-487-B will be produced by the system showing the new amount of the bond.

The PSTD divisions will process the riders decreasing the amount of the bond for their accounts.

REFUND OF CASH DEPOSITS IN DISTRICT OFFICE

435.000

GENERAL

435.005

~~Form BOE 1035, Report of Security Deposits — Account Checks Issued, is requested on-line.~~

~~District offices must maintain a permanent log identifying all returned cash deposit refund checks. The log is to be maintained by someone other than the refund clerk and include date, new mailing address and the disposition of each check. A supervisor is to review all cash deposit refund checks prior to their remailing and periodically review the log book.~~

REFUND OF CASH DEPOSITS — PROCEDURAL POLICIES

435.010

~~Checks payable to the Board will be honored by the bank in any amount. Checks payable to depositors in excess of \$15,000 must be signed and countersigned in the district office by two authorized persons (See Beam 2517).~~

~~District offices and PSTD divisions will make refunds for so-called legal cases, such as bankruptcies, assignments and probates. Care must be taken that the check is delivered to the proper person, other than the depositor, who is authorized by the court to receive it.~~

RETURNED CASH DEPOSIT REFUND PROCEDURES

435.011

A taxpayer's address change may be discovered when the post office returns a cash deposit refund check to the Board of Equalization as undeliverable mail. When the cash deposit refund check is \$50.00 or more, a prompt attempt to locate the taxpayer should be made. If the refund check is less than \$50.00, it

should be forwarded to the Accounting Section. For sales and use tax accounts, the responsibility to determine a current address rests solely with the respective district office. The PSTD divisions are responsible for attempting to locate any tax and fee payers for accounts under their control.

If the tax or fee payer is located, verify the tax or fee payer's identity by social security number or driver's license number before mailing the refund check to the taxpayer's new address and update IRIS. If the depositor is not located within sixty (60) days, a memorandum summarizing all skip tracing actions along with the original check will be forwarded to the Accounting Section. A copy of the refund check and any skip tracing documents will be retained in the district office or PSTD division for three years.

The Accounting Section will transfer the funds to the unclaimed trust fund. The funds will stay in the unclaimed trust fund for a period of two years. If the taxpayer/depositor does not claim these funds within that time, the funds are escheated to the State's General Fund.

District offices and PSTD divisions must maintain a permanent log identifying all returned cash deposit refund checks. The log is to be maintained by someone other than the refund clerk and include date, new mailing address and the disposition of each check. A supervisor is to review all cash deposit refund checks prior to their re-mailing and periodically review the log book.

~~When a district office receives a cash deposit refund check returned from the post office, prompt action should be taken to determine a current address for the depositor. Cash security deposit refunds under \$50.00 need not be investigated for a better address.~~

~~A complete report on both sides of Form BOE 452, Compliance Activity Report, listing social security numbers, SEIN and/or FEIN numbers, driver license numbers, dates of birth, and the results of skip tracing efforts to locate the taxpayer should be completed. If the taxpayer is located, his or her identity should be verified by social security number or driver license before the refund check is re-mailed.~~

~~If after 60 days, attempts to locate the depositor have failed, the efforts to locate the taxpayer are to be reviewed by a district office supervisor for approval before a copy of the refund check and copy of Form BOE 452 is sent to the Special Projects Team in the Program Planning Division. The original refund check and a copy of the report should be forwarded to the Headquarters — Accounting Section. A copy of the refund check and the original BOE 452, with any skip tracing documents, should be retained in the district office for three years.~~

~~The Special Projects Team in the Program Planning Division will review all returned mail reports received from the district offices and attempt to find a current address for the depositor. The Special Projects Team in the Program Planning Division will not investigate uncashed refund items. A memorandum will be forwarded to Accounting Section and the district office outlining the~~

~~results of this investigation.~~

~~The Headquarters Accounting Section transfers the funds to the unclaimed trust fund. The funds will stay in the unclaimed trust fund for a period of two years. If the taxpayer/depositor has not claimed these funds within that time, they will then be credited to the State General Fund.~~

UNCASHED CASH DEPOSIT REFUND PROCEDURES

435.012

Each quarter, the Chief Accounting Officer is responsible for preparing and sending a memo regarding uncashed checks to all district administrators and the PSTD division chiefs. The memo is mailed along with two copies of every uncashed check that is \$50.00 or more and older than six (6) months from the issue date. The mailing occurs even if there are no un-cashed refunds checks older than six months for that quarter. The district offices and PSTD divisions are responsible for contacting the Accounting Section if a memo is not received.

Upon receipt of the memo, the district office or PSTD division staff will review the account information and, if necessary, will attempt to locate a current address before Form BOE-1137 and Form STD-805-A or STD-805-B are mailed. Form STD-805-A is used when the tax or fee payer is within California and Form STD-805-B when the tax or fee payer is outside California. The district office or PSTD division will follow up on the mailing within thirty (30) days if a reply to the mailing of these documents is not received.

The district office or PSTD division will send a report showing the skip tracing actions taken to locate the tax or fee payer on each listed account to the Accounting Section no later than sixty (60) days after receipt of the memo.

Request for In-Lieu Checks and Stop Payments

Generally, a request for an in-lieu check originates when the taxpayer informs the Board of Equalization staff of the loss, destruction, or mutilation of the original refund check and requests a replacement check. The district office or PSTD division provides the taxpayer with STD-805-A or STD-805-B. The district office or PSTD division sends an explanatory letter and the completed STD-805-A or STD-805-B to the Accounting Section to request the stop payment of the original check and the issuance of an in-lieu check.

The Accounting Section is responsible for issuing all stop payments. If a taxpayer's refund check is lost or destroyed within one year of the date of issue, a stop payment is required. When an in-lieu check is required, the Accounting Section will issue the check. The check will be issued after a thirty (30) day waiting period from the time the stop payment was placed by the State

Treasurer's Office.

~~Whenever a refund check is issued to a taxpayer and is lost or destroyed within two years of the date of issue, a stop payment is required. It is the responsibility of the Headquarters Accounting Section to issue all stop payments. Requests for stop payment of a cash deposit refund check will be made in the form of an explanatory letter. Generally, the requests for stop payment are originated by the taxpayer informing the Board of loss, destruction or mutilation of the original refund check and requesting replacement. Board employees will not stop payment when it appears that the request may involve the Board in any controversy between private parties.~~

~~Each quarter, the Chief Accounting Officer will forward to the appropriate District Administrator a memo and two copies of those checks which remain uncashed more than six (6) months after the issue date and are greater than or equal to \$10.00. The memo will be forwarded to the districts even when there are no uncashed refund checks over six months old for that quarter. The districts are responsible for contacting the Accounting Section if neither a listing nor a memo is received. Copies of the uncashed checks will be forwarded by the Accounting Section to the Special Projects Team in the Program Planning Division and the Taxpayer Records Section.~~

~~The district office, upon receipt of the check copies, will review the file and mail Form GA 1137 and Form STD 805 A or B to the address of record. Form STD 805 A is executed when the depositor is within the State of California. Form STD 805 B is executed when the depositor is outside California. A thirty day follow up should be established. All Forms STD 805 returned to the district by depositors should be sent to the Headquarters Accounting Section who will finalize and process the Forms STD 805 by placing a stop payment on the original check. When a replacement check is required, the Accounting Section issues an in-lieu check after a 30 day waiting period. If the GA 1137 and STD 805 are returned by the post office, the district office will attempt to locate a current address for the depositor.~~

~~A report on Form BOE 452, Compliance Activity Report, showing the district office action on each listed account should be forwarded to the Headquarters Accounting Section no later than 60 days after receipt of the listing. A copy of the report should also be sent to the Special Projects Team in the Program Planning Division.~~

PREPARATION OF CASH DEPOSIT REFUND CHECKS

435.015

Refund checks will bear the account number as shown in the Board of Equalization's records and the words "security refund" in the upper left hand corner. If the check is being sent to an escrow, the escrow number should also be typed in the upper left corner just under the words, "Security Refund". Otherwise, no other entries should be made in this section. Below the section "Pay to the Order of," will appear the name of the taxpayer and his/her last address, as it appears on the report from the on-line Security Deposit system. ~~If~~ In the case of an individual, the first name, middle initial (if any) and last name are sufficient to properly identify the taxpayer. The majority of partnerships are comprised of only two parties and there should be sufficient room on the check to include both first names and middle initials of the

principals. When a situation is encountered where the number of partners is such that inclusion of the complete first names of each will result in crowding, initials only are acceptable.

- a. John R. Smith
2345 First Street
Sacramento, CA 95818
- b. J.R. Smith, W. Jones, F.A. Gildersleeve and P.T. Eisenhower
2345 First Street
Sacramento, CA 95818
- c. The Academy Record Shoppe, Inc.
2345 First Street
Sacramento, CA 95818
- d. W.T. Ball Co., Inc. and Rocklin Gravel Corp., a joint venture
2345 First Street
Sacramento, CA 95818

Where the taxpayer is other than an individual, partnership or corporation, it should be identified on the check as indicated in the foregoing. This requirement will allow the cashing institution (usually the bank where the bank account is maintained) to more easily identify the account. This type of refund is in the minority and the extra typing involved should be no imposition.

If the inclusion of a business name on the check is deemed necessary by the district, the taxpayer name should read:

- a. John R. Smith, dba Smith Auto Supply
- b. John R. Smith and Willie Jones, dba Smith Auto Supply

ENDORSEMENT OF CASH DEPOSIT REFUND CHECKS

435.020

Occasionally, recipients of cash deposit refund checks may have difficulty in cashing them because of a bank's refusal to honor their endorsement.

The ~~three~~ four circumstances most likely to arise are:

1. The cash deposit refund check is made out in the name of a deceased taxpayer and the surviving spouse appears asking for information regarding the proper procedure to be followed to cash the check. When the inquiry concerns a deceased taxpayer, compliance with State Administrative Manual 8477.32 will adequately protect the Board of Equalization.
2. The cash deposit refund check is made out to individually named partners. One partner appears with the explanation that his/her other partner(s) has disappeared. When the inquiry concerns a missing partner(s), the check may be endorsed as drawn, with the remaining partner's signature as partner entrusted with dissolution under provisions of the Corporations Code §16804.
- ~~3.~~ 3.—The cash deposit refund check is made out to a corporation. A corporate officer requests that the check be made payable to an individual officer. When the inquiry concerns a corporation, an in-lieu check can be issued to an individual officer if a notarized affidavit signed by each corporate officer is provided.

4. The cash deposit refund check is made out to a dissolved corporation. A corporate officer requests that the check be made payable to an individual officer. The original check, a copy of the Certificate of Dissolution with the Office of the Secretary of State seal that clearly states the name of individual that will be receiving the payment, and Forms STD-805-A or STD 805-B will be returned to the district office or PSTD division. Staff will then forward the documents to the Accounting Section.

In the few instances where the district office recommends issuance of an in-lieu check, the original refund check will be sent to the Headquarters—Accounting Section with a request to issue an in-lieu check (see CPPM 435.012).

District offices and PSTD divisions are not authorized to issue in-lieu checks.

DISTRICT PROCESSING OF FORM BOE-1035

435.025

- The BOE-1035-LZ, Report of Security Deposit Account Checks Issued, is printed on-line by the refund clerk who then prepares the checks.
- The refund clerk will enter the check numbers in the Security Deposit system for that transmittal. This includes entry of spoiled (voided) checks, and the check range, ~~and the check made payable to the Board of Equalization.~~ The BOE-1035-LZ will be printed by the system.
- ~~Each item on a Form BOE-1035-LZ that is payable to the Board must be supported by a payment document. These are sent to the district cashier with the Board check for on-line processing. The cashier issues one receipt to the refund clerk reflecting the total amount payable to the Board. The original BOE-1035-LZ will be forwarded to Headquarters Accounting Section. The refund clerk files the receipt with the district copy of Form BOE-1035-LZ.~~

The last report for the month must include the data on the last ~~line~~ refund check issued for that month and must be mailed by the districts no later than four working days prior to the end of the month. If it is necessary to issue another refund check during the remaining days in the month, ~~Headquarters~~ the Accounting Section must be notified by telephone immediately and a supplemental Form BOE-1035-LZ sent to Headquarters without delay.

Spoiled checks are voided and the check numbers are entered in the Security Deposit system. Checks should be voided whenever an error is made in typing the taxpayer's name, amount or date. Erasures or strikeouts are not permissible.

The refund clerk sends the original copy of Form BOE-1035-LZ and all copies of voided checks and the tissue copies of the refund checks to Headquarters Accounting Section. The refund clerk preparing the Form BOE-1035-LZ and refund ~~warrants~~ checks will sign the Form BOE-1035-LZ.

Only one Form BOE-1035-LZ need be prepared for any one day's batch of refund warrants covering all business taxes.

DISTRICT OFFICE VERIFICATION

435.030

Verification should be made that each completed Form BOE-1035-LZ agrees with the total amount of ~~checks prepared~~ applied for to the Board of Equalization and amount of checks prepared to each taxpayer/client.

CLOSE-OUT AUDITS AND REFUNDS-RELEASING OF CASH SECURITY DEPOSITS

435.035

A security deposit refund will be completed only after the appropriate audit program has cleared any pending audits (i.e. selected for audit or in process) and the taxpayer's on-line record has been thoroughly checked for any record of unpaid liabilities. However, for accounts that have been selected for audit but the audit has not yet started, the appropriate audit program has sixty (60) days from the date the close out was processed (i.e. close out "create date") to assign the audit and to contact the taxpayer. If the audit is not actively being worked after sixty (60) days, the security deposit must be released.

Application of Security

When a security deposit is to be applied to a liability the following effective dates should be used.

1. Cash - the date of the close out.
2. Liquid - the date of the close out.
3. Surety Bond - the postmark date of the payment.

If there is more than one period of liability, refer to section 620.030 for the order of allocation

~~In all cases, the cash deposit refund will be completed only after the District Audit has cleared any pending audits, and the district office master file or on-line record has been thoroughly checked for any record of unpaid liabilities.~~

GUIDELINES FOR REDEEMING AND/OR CONVERTING TIME DEPOSIT AND SAVINGS ACCOUNTS HELD AS SECURITY DEPOSITS

435.050

GENERAL

When a bank is sold to or merged with another bank, the Board of Equalization policy is to contact the surviving bank for a replacement account, new collateral, and a signed Savings Institution Acknowledgement from the second page of Form BT-598-LZ, Notice of Security Requirements.

The Board of Equalization has experienced some difficulties when attempting to redeem a deposit account for cash or change an account's collateral to collateral from the surviving bank. The three most common problems encountered are: (1) the bank can not find a record of the account, (2) the bank refuses to issue a certificate or passbook from the surviving bank or (3) the bank ~~says~~ states the

account was transferred to the State Controller as required by operation of law or released to a person other than the Board of Equalization. Banks and financial institutions are required to transfer funds to the State Controller in cases where the depositor cannot be found.

~~To help reduce the difficulties experienced when changes are necessary with the collateral held by the Board, the new security procedures listed in CPPM 410.015 were developed.~~

Procedures

- If the time deposit or passbook savings need to be converted, the account should be reviewed for release eligibility. If it meets the release criteria, the security should be released.

When time deposit and passbook savings accounts are to be redeemed or converted, the collateral should be sent via first class mail. A photocopy of the collateral and appropriate letters will be sent to the financial institutions. The original certificate will be provided on request. If districts cannot locate the certificate, a letter explaining the situation will be sent to the banks. Copies of the documents sent to the bank should be kept in a secure place.

Staff will continue to work closely with financial institutions until payment is received. When the replacement has been received, the "old" certificate is ended and the new one is posted. Both certificates must be retained, cover letter to the bank should be kept in a secure place.

- When time deposit and passbook savings accounts are to be redeemed, and there may be excess funds due to the taxpayer, Form BOE-1234-LZ, *Letter Requesting Conversion of Time & Savings & Loan Certificates To Cash*, should accompany the original evidence of deposit sent to the savings institution. Instructions for disbursement of excess funds must be included on Form BOE-1234-LZ.
- All contacts with the bank should initially be in writing or followed-up with a letter. If financial institutions still refuse to redeem the certificate, staff should visit the bank and redeem the certificate. All contacts should exhibit a firm, professional tone. Do not hesitate to speak to the branch manager to resolve any difficulties.
- Always complete a Form BOE-487 as outlined in CPPM 420.005.
- When security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing resources, send the collateral with release endorsement to the bank. The cover letter should inform the bank that the Board of Equalization has released its interest in the funds to the depositor/taxpayer and, if the funds are will be transferred by operation of law to the State Controller ~~at a later date~~, the Board of Equalization should not appear as the account holder or other interest holder on the account.

Circumstances

1. The Bank Says It Has No Record of the Account

Active Permits and Licenses — When converting an old deposit account to a new account from a surviving bank, and the bank has no

record of the account, explain to the bank that the Board of Equalization is the account holder and is presenting the original collateral for conversion and the request should be honored. If the bank continues to refuse to convert the old account to a new account or redeem for cash, return the collateral to the taxpayer with a completed form letter BOE-35 (Exhibit 1). Include Form BOE-598-LZ for the required replacement amount.

Closed-Out Permits and Licenses — When redeeming a deposit account for cash, explain to the bank that the Board of Equalization is the account holder and is presenting the original collateral for redemption and the request should be honored. If the bank continues to refuse to redeem the collateral for cash, refer the denied claim to the Special Procedures Section for an Attorney General referral.

2. The Surviving Bank Refuses to Issue a New Certificate for an Old Account

If the surviving bank retains the account numbers of the former bank but does not issue certificates, a letter from the bank that certifies those circumstances and also that the surviving bank will honor the former institution's certificate when presented for redemption is acceptable — with the required wording — in lieu of a replacement certificate.

~~Contact the Special Projects Team in the Program Planning Division to obtain approval for the bank to provide a letter instead of a replacement certificate and a letter template with the required wording.~~

When attempting to convert a deposit account and/or replace the collateral from a surviving bank, explain the Board of Equalization's policy to the bank. If the bank will not conform to our request, ask to withdraw all the funds without an early withdrawal penalty.

- If the penalty is not waived and the maturity date is within ninety (90) days, hold the certificate until that date. At that time, contact the bank to close the account. Complete and send form letter BOE-36 (Exhibit 2), to inform the taxpayer of the circumstances and ask the taxpayer if he or she would like the cash deposit converted to a deposit account.
- If the early withdrawal penalty is waived, redeem the collateral for cash and post the amount as a cash deposit. Notify the taxpayer of the actions taken with form letter BOE-36 (Exhibit 2).
- If the penalty is not waived and the maturity date is not within ninety (90) days, hold the certificate and set a follow-up ~~for that date~~. Send the bank form letter BOE-37 (Exhibit 3). When the account reaches the maturity date, contact the bank to cash the account. Complete and send form letter BOE-36 (Exhibit 2), to inform the taxpayer of the circumstances and ask the taxpayer if he or she would like the cash deposit converted to a deposit account. Send the bank form letter BOE-37 (Exhibit 3).

If the bank still refuses to redeem the certificate, a copy of the certificate, letter BOE-35 and the BOE-598 will be mailed to the taxpayer. If the replacement is not received after thirty (30) days, it should be pursued as any other request for

security.

3. The Bank Says the Account was Transferred to the State Controller or Released

When converting or redeeming an account, explain to the bank that the Board of Equalization is the account holder and is presenting the original collateral and the request should be honored.

- If the account is determined to have been transferred to the State Controller by operation of law, the bank should pay the Board of Equalization and file a Holder's Claim for Reimbursement with the Bureau of Unclaimed Property of the State Controller's Office, (800) 992-4647, to retrieve the funds. If the financial institution still won't send payment, the account documents should be forwarded to the Compliance Policy Unit who will then file a claim with the Bureau of Unclaimed Property.
- If the account is determined to have been released to the taxpayer, the bank should be informed that the account holder is the Board of Equalization and without the Board of Equalization's release endorsement, the bank remains liable for the funds.
- If ~~the district office staff~~ cannot collect from the taxpayer, the bank should be requested to make payment. If the bank continues to refuse to redeem the collateral for cash, refer the denied claim to the Special Procedures Section for an Attorney General referral.

4. Security Released to a Taxpayer by the Board of Equalization

When collateral is released to a taxpayer and the taxpayer has difficulties ~~with the bank when redeeming the collateral with the bank~~, the taxpayer will sometimes ask the Board of Equalization for assistance.

- If the bank has told the taxpayer that they cannot find a record of the account, the taxpayer should be advised that the Board of Equalization has released its interest in the account to the taxpayer and the bank should honor the original collateral. Continued refusal by the bank to redeem the collateral may be a civil matter between the bank and the taxpayer.

In cases where financial institutions refuse to release the security to the taxpayer, the Board of Equalization will provide a letter stating it has released all interest in the funds to the depositor/taxpayer.

- If the bank determines that the funds were forfeited to the State Controller when the depositor could not be located, the taxpayer should be directed to the Bureau of Unclaimed Property at the State Controller's Office, (800) 992-4647. The funds may be listed under the Board of Equalization, but the taxpayer's name and social security number may also be shown. If the State Controller locates the funds, the local Board of Equalization office ~~should~~ will provide the taxpayer with documentation needed, such as a release of interest letter, for the

taxpayer to present to the State Controller when submitting a claim for the funds. If the State Controller cannot find a record of the funds, the taxpayer should be directed to the bank for settlement. Continued refusal by the bank to redeem the collateral may be a civil matter between the bank and the taxpayer.

However, if at any time a ~~district staff~~ cannot locate a bank or savings and loan association whose certificate has been posted as security to a business taxes account, they may call the Registration and Security Control ~~Team-Unit in LRAS~~ for the name and address of the institution that has assumed responsibility for payment of the certificate.

**DISPOSITION OF INSURED ACCOUNTS AND LIQUID SECURITY
WHEN THE TAXPAYER CANNOT BE LOCATED OR THE
FINANCIAL INSTITUTION FAILS**

435.055

~~This-~~The Board of Equalization has an obligation to make every effort to return a taxpayer's deposit after the account is closed out and cleared. ~~Districts Staff~~ should exhaust all available sources of information in an attempt to locate the taxpayer.

When security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing resources, send the collateral with the release endorsement to the bank. The cover letter should inform the bank that the Board of Equalization has released its interest in the funds to the depositor/taxpayer and, if the funds are forfeited to the State Controller at a later date, the Board of Equalization should not appear as the account holder or other interest holder on the account.

Should an institution fail, ~~then the local district staff~~ will take immediate steps to notify the Registration and Security Control ~~Team-Unit in LRAS~~ of the failure. The Registration and Security Control ~~Team-Unit in LRAS~~ will correct their records and notify the ~~the~~ Compliance Policy Unit in the Tax Policy Division by: ~~The The Compliance Policy Unit in the Tax Policy Division will order from the Technology Services Division sending~~ a listing of accounts secured by certificates issued by the defunct institution.

Instruction to the districts and PSTD divisions will follow from Headquarters as to the identity of their accounts and how to proceed to protect both the State and the depositor.

JEOPARDY DETERMINATION SECURITY

445.000

GENERAL

445.010

Any person against whom a jeopardy determination is made who ~~desires~~ decides to file a petition for re-determination must do so within ~~10~~ ten days from the date of the determination. At the same time, the person must also deposit with the Board of Equalization such security as may be deemed necessary. The security must be in any of the forms that would be acceptable as regular security, except guaranties. If a surety bond is offered, it will not be accepted unless the effective date covers the oldest period of the liability and

the surety company has knowledge of the pre-existing liability.

AMOUNT OF SECURITY

445.020

Generally, the amount of security required should be equal to the amount of the jeopardy determination. There may be, however, situations where an amount of security less than the amount of the jeopardy will be acceptable. If acceptance of a petition for re-determination is to be recommended by the district office when the amount of security accepted is less than the amount of the jeopardy determination, the recommendation should be made by the District Administrator or designee. The effective date of the security is the earlier of the date of deposit or receipt by the Board of Equalization (cash).

When accepting security on jeopardy determinations, the taxpayer should be informed that interest will continue to accrue on the tax until the liability is re-determined and the security applied. The advantage of full payment over posting security should always be clearly explained to the taxpayer since full payment may avoid possible interest accruals. In cases where the taxpayer has posted security in the form of a cash deposit, interest will stop accruing upon receipt. Other forms of security will not stop the accrual of interest.

PROCESSING

445.030

Security for jeopardy determinations should be processed in the same manner as regular security deposits. Petitions which are accompanied by security should be forwarded immediately to the Headquarters Petition Section with a transmittal letter with information regarding the amount and form of security posted.

CLAIMS UPON SECURITY FROM OUTSIDE

THE BOARD OF EQUALIZATION AND LIEN DEMANDS

450.000

GENERAL

450.010

Government Code section 12419.4 provides that the State has a lien, for any taxes due the State from any person or entity, upon all personal property belonging to such entity and held by the State or amount owed to such entity by the State. Section 12419.4 does not apply to sales and use tax security deposits (See CPPM 465.030).

Government Code section 12419.4 does not apply to salaries or wages owing to officers or employees of the State. It does not permit one agency to obtain property or money held by another agency, as long as the holding agency has any rights against such properties or monies. Whenever it has been deposited with a State agency for a particular purpose, e.g., the payment of taxes, it shall not be used for any other purpose by the holding agency, until it is no longer needed for the purpose for which it was held or deposited.

A lien created by Section 12419.4 of the Government Code is enforced by means of a written demand by the creditor agency on the agency holding the property.

LIEN DEMANDS ON OTHER STATE AGENCIES

450.020

The Headquarters Special Procedures Section is responsible for lien demands on other agencies. The Special Procedures Section prepares the demand letter

directed to the other agency, and maintains a follow-up to ensure receipt of the funds or property or, if nothing is available, that a reply is received.

The demand letter ~~shall~~will include the amount of the delinquent liability owed to the Board of Equalization, plus any additional charges which may accrue, and a statement that the amount due constitutes a lien pursuant to Section 12419.4 of the Government Code on property held, or amount owed to the taxpayer by the other agency. The other agency shall be requested to transfer the property held, or pay to the Board of Equalization the amount owed, up to the stated amount of liability.

When a ~~district office~~program area has information indicating that another State agency holds property of a person indebted to the Board of Equalization, or owes an amount to such person, the Special Procedures Section will promptly be furnished with the following information:

- a. Name of the agency
- b. Nature of the property or the approximate amount the agency owes to the person
- c. Reason for the other agency's indebtedness, and
- d. Approximate date on which the property will be returned or refund made.

Upon receipt of this information, the Special Procedures Section will enforce the lien by making written demand on the other agency.

LIEN DEMANDS ON THE BOARD OF EQUALIZATION— DISTRICT ACTION 450.030

When lien demands are received by ~~district offices~~a program area, the taxpayer will be notified that a demand has been made under section 12419.4 of the Government Code, and the Board of Equalization proposes to honor the demand subject to any prior claim the Board of Equalization may find in its favor. A copy of this letter will be sent to the agency making the demand and to Headquarters Special Procedures Section.

If a taxpayer disputes the amount owed to the other agency, the Board of Equalization will not become involved in the ~~controversy~~matter. The taxpayer will be advised by letter that the matter should be taken up with the other agency, and that the Board of Equalization, under the Government Code; has no alternative but to honor the demand.

LIEN DEMANDS ON THE BOARD OF EQUALIZATION — HEADQUARTERS ACTION 450.040

Copies of the Board of Equalization's refund schedules are furnished to the ~~Department of Human Resources~~Employment Development Department and Franchise Tax Board. If those agencies desire an offset of any of the items indicated under Section 12419.5 of the Government Code, they send their requests for offset directly to the Refunds Section.

~~When~~Lien demands ~~are~~ received from other agencies by the Headquarters office, ~~they~~ will be routed to the Special Procedures Section for processing.

Upon receipt of a lien demand, either through a district office or directly from another agency, the Special Procedures Section will review the account to

determine if a tax overpayment refund is pending. If such a refund is pending, the Special Procedures Section promptly notifies the Refunds Section of the lien demand. The Refunds Section will make arrangements for an offset by the State Controller.

PAYMENT OTHER THAN SECURITY TO OTHER STATE AGENCIES

455.000

ORDER OF PRIORITY OF LIENS

455.040

All liability owed by the taxpayer for any of the tax laws administered by the Board of Equalization must be cleared before meeting the demands of other State agencies. If a Board of Equalization liability is cleared, and the remaining refund is not sufficient to meet all demands from other agencies, such demands will be paid in the order received.

A federal claim, Notice of Levy, served on the Board of Equalization will not be recognized against a refund until all liabilities owing to all State agencies which have asserted liens are cleared.

When conflicting demands are made upon refunds, they will generally be honored in the following order:

1. Any amount owed to the Board of Equalization under any of the tax laws that it administers.
2. Liens of other State agencies acquired through the provisions of Section 12419.4 of the Government Code.
3. Federal levies.

FEDERAL CLAIM, NOTICE OF LEVY

455.050

The Federal Notice of Levy is effective on refunds that may be due the taxpayer. If refunds, either overpayment or audit refunds, are in process, they will be identified when the copy of the Notice of Levy is sent to the Special Procedures Section. Headquarters will take action to give effect to the levy in these cases.

Levies by the Federal Government can be made by service of their Notice of Levy on district or branch offices of the Board of Equalization. All other services on the Board of Equalization must be made on the Executive Director.

When a Notice of Levy is served by an agent of the Federal Government, or by mail, on a district or branch office, it will be accepted by the District Administrator or designee. Service only will be acknowledged. No answer shall be made in writing that the Board of Equalization holds anything at this point that may be subject to the levy. The agent should be advised that as soon as ~~we are able to~~ it is determined that nothing is owed to the State and that there are no prior claimants that may have priority, the levy will be honored.

A copy of the notice will be immediately transmitted to Headquarters Special Procedures Section. Inquiry should be made to determine if any amounts are owed to the other State agencies. If there is surplus refund money after paying the Board of Equalization's amounts in full and any other amounts due other State agencies, a letter will be sent to the taxpayer advising him or her of the federal levy, ~~and that if the taxpayer neither acknowledgment~~ acknowledges

~~nor objection objects~~ to the levy ~~is received~~ within in a specific time, the levy will be honored by the Board of Equalization. Should an objection be received, full particulars will be sent to Headquarters Special Procedures Section for referral to the legal staff.

If it is acknowledged or no objection is received, any surplus money will be paid directly to the Federal Government. A copy of their levy should accompany the payment. If there are no funds available, a copy of the levy will be returned to them with a statement that no funds are available.

THIRD PARTY DEPOSITS

455.060

Deposits made by a third party to obtain a use tax clearance must be kept in the name of the party placing the deposit. Such deposits are not subject to lien demands. These deposits are not available to apply to any other liability owed by the taxpayer except for those accounts for which a form BOE-1274, Notice of Amounts Due, and/or form BOE-471, Certificate of Payment, have been issued.

MISCELLANEOUS

465.000

RECONCILIATION OF ACTIVE LIQUID SECURITY

465.010

In order to ensure the accuracy of the information on file, the security document from the ~~district~~ security file will be compared to the on-line security system when the security for that account is to be applied or refunded.

In addition, yearly, each district and PSTD division will receive a ~~random~~ listing of active liquid ~~of~~ security documents to be tested. The list will contain the account number and ownership; and the type, amount, and identification of the security document as shown on the control records.

Verification to the actual documents will be made by a person other than the normal custodian of the documents. Discrepancies will be noted on the listing by deleting incorrect data and writing in the correct information. Reconciliation also includes but is not limited to acquiring duplicate certificate from banks that have merged, transferring certificates to the appropriate district office, and obtaining missing documents. When transferring the documents to the correct district, a copy will be kept by the transferring district for two years and comments will added in IRIS noting the date the security document were sent to the receiving district.

The list will be worked until all the security is reconciled. Appropriate comments should also be made regarding items not verified because of transfer to another district or other reasons.

A report certifying completion of the test by the District Administrator and the verified listing will be sent to the respective Chief of Field Operations within 45 sixty (60) days of receipt of the listing. PSTD division chiefs will send the report to the PSTD Operations Section. A copy of the report and of the listing will be routed to the Internal Security and Audit Division, and a copy retained in the district office or PSTD division.

~~The Special Projects Team in the Program Planning Division will establish criteria for the selection of the test sample and distribute the lists, in triplicate, to district offices. That section will monitor, review and evaluate test results. If~~

~~necessary, they will notify districts if additional testing is required.~~

The Internal Security and Audit Division will conduct periodic test checks of the documents and use the test results as a reference. Any deficiencies noted through the audit shall later be reinvestigated to determine the effectiveness of corrective actions.

FRAUDULENT ENDORSEMENT OF BOARD OF EQUALIZATION CHECK

465.020

When a payee reports that a check has not been received, a memorandum should be forwarded to the Headquarters Accounting Section providing the payee's name, current address, account number, check number, date and amount of check.

In those cases where the intended payee reports to the Board of Equalization that a check has not been received, and the check is found to have been paid by the State Treasurer, the Board of Equalization's Accounting Section prepares the documentation necessary before issuing the replacement check, FTB Form 435, Request for Duplicate Controller's Warrant/Stop Payment, and forwards it to the payee to be completed.

~~Upon receipt of the signed affidavit by the State Treasurer, the first copy of Treasury Form STC CA 0034, Forged Endorsement Affidavit, and the original forged check will be charged back to the applicable bank. (SAM 8041.1). This action, however, is possible only within the one year period of legal negotiability (Government Code §17403).~~

~~If more than one year elapses before the payee takes action, it is not possible to charge back the item to the bank in question. That leaves the claimant with two options:~~

- ~~1. pursue the matter directly with the bank;~~
- ~~2. file a legislative claim through the Board of Control.~~

OFFSETS FOR OTHER ACCOUNTS OR STATE AGENCIES

465.030

RTC section 6701 provides that any security in the form of cash or insured savings accounts shall be held by the Board of Equalization in trust to be used solely in the manner provided by RTC sections 6701 and 6815. Most security provisions administered by the PSTD contain similar language. Therefore, cash and savings account security deposits for sales and use tax accounts may not be applied to other tax programs administered by the Board of Equalization or offset or released to other State agencies claiming a lien pursuant to Government Code section 12419.4.

GUIDELINES FOR RELEASING SECURITY DEPOSITS TO FINANCIAL INSTITUTIONS

465.040

When funds are forfeited to the State Controller's Office and the Board has been unable to ~~be~~ locate the taxpayer, the following procedures should be implemented.

When time deposit and passbook savings accounts or any other security collateral is to be released to a taxpayer and the taxpayer cannot be located after using all available skip tracing tactics and resources, the bank in

possession of the security should be notified. The release endorsement along with a cover letter BOE-435-4 must be sent to the bank of record informing them that the Board of Equalization has released its interest in the funds to the depositor. This letter also informs the bank that if funds are forfeited to the State Controller's Office at a later date, the Board of Equalization should not appear as the account holder, or other interest holder on the account.

If the bank contacts the Board of Equalization after receipt of the BOE-435-4 letter, an explanation should be provided to the bank representative that the Board of Equalization has been unable to locate the depositor. The Board of Equalization representative should explain that security is no longer required and the Board of Equalization releases its interest in the funds to the depositor. It should also be emphasized to the bank that the Board of Equalization should not appear as the account holder or other interest holder on the account as stated in the BOE-435-4.

LIQUIDATION OF A SURETY COMPANY

465.050

When the Board of Equalization receives notification that a surety company is being liquidated, the Registration and Security Control ~~Team Unit in LRAS~~ will provide the Compliance Policy Unit in the Tax Policy Division with a list of taxpayers with surety bonds issued by the surety company. The Compliance Policy Unit will provide the Special Procedures Section with copies of the notice of liquidation and the list of affected accounts. The Compliance Policy Unit will distribute the list to the field offices and the ~~Property and Special Taxes Department~~ PSTD divisions with a request that replacement security be obtained if the Board of Equalization still requires security from the taxpayer.

The Special Procedures Section is responsible for making any necessary demands on the bonds or other activity with respect to collection from surety. They will send a memo asking the field offices and Property and Special Taxes Department to provide them with a list of accounts and a BOE-200, Special Procedures Action Request, for each account for which a claim against the bond is required. The Special Procedures Section will combine all the requests and file one claim in the liquidation.

SURETY COMPANY NAME AND OWNERSHIP CHANGES

465.060

When the name or ownership of a surety company changes, Board of Equalization policy is to contact the new surety company to request a rider showing the change. The Registration and Security Control ~~Team Unit in LRAS~~ will advise the Compliance Policy Unit in the Tax Policy Division and provide a list of affected accounts. Compliance Policy Unit will distribute the list to the field offices and the Property and Special Taxes Department and request that a rider showing the change be obtained.

BOE-35, SECURITY DEPOSIT — OLD BANK TO NEW BANK

EXHIBIT 1

**BOE-36, SECURITY DEPOSIT —
OLD BANK TO NEW BANK REFUSAL**

EXHIBIT 2

BOE-37, SECURITY DEPOSIT — ACCOUNT VERIFICATION

EXHIBIT 3