

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

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

**Date:** September 16, 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*,  
Section 405.035**

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*, Section 405.035 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 September 8, 2008, we sent a memorandum advising Board Members that there were no comments and of our intention to place these revisions on the October 2, 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)

## Release and Refund of Security — Active Accounts

405.035

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

“Security held by the Board of Equalization 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 otherwise 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. Account has no current account receivables (includes both final and non-final liabilities.)
3. Account has no current delinquent returns(s).
4. Account has no more than two instances within the last twelve months of non-compliance with items two and three above (for this criteria, use the Demand date or the Notice of Determination date for account receivables. If a liability has both a Notice of Determination date and a Demand date, use the 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 that 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 accounts must be reviewed and eligible deposits must be released before the end of each month.

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 Board with an immediate effective date. In cases where the Board of Equalization Board 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.

**Release and Refund of Security — Active Accounts (CONT.) 405.035**

~~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*. The marked list and a memorandum or an e-mail must be sent signed by the District Administrator or the District Principal Compliance Supervisor or District Administrator must be sent to the Registration and Security Control Team Unit in the Local Revenue Return Analysis and 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. For divisions within the PSTD, the division Administrator or Principal Compliance Supervisor will send an e-mail or memorandum to 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 (See 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.~~