



STATE BOARD OF EQUALIZATION

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**STATE BOARD OF EQUALIZATION
Notice of Interested Parties Meeting**

Date	Time	Location
February 4, 2013	9:00 am – 11:00 am	450 N Street, Room 122, Sacramento

The State Board of Equalization (BOE) Legislative and Research Division and Sales and Use Tax Department invite you to attend an interested parties meeting to discuss legislative proposals the Board may consider for this year’s legislative session. These proposals have not yet been approved by the Board Members. However, the proposals may be presented for consideration at a future Board of Equalization Legislative Committee meeting. Before the proposals are presented at the Legislative Committee meeting, we would like to provide stakeholders an opportunity to discuss the issues and present any suggested changes or comments.

- Proposal 1 – Impose criminal penalties for selling, purchasing, using, transferring, or possessing software programs that falsify electronic sales records.
- Proposal 2 – Authorize refunds of sales and use tax by means of amended returns and also authorize electronic filing of claims for refunds.
- Proposal 3 – Allow retailers to claim a bad debt deduction for the lumber products assessment.

We will also present stakeholders with a chance to comment on suggestions already adopted by the Board Members to be Board-sponsored and for which we are seeking authors.

- [Suggestion 2-1](#) - Allow the BOE to increase the levy amount the Taxpayers’ Rights Advocate is authorized to release or return.
- [Suggestion 2-2](#) - Allow a taxpayer to file a claim for reimbursement of bank charges and third party check charges incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE under the various special taxes and fees programs.
- [Suggestion 3-1](#) - Authorize a direct refund of excess sales tax reimbursement to the retailer’s customer, in lieu of the retailer, under limited circumstances.

If you would like to participate by teleconference, call 888-278-0296 and use participant pass code 3393222.

Contact

Mr. Kevin Beile at kevin.beile@boe.ca.gov or (916) 323-7169.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to email your comments to Kevin Beile prior to February 4, 2013. Whether or not you are able to attend the stakeholders meeting, you may submit written comments by February 15, 2013.

If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting.

The meeting location is accessible to people with disabilities. Please contact Mr. Beile if you require special assistance.

This notice is available on the BOE website at <http://www.boe.ca.gov/info/calendar.htm> and <http://www.boe.ca.gov>.

/s/ Jeffrey L. McGuire

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

/s/ Michele Pielsticker

Michele Pielsticker, Chief
Legislative and Research Division

Add Revenue and Taxation Code Sections 7153.6 and 55363.5 to the Sales and Use Tax Law and Fee Collections Procedures Law, respectively, to make it a felony for any person to knowingly sell, purchase, install, transfer or possess software programs that falsify electronic sales records, punishable as specified.

Source: Sales and Use Tax Department

Existing Law. The Revenue and Taxation Code (RTC) sanctions taxpayers who fail to comply with the law in the reporting and remitting of tax and fee liabilities. In addition to a variety of civil penalties, the RTC imposes criminal penalties for violations. For example, under Sections 7152 and 7153 of the Sales and Use Tax Law, any person who makes a fraudulent return with the intent to evade the determination of an amount due or any person who assists in the preparation or presentation of a document that is false to a material matter is guilty of a misdemeanor, punishable by a fine of not less than \$1,000 and not more than \$5,000, or imprisonment up to one year in the county jail, or both fine and imprisonment in the discretion of the court. In addition, Section 7153.5 provides that the crime is a felony if the unreported tax liability is at least \$25,000 in a consecutive 12-month period, punishable by a fine of not less than \$5,000 and not more than \$20,000, or imprisonment for 16 months or 2 or 3 years, or both the fine and imprisonment in the discretion of the court.

The existing Fee Collection Procedures Law (FCPL) generally provides for the administration and collection of BOE-administered fees. It was added to the RTC to allow bills establishing a new fee to reference this law with minimal verbiage. Among other things, the FCPL includes collection, reporting, refund, and appeals provisions, and, similar to the Sales and Use Tax Law, provides criminal penalties for violations.

Existing law does not specifically penalize a person for the sale, purchase, installation, transfer, or possession of sales suppression devices or software that conceals or removes sales transactions from retailers' recordkeeping systems.

This Proposal. This proposal would make it a felony, punishable by a fine of up to \$100,000 and imprisonment for not less than 1 year or more than 5 years, for any person to knowingly sell, purchase, install, transfer, or possess in this state any automated sales suppression device, zapper or phantom-ware, as defined. This provision would be incorporated into the Sales and Use Tax Law and the FCPL.

Background. California's tax system is one based on the principal of voluntary compliance. Most taxpayers that report their tax liabilities to the BOE are honest and generally comply with the tax laws. However, there are some who seek to skim or hide their sales to evade the taxes due. Some cash-based businesses, for example, don't ring up all their sales through their cash register, keep two sets of books, or simply file false tax returns.

However, a more sophisticated approach to skimming sales has been developed to electronically and systematically conceal or remove sales transactions from recordkeeping systems at or close to the point of sale. These devices are referred to as "zappers" or "sales suppression devices," and the software is referred to as "phantomware." The use of this technology makes detecting understated records of sales difficult. Use of this technology not only defrauds the state, but also may provide users an unfair competitive advantage over taxpayers who comply with the law and pay their fair share of taxes and fees.

According to Richard Ainsworth, a tax attorney and Boston University School of Law professor who has researched zappers extensively, sales suppression devices are widely used in European countries and Canada. Additionally, use of these devices has spread to the United States. Georgia, Louisiana, Maine, Michigan, Tennessee, Utah, and West Virginia have passed legislation, and several more, including Illinois and New York, have proposed legislation outlawing these devices and software.¹

The BOE currently is conducting an informal study to estimate the extent of the zapper problem and how it affects California sales tax reporting. The Federation of Tax Administrators' (FTA) website includes a table of estimated state losses.² Under the FTA's methodology, California's estimated loss from the use of zapper software would amount to \$2.8 billion per year. However, using BOE data, California restaurant taxable sales totaled \$51.3 billion in 2010. Using Mr. Ainsworth's/Revenue Quebec's "rule of thumb" that five percent of gross restaurant sales are zapped, the resulting CA annual revenue loss is \$214 million based on the statewide tax rate of 8.37%.

This proposal would bring California in line with other states that have passed or proposed similar legislation.

By amending the FPCL, the proposal would also apply to the California Tire Fee and Covered Electronic Waste Recycling Fee, which are fees imposed on consumers at the retail level.

The Legislature has recognized through its enactment of criminal penalties for deliberate taxpayer fraud and evasion that criminal sanctions play an important role in tax administration. Specifically criminalizing and punishing the sale, installation, and use of sales suppression devices would serve as a strong deterrent to potential offenders.

Section 7153.6 is added to the Revenue and Taxation Code, to read:

7153.6. (a) Notwithstanding any other provision of this part, a person who knowingly sells, purchases, installs, transfers, or possesses in this state any automated sales suppression device or zapper or phantom-ware is guilty of a felony and shall be punished by a fine of not more than \$100,000 and imprisonment for not less than 1 year or not more than 5 years. In addition, the person shall be liable for all taxes, interest and penalties due as the result of the use of an automated sales suppression device or zapper or phantom-ware and shall forfeit to the state all profits associated with the sale or use of an automated sales suppression device or zapper or phantom-ware.

(b) For purposes of this section:

(1) "Automated sales suppression device" or "zapper" means a software program carried on a memory stick or removable compact disc, accessed through an internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(2) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to

¹ See, Richard Ainsworth, "Zappers: Technology-Assisted Tax Fraud, SSUTA, and the Encryption Solutions" (2008) vol. 61, no. 4, *The Tax Lawyer* 1075-1110.

² The losses are based on a ratio of the estimated losses in Quebec compared to Quebec's Gross Domestic Product (GDP) that is applied to the states' GDP.

record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

(3) "Phantom-ware" means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) "Transaction data" includes information regarding items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

Section 55363.5 is added to the Revenue and Taxation Code, to read:

55363.5. (a) Notwithstanding any other provision of this part, a person who knowingly sells, purchases, installs, transfers, or possesses in this state any automated sales suppression device or zapper or phantom-ware is guilty of a felony and shall be punished by a fine of not more than \$100,000 and imprisonment for not less than 1 year or not more than 5 years. In addition, the person shall be liable for all fees, interest and penalties due as the result of the use of an automated sales suppression device or zapper or phantom-ware and shall forfeit to the state all profits associated with the sale or use of an automated sales suppression device or zapper or phantom-ware.

(b) For purposes of this section:

(1) "Automated sales suppression device" or "zapper" means a software program carried on a memory stick or removable compact disc, accessed through an internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(2) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

(3) "Phantom-ware" means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) "Transaction data" includes information regarding items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax or fee amount for each of the items subject to the tax or fee, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

Add Revenue and Taxation Code Section 6452.5 to the Sales and Use Tax Law to require the filing of amended returns for specified overpayments and underpayments. Also amend Revenue and Taxation Code Section 6904 to allow the submission of claims for refund via electronic media.

Source: Sales and Use Tax Department

Existing Law. Except where specifically exempted or excluded by statute, Revenue and Taxation Code (RTC) Section 6051 imposes a sales tax on all retailers for the privilege of selling tangible personal property at retail in this state. Under Civil Code Section 1656.1, a retailer may add sales tax reimbursement to the sales price of tangible personal property if the contract of sale provides for such reimbursement.

RTC Section 6452 requires a retailer and any other person liable for the tax to file a return with the Board of Equalization (BOE). Generally, returns are due quarterly at the end of the month following the quarterly reporting period.

RTC Section 6904 provides that every claim for refund must be in writing and shall state the specific grounds upon which the claim is founded.

Current law does not require the filing of an amended return when a taxpayer discovers that an overpayment or underpayment has occurred.

Existing Policies and Procedures. The BOE's Compliance Policy and Procedure Manual contains guidelines for taxpayers when they discover an error on a sales and use tax return. Taxpayers are instructed to make a copy of the original return filed, and to indicate the corrected figures on the side of the original figures. In addition, these guidelines recommend that taxpayers write the notation "AMENDED RETURN DO NOT PROCESS AS ORIGINAL" on the face of the return, and that a cover letter be included explaining the changes. Under current processes, when a taxpayer submits a return without the "AMENDED RETURN" notation on the face of the return, the return is considered a duplicate return, rather than an amended return.

In lieu of filing an amended return, current procedures allow a taxpayer to submit a claim for refund form (a BOE-101, *Claim for Refund*). This form requires the taxpayer to describe the reason for the overpayment and specify the amount of the overpayment. Frequently, taxpayers indicate \$1, as they do not have the specific amount of the overpayment. Submitting a claim for refund for one dollar, rather than an amended return, requires significantly more work for BOE staff to determine the validity of the claim for refund and the proper amount.

This Proposal. This proposal would require a taxpayer to file an amended return with the BOE when the taxpayer believes an overpayment of tax on a previously filed return has been made, or when a taxpayer believes an underpayment of tax occurred on a previously filed return, provided the statute of limitations has not expired.

This proposal would also allow the electronic filing of claims for refund.

Section 6452.5 is added to the Revenue and Taxation Code to read:

6452.5. (a) When a person believes an error has been made on a previously filed return, the person shall file an amended return if either of the following apply:

(1) The amended return results in an underpayment of tax for the period, and the period in which the underpayment occurred is within the time a deficiency determination may be made for the underpayment under Section 6487.

(2) The amended return results in an overpayment of tax for the period and the date in which the amended return is filed and the period for which the amended return is filed are within the time specified in Section 6902.

(b) An amended return shall be in a form as prescribed by the board, which may include, but is not limited to, electronic media.

(1) If the amended return results in an overpayment of tax, the amended return shall be accompanied by an explanation of the reason for the overpayment. If the overpayment represents excess tax reimbursement, the board may require that the excess tax collected be returned to the person from whom it was collected as a condition of the refund.

(2) If the amended return results in an underpayment of tax, penalty and interest shall be due in accordance with this part.

Section 6904 of the Revenue and Taxation Code is amended to read:

6904. (a) Every claim shall be in the form as prescribed by the board, which may include, but not be limited to, electronic media, writing and shall state the specific grounds upon which the claim is founded.

(b) A claim filed for on behalf of a class of taxpayers shall do all of the following:

(1) Be accompanied by written authorization from each taxpayer sought to be included in the class.

(2) Be signed by each taxpayer or taxpayer's authorized representative.

(3) State the specific grounds on which the claim is founded.

Amend Public Resources Code Section 4629.5 to allow retailers to claim a bad debt deduction for the lumber products assessment, as currently allowed under the Sales and Use Tax Law.

Source: Sales and Use Tax Department

Existing Law. Beginning January 1, 2013, Public Resources Code (PRC) Section 4629.5 (Assembly Bill 1492, Chapter 289, Statutes 2012) imposes a 1% assessment on a person who purchases lumber products and engineered wood products to be collected by the retailer at the time of sale. However, the statute currently does not provide any relief for the retailer if the customer's account becomes uncollectible. In effect, the retailer is required to pay the assessment to the BOE whether or not he or she has collected the assessment from the customer on whom the assessment actually is imposed.

The BOE administers and collects the assessment pursuant to the Fee Collection Procedures Law (FPCL) (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code (RTC)). Among other things, the FPCL provides for collection, reporting, refund, and appeals, as well as for the authority of the BOE to adopt regulations relating to the FPCL's administration and enforcement.

The BOE deposits all assessment revenues received, less refunds and reimbursements, into the Timber Regulation and Forest Restoration Fund

For the privilege of selling tangible personal property at retail, existing Sales and Use Tax Law imposes a sales tax upon a retailer pursuant to Article 1 (commencing with Section 6051) of Part 1 of Division 2 of the RTC). The retailer is responsible for reporting and paying the retail sales tax. RTC Section ?? allows a retailer to claim a bad debt deduction for previously reported taxable sales if he or she does not receive total compensation for the retail sale transaction because the measure of the tax is represented by accounts that have been found worthless and charged off for income tax purposes. If a retailer only collected a portion of the amount reported as taxable, a partial deduction also may be claimed for that portion found to be uncollectible.

This Proposal. This proposal would allow retailers to claim a bad debt deduction for previously reported Lumber Products Assessment (LPA) amounts if the related account becomes worthless and is charged off for income tax purposes or in accordance with generally accepted accounting principles, consistent with the treatment of bad debt under the Sales and Use Tax Law and other taxes and fees administered by the BOE.

This proposal is intended to add equity to the assessment program so that retailers are not unfairly burdened with a liability for which it can be argued they are simply collecting on behalf of California from their customers.

Background. While the retailers who sell products subject to the LPA are required to collect the assessment on such products sold for storage, use, or other consumption in California, the assessment actually is imposed upon a person who purchases a lumber product or an engineered wood product. This method of collection places the ultimate liability for collection of the assessment with the retailer as the retailer is required to charge and collect the assessment from the purchaser pursuant to both subdivisions (a) and (c) of PRC Section 4629.5. Accordingly, if a person purchasing a lumber product issues a bad check or does not pay the retailer, the retailer is still required to report

those sales as subject to the assessment and remit that assessment to the BOE. Some of the reported assessment amounts likely will become bad debts owed by the customer to the retailer (for example, uncollectible accounts receivable).

Section 4629.5 of the Public Resources Code is amended to read:

(a)(1) On and after January 1, 2013, there is hereby imposed an assessment on a person who purchases a lumber product or an engineered wood product for the storage, use, or other consumption in this state, at the rate of 1 percent of the sales price.

(2) A retailer shall charge the person the amount of the assessment as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser.

(3) The retailer shall collect the assessment from the person at the time of sale, and may retain an amount equal to the amount of reimbursement, as determined by the State Board of Equalization pursuant to regulations, for any costs associated with the collection of the assessment, to be taken on the first return or next consecutive returns until the entire reimbursement amount is retained. For purposes of this paragraph, the State Board of Equalization may adopt emergency regulations pursuant to Section 11346.1 of the Government Code. The adoption of any regulation pursuant to this paragraph shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(b) The retailer shall separately state the amount of the assessment imposed under this section on the sales receipt given by the retailer to the person at the time of sale.

(c)(1) The State Board of Equalization shall administer and collect the assessment imposed by this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) with those changes as may be necessary to conform to the provisions of this article. For purposes of this section, the references in the Fee Collection Procedures Law to "fee" shall include the assessment imposed by this section.

(2) A retailer is relieved from liability to collect the assessment imposed by this section that became due and payable, insofar as the base upon which the assessment is imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the assessment may, under rules and regulations prescribed by the State Board of Equalization, take as a deduction on its return the amount found worthless and charged off by the retailer. If any such accounts are thereafter in whole or in part collected by the retailer, the amount so collected shall be included in the first return filed after such collection and the assessment shall be paid with the return. For purposes of this subdivision, the term "retailer" shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(d)(1) The assessment is required to be collected by a retailer and any amount unreturned to the person who paid an amount in excess of the assessment, but was

collected from the person under the representation by the retailer that it was owed as an assessment, constitutes debts owed by the retailer to this state.

(2) Every person who purchases a lumber product or an engineered wood product for storage, use, or other consumption in this state is liable for the assessment until it has been paid to this state, except that payment to a retailer relieves the person from further liability for the assessment. Any assessment collected from a person that has not been remitted to the State Board of Equalization shall be a debt owed to the state by the retailer required to collect and remit the assessment. Nothing in this part shall impose any obligation upon a retailer to take any legal action to enforce the collection of the assessment imposed by this section.

(e) Except as provided in paragraph (3) of subdivision (a), the State Board of Equalization may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section, including, but not limited to, collections, reporting, refunds, and appeals.

(f)(1) The assessment imposed by this section is due and payable to the State Board of Equalization quarterly on or before the last day of the month next succeeding each quarterly period.

(2) On or before the last day of the month following each quarterly period, a return for the preceding quarterly period shall be filed with the State Board of Equalization using electronic media, in the form prescribed by the State Board of Equalization. Returns shall be authenticated in a form or pursuant to methods, as prescribed by the State Board of Equalization.

(g) For purposes of this section, all of the following shall apply:

(1) "Purchase" has the same meaning as that term is defined in Section 6010 of the Revenue and Taxation Code.

(2) "Retailer" has the same meaning as that term is defined in Section 6015 of the Revenue and Taxation Code.

(3) "Sales price" has the same meaning as that term is defined in Section 6011 of the Revenue and Taxation Code.

(4) "Storage" has the same meaning as that term is defined in Section 6008 of the Revenue and Taxation Code.

(5) "Use" has the same meaning as that term is defined in Section 6009 of the Revenue and Taxation Code.

(h)(1) Every person required to pay the assessment imposed under this article shall register with the State Board of Equalization. Every application for registration shall be made in a form prescribed by the State Board of Equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the State Board of Equalization may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the State Board of Equalization.

(2) An application for registration filed pursuant to this section may be filed using electronic media as prescribed by the State Board of Equalization.

(3) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

Amend Revenue and Taxation Code (RTC) Section 7094 of the Sales and Use Tax Law and amend comparable statutes in the special tax and fee laws the Board of Equalization (BOE) administers to allow the BOE to increase the levy amount the Taxpayers' Rights Advocate is authorized to return from \$1,500 to \$2,300 to adjust for inflation and to provide a mechanism for future adjustments for inflation.

Source: Honorable Jerome E. Horton

Existing Law. Under the existing Sales and Use Tax Law (§ 7094), Use Fuel Tax Law (§ 9272), Alcoholic Beverage Tax Law (§ 32472), Energy Resources Surcharge Law (§ 40212), Emergency Telephone Users Surcharge Law (§ 41172), Hazardous Substances Tax Law (§ 43523), Integrated Waste Management Fee Law (§ 45868), Oil Spill Response, Prevention, and Administration Fees Law (§ 46623), Underground Storage Tank Maintenance Fee Law (§ 50156.12), and Diesel Fuel Tax Law (§ 60632), the Taxpayers' Rights Advocate (TRA) is authorized to release a levy or notice to withhold or, within 90 days of receipt of funds from a levy, order the return of up to \$1,500 to the taxpayer or feepayer (hereafter, taxpayer), if the levy of funds threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

Two other provisions, the Cigarette and Tobacco Products Tax Law (§ 30459.2) and the Fee Collection Procedures Law (§ 55333), also allow the TRA to release a levy when the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family. These provisions also allow the BOE to release a levy when the expense of the sale exceeds the liability. However, neither statute authorizes the TRA to return funds.

A taxpayer may also file a claim with the BOE for reimbursement of bank charges, if a levy is erroneously issued on a bank account and bank charges are incurred. In addition, prior to the BOE selling any property it may have seized, it must notify the taxpayer of the statutory exemptions from levy available under the Code of Civil Procedure. Finally, the BOE is also required to return to a taxpayer the property or the proceeds from the sale of any property levied upon if (i) the levy was not in accordance with law, (ii) the taxpayer has entered into and is in compliance with an installment payment agreement as specified, or (iii) the return of the property will facilitate collection or be in the best interests of the state and the taxpayer. This provision does not apply where the BOE finds collection of the tax to be in jeopardy.

This Proposal. This proposal would increase the amount of levied funds the TRA is allowed to order returned within 90 days from the date the funds were received from \$1,500 to \$2,300, in cases where the levy threatens the health or welfare of the taxpayer, his or her spouse and dependents or family. The increase from \$1,500 to \$2,300 is based on the accumulation of application of the California inflation factor from the date Section 7094 was first effective, on January 1, 1996, to the present. This proposal also provides a mechanism for future adjustments for inflation. In addition, as noted previously, the TRA

presently lacks the authority to return levy funds under two laws; both of these sections are proposed to be updated to be consistent with the other tax and fee laws.

Background. The Harris-Katz California Taxpayers' Bill of Rights was enacted in 1988 (Assembly Bill 2833, Ch. 1574), effective January 1, 1989, to place certain guarantees in the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes. The Katz-Harris Taxpayers' Bill of Rights, also enacted in 1988, placed similar guarantees in the California Personal Income Tax Law and the Bank and Corporation Tax Law. Conforming taxpayer rights provisions were added to most BOE-administered special tax and fee programs in 1992 by Chapter 438, effective January 1, 1993.

The enacting legislation added RTC Section 7094, which allowed the TRA to release a levy upon making a determination that the levy threatened the health or welfare of the taxpayer or his or her spouse and dependents or family. The language mirrored Franchise Tax Board (FTB) statutes and did not have a limitation on the time or amount that could be released.

Section 7094 was subsequently amended in 1995 by Senate Bill 718 (Ch. 555) to read as it does today. Among other things, the TRA was provided additional authority to return (within 90 days from the levy) an amount not to exceed \$1,500, in those cases where the TRA determined the levy threatened the health or welfare of the taxpayer or his or her spouse and dependents or family. Although the available legislative history does not explain the reason for the time or dollar amount threshold, the statute itself seems to suggest that the Legislature was attempting to strike a balance between the expanded power to return funds and the potential resulting revenue impact.

In General. Both the Internal Revenue Service (IRS) and the FTB have provisions that provide for the release of a levy if the levy creates an economic hardship or otherwise threatens the health and welfare of the taxpayer, his or her spouse and dependents or family.

With respect to the FTB, a levy may be released in the event of any circumstances deemed appropriate by the FTB, including, but not limited to the following:

- Expense to the state related to the sales process exceeds the liability.
- TRA orders the release upon a finding that the levy threatens the health or welfare.
- Proceeds from the sale would not result in a reasonable reduction of the debt.
- Administrative procedures were not followed when the levy was issued.
- Installment payment agreement was entered into to pay the tax liability for which the levy was issued, unless the agreement allows for a levy.

- Release of the levy will facilitate collection of the tax liability or will be in the best interest of the taxpayer and state.

In general, the IRS is also authorized to release a levy under similar conditions as the FTB. These include the following:

- Release of the levy will facilitate collection of the liability.
- Installment payment agreement has been entered into, unless the agreement allows for a levy.
- Secretary determines that the levy creates a financial hardship.
- Liability is satisfied or becomes unenforceable due to lapse of time.
- Fair market value exceeds the liability and release will not hinder collection.

The IRS is specifically authorized to return property that has been wrongfully levied upon. The amount and time are both specified and exceed the time limit and amount that the BOE is authorized to return. The IRS may return property at any time. An amount equal to the amount of money levied on may be returned prior to nine (9) months from the date of levy.

Revenue Impact. Based on discussions with the TRA, the annual revenue loss is expected to be minimal, approximately \$4,600.

Section 7094 of the Revenue and Taxation Code is amended to read:

7094. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars (~~\$1,500~~) (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is

equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 9272 of the Revenue and Taxation Code is amended to read:

9272. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars (~~\$1,500~~) (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer of his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be

operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 30459.2 of the Revenue and Taxation Code is amended to read:

30459.2. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of ~~any of the following: that (1) the~~ expense of the sale process exceeds the liability for which the levy is made.

(2b)(1) The Taxpayers' Rights Advocate may orders the release of the any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of

either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(bc) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(ed) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 32472 of the Revenue and Taxation Code is amended to read:

32472. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars ~~(\$1,500)~~ (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4

(commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 40212 of the Revenue and Taxation Code is amended to read:

40212. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five~~ two thousand three hundred dollars ~~(\$1,500)~~ (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until its has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 41172 of the Revenue and Taxation Code is amended to read:

41172. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars ~~(\$1,500)~~ (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 43523 of the Revenue and Taxation Code is amended to read:

43523. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars (~~\$1,500~~) (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 45868 of the Revenue and Taxation Code is amended to read:

45868. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars (~~\$1,500~~) (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the fee payer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 46623 of the Revenue and Taxation Code is amended to read:

46623. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of the funds pursuant to a levy or the notice to withhold, may order the return of any amount up to ~~one thousand five hundred~~ two thousand three hundred dollars (~~\$1,500~~) (\$2,300) of moneys received, upon his or her finding that the

levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 50156.12 of the Revenue and Taxation Code is amended to read:

50156.12. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to ~~one thousand five~~ two thousand three hundred dollars (~~\$1,500~~) (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 55333 of the Revenue and Taxation Code is amended to read:

55333. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following: ~~that~~
~~(1) The expense of the sale process exceeds the liability for which the levy is made.~~

(2b)(1) The Taxpayers' Rights Advocate may order the release of the any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the

California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(bc) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(ed) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Section 60632 of the Revenue and Taxation Code is amended to read:

60632. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event the expense of the sale process exceeds the liability for which the levy is made.

(b)(1) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part, or within 90 days from the receipt of the funds pursuant to a levy or notice to withhold may order the return of any amount to ~~one thousand five hundred~~ two thousand three hundred dollars ~~(\$1,500) (\$2,300)~~ of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse or dependents.

(2) The board shall adjust the two thousand three hundred dollar (\$2,300) amount specified in paragraph (1) as follows:

(A) On or before March 1, 2014, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is

equal to or exceeds a new operative threshold, as defined in subparagraph (C).

(B) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (C), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(C) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraphs (A) and (B) as the operative adjustment to the amount specified in paragraph (1).

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

Amend RTC Sections 7096, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1 to waive for reasonable cause the requirement that a taxpayer file a claim for reimbursement of bank charges and third party check charges within 90 days from the date of the BOE's erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Also amend the above-specified special tax and fee sections to allow a taxpayer to file a claim for reimbursement of bank charges and third party check charges incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE under the various special taxes and fees programs in conformity with the Sales and Use Tax Law. (Housekeeping)

Source: Taxpayers' Rights Advocate

Existing Law. Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or order to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

In connection with various BOE e-service initiatives, taxpayers are encouraged to remit payments electronically in connection with current tax or fee obligations or installment payment agreements for past due amounts. The available means of electronic payments include electronic funds transfer arrangements, payments by credit card, and direct debits.

Under RTC Section 7096 of the Sales and Use Tax Law, if the BOE erroneously issues a levy or notice to withhold, erroneous processing action, or erroneous collection action, and that error resulted in bank charges or third party check charges incurred by a taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. Bank and third party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those actually paid by the taxpayer and not waived or reimbursed by the financial institution.

Identical provisions are also contained in the other BOE-administered special tax and fee laws, except that they don't expressly provide that a taxpayer may claim reimbursement for bank and third party check charges due to an "erroneous processing action or erroneous collection action" by the BOE.

Occasionally, an erroneous BOE action has resulted in the imposition of bank or third party check charges and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. Occasionally, due to a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was credited erroneously by the BOE to another taxpayer's account. Due to the

double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the special tax and fee laws contain no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

Furthermore, RTC Section 7096 of the Sales and Use Tax Law and equivalent sections of the special tax and fees laws provide that, in order for the BOE to grant the taxpayer's claim for reimbursement, both of the following conditions must be met:

- (1) The erroneous levy, notice to withhold, processing action, or collection action was caused by BOE error.
- (2) Prior to the erroneous action by BOE, the taxpayer responded to all contacts by the BOE and provided the BOE with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the BOE for reasonable cause.

All relevant statutes provide that claims must be filed within 90 days from the date of the erroneous action by the BOE. The BOE is required to respond to the claim within 30 days from the date the claim is received.

Sometimes a taxpayer is prevented from filing a claim within 90 days from the date of the erroneous BOE action. In one example where the BOE filed a levy in error, the taxpayer did not receive the BOE's Notice of Levy because it was sent to an incorrect address. The taxpayer's financial institution delayed complying with the levy for nearly three months, and notified the taxpayer of the levy at that time. Since that was the taxpayer's first notification of the levy, which resulted in early withdrawal fees and bank processing fees, the taxpayer was unable to meet the 90-day deadline for filing a claim with the BOE for reimbursement of bank charges. The BOE did not then have the statutory authority to grant the claim, even though all other conditions were met.

Relative to the Franchise Tax Board (FTB), RTC Section 21018 applies to claims for bank fee or third-party check charge reimbursement related to erroneous levies, erroneous processing actions, or erroneous collection actions by that agency. Section 21018 (b) provides that claims shall be filed within 90 days from the date of the erroneous levy, erroneous processing action, or erroneous collection action, as does RTC Section 7096; however, Section 21018 (b) also provides, "The board may extend the period for filing a claim under this section."

Background. The Members of the BOE unanimously adopted an identical proposal as part of its 2012 Legislative package. The provisions of that proposal were introduced in the BOE-sponsored omnibus bill, Assembly Bill 2688 (Committee on Revenue and Taxation). Similar provisions were also amended into AB 2225 (Perea). Both AB 2225 and AB 2688 passed from the Assembly Revenue and Taxation Committee and the Assembly Appropriations Committee

on the consent calendar, and both bills were placed on Assembly Floor's consent calendar.

When AB 2688 was heard in the Senate Governance and Finance Committee, it was recommended that it be amended to remove the duplicate erroneous processing and collection provisions that were also contained in AB 2225. AB 2688 was subsequently amended on June 26, 2012. Assembly Bill 2225 successfully passed the Senate Committee on Governance and Finance (8 ayes, 0 noes) and was reported directly to second reading as recommended by the Senate Committee on Appropriations, pursuant to Senate Rule 28.8.

On August 23, 2012, one day before the last day to amend on the Floor, AB 2225 was gutted and amended to incorporate provisions related to courts. BOE staff learned of the amendment when the bill was in print on August 24, 2012, too late to amend the provisions into another BOE-sponsored measure.

This Proposal. This proposal would amend RTC Section 7096 of the Sales and Use Tax Law and all equivalent special tax and fees laws to provide the BOE the authority to approve a claim for reimbursement of bank charges or third party check charges filed later than 90 days from the date of the erroneous BOE levy or action, for reasonable cause.

These changes would allow the BOE to fairly and equitably administer the law under the variety of circumstances that could arise following an erroneous levy or erroneous processing or collection action by the BOE. This proposal would also provide consistency with the authority granted to the FTB by RTC Section 21018.

In addition, this proposal would conform the claim for reimbursement of bank charges provisions in the Sales and Use Tax Law with the other tax and fee programs administered by the BOE by expressly providing that, in addition to reimbursement of bank or third party check charges incurred by a taxpayer as the directly result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE. The other tax and fee laws to which these provisions would be extended include: Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

Section 7096 of the Revenue and Taxation Code is amended to read:

7096. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or

third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 9274 of the Revenue and Taxation Code is amended to read:

9274. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested

information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 30459.4 of the Revenue and Taxation Code is amended to read:

30459.4. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 32474 of the Revenue and Taxation Code is amended to read:

32474. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by

the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 40214 of the Revenue and Taxation Code is amended to read:

40214. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested

information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 41174 of the Revenue and Taxation Code is amended to read:

41174. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 43525 of the Revenue and Taxation Code is amended to read:

43525. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or

third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 45870 of the Revenue and Taxation Code is amended to read:

45870. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested

information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 46625 of the Revenue and Taxation Code is amended to read:

46625. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees that are incurred by the feepayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with either a levy or instructions in a notice to withhold, and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. Bank charges include only those charges that are paid by the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement pursuant to this section shall file a claim with the board that shall be in the form as may be prescribed by the board. The board shall not grant a claim unless it determines that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action resulted from board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation that was sufficient to establish the feepayer's position. The requirement of this paragraph may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action that is asserted to be erroneous. The board shall respond to a claim filed pursuant to this section within 30 days of receipt. This provision may be waived by the board for reasonable cause. If the board denies a claim, the taxpayer shall be notified in writing of the reason or reasons for denial.

Section 50156.14 of the Revenue and Taxation Code is amended to read:

50156.14. (a) A feepayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an

erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid to the feepayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the feepayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the feepayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 55335 of the Revenue and Taxation Code is amended to read:

55335. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Section 60633.1 of the Revenue and Taxation Code is amended to read:

60633.1. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. This provision may be waived by the board for reasonable cause. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

Amend Revenue and Taxation Code Section 6901 of the Sales and Use Tax Law to authorize a direct refund of excess sales tax reimbursement to the retailer's customer, in lieu of the retailer, under limited circumstances.

Source: Sales and Use Tax Department

Existing Law. Under existing Revenue and Taxation Code (RTC) Section 6901.5, when a retailer represents to a purchaser that an amount constitutes reimbursement for sales or use tax, but the sales tax paid by the purchaser is computed upon an amount that is either not taxable or in excess of an amount that is taxable, the amount paid is excess tax reimbursement.

RTC Section 6901 provides that, if the BOE determines that any amount of sales tax has been paid more than once or has been erroneously or illegally collected or computed, the BOE must make note of it in its records, credit the amount to another BOE liability owed by the retailer that overpaid, and refund the balance.

Section 6901 further provides that any overpayment of use tax by a purchaser to a retailer shall be refunded by the BOE to the purchaser. While the statute allows the BOE to refund excess use tax directly to the purchaser, the BOE may issue a refund for excess sales tax reimbursement only to the retailer (who is liable for and paid the excess sales tax to the BOE) and may not issue the refund to the purchaser. To obtain a refund of sales tax, the retailer must submit a claim for refund to the BOE.

RTC Section 6901.5 provides that a retailer who has collected excess tax reimbursement from a purchaser must return the money to the purchaser who paid it or remit the funds to the state.

The BOE's Sales and Use Tax Regulation 1700, *Reimbursement for Sales Tax*, interprets Section 6901.5. Under Regulation 1700(b)(2), whenever the BOE ascertains that a retailer has collected excess tax reimbursement, the retailer will be afforded an opportunity to refund the excess tax reimbursement to the purchasers from whom it was collected.

Regulation 1700(b)(3) provides that excess tax reimbursement paid to the BOE as sales tax may be refunded to the retailer upon submission of sufficient evidence that the excess tax reimbursement has been or will be returned to the customer. Under Regulation 1700(b)(3)(B), if a retailer has not refunded excess tax reimbursement to the customer, but would rather do so than incur an obligation to the state, the retailer must: (1) inform the purchaser in writing that excess tax reimbursement was collected and that the excess amount will be refunded or credited to the purchaser; and (2) obtain and retain for verification by the BOE an acknowledgement from the purchaser that the purchaser has received notice of the amount of indebtedness of the retailer to the purchaser. The BOE's form BOE-52-L2, *Notice of Pending Refund of Excess Sales Tax Reimbursement*, is available to assist the retailer in obtaining documentation from the customer.

Proposed Law. This proposal, under limited circumstances, would allow the BOE to refund excess tax reimbursement directly to the purchaser who paid the sales tax. The BOE's direct refund to a purchaser would only be allowed for refund amounts of \$300,000 or greater.

For the purchaser to obtain a direct refund, the retailer claiming the refund would be required to irrevocably assign his or her right to the refund to the purchaser who paid

excess tax reimbursement. The retailer and the customer both would need to sign the irrevocable assignment and submit it to the BOE with the retailer's claim for refund.

Background. Generally, the existing procedure for refunding excess tax reimbursement works as intended, and the retailer refunds the excess sales tax to the purchaser as required. However, BOE staff recently has discovered large dollar amounts of excess tax reimbursement that it refunded to the retailer, but which were not refunded by the retailer to the purchaser. When the BOE becomes aware of the retailer's failure to refund excess tax reimbursement to the purchaser, it issues a determination against the retailer for the deficiency. Nonetheless, if the transactions are beyond the statute of limitations, a determination is no longer available to the BOE as a remedy.

To address this issue, BOE staff revised Form BOE-52-L2, *Notice of Pending Refund of Excess Sales Tax Reimbursement*, to include a power of attorney statement. The limited power of attorney statement authorizes the BOE to disclose to the purchaser information on the status of a retailer's refund claim. Information regarding the status of the refund claim is essential for the purchaser to ensure the retailer refunds the excess tax reimbursement before the statute of limitations expires on a determination. This new procedure applies only to excess tax reimbursement refunds of \$300,000 or more to a single customer. The threshold of \$300,000 is designed to ensure the BOE can manage the number of direct refund inquiries within existing resources.

In addition to the power of attorney procedure, it was suggested that staff pursue a legislative change to allow the BOE to issue a refund of excess tax reimbursement directly to the purchaser under limited circumstances. Issuing a refund directly to the purchaser would shorten the refund process by approximately two to three months. It also would reduce the retailers' workload, as they will not be required to perform tasks related to generating the refund, such as issuing checks, answering telephone calls, and recording transactions.

To make the proposed legislative change consistent with current procedures related to assignment of limited power of attorney and to keep costs within existing resources, it is recommended that the BOE be allowed to issue direct refunds to the customer for refunds of excess tax reimbursement of \$300,000 or greater to a single customer.

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

6901. (a) If the board determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, executors, or customer as provided in paragraph (b) of this section, if a determination by the board is made in any of the following cases:

- 1) An amount of tax, interest, or penalty was not required to be paid.

2) Any amount of prepayment of sales tax, interest, or penalty paid pursuant to Article 1.5 (commencing with Section 6480) of Chapter 5 was not required to be paid.

3) Any amount that is approved as a settlement pursuant to Section 7093.5.

(b) A person may make an irrevocable election to assign to the customer the right to receive the amount refunded if all of the following conditions are met:

1) The amount represents excess tax reimbursement that is required to be paid by the person to the customer under section 6901.5.

2) The amount to be refunded is \$300,000 or greater.

3) The irrevocable election to assign the amount refunded to the customer is evidenced by a statement signed by the person and the customer authorizing the named customer to receive the amount refunded.

4) The signed statement is submitted to the Board in conjunction with the person's claim for refund.

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

(d) Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.