

# INITIAL DISCUSSION PAPER

## Proposed Revisions to Compliance Policy and Procedures Manual Chapter 1, General

### Issue

Should proposed revisions to Chapter 1, *General*, be incorporated into the Compliance Policy and Procedures Manual?

### Background

The Compliance Policy and Procedures Manual (CPPM) is the State Board of Equalization's (Board) guide for compliance functions. These functions include taxpayer registration, account maintenance, and collections. The chapters contained within the CPPM incorporate procedures and techniques that have evolved over the years and have proven to be sound and practical. Board employees are required to follow these procedures to ensure fair and uniform treatment of taxpayers.

CPPM Chapter 1, *General*, is the introductory chapter to the CPPM. It provides a brief history of the Board, and an overview of the Board's organization and the taxes it administers. The Chapter describes compliance responsibilities and functions, and the standards of conduct expected of compliance staff. It also covers certain functions and information that apply to all compliance functions, including the proper procedures and conduct for cases that are affected by the legal process, the exchange of confidential information, and the format and disposition of taxpayer correspondence. The guidelines set forth in Chapter 1 enable staff to effectively fulfill these and other compliance functions covered in the CPPM.

CPPM Chapter 1, *General*, was last revised in December 1996. The proposed revisions to Chapter 1 that are recommended for approval by the Business Taxes Committee reflect Board-wide policy to be implemented by all departments of the Board unless program-specific statutes, regulations, procedures, or contrary Board decisions take precedence. It is anticipated that additional revisions to Chapter 1 will be recommended as it progresses through the BTC process.

Discussion of the proposed revisions to Chapter 1 is scheduled for the Business Taxes Committee meeting on October 24, 2001.

Revisions proposed for Chapter 1 include:

- Addition of a section that describes the Board's mission and philosophy.
- Addition of policies required by legislative changes.
- Clarification of policies in the current CPPM.
- Addition of a section on taxpayer accounts that are classified as confidential.
- Addition of a section on the Taxpayers' Bill of Rights and the Taxpayers' Rights Advocate.

**INITIAL DISCUSSION FOR ISSUE PAPER**  
**Proposed Revisions Compliance Policy and Procedures**  
**Manual Chapter 1, General**

- Addition of a statement on the Board policy for the acknowledgement and disposition of incoming correspondence.
- Updates needed because of outdated information or new tax programs.
- Transfer of information to other CPPM chapters.
- Incorporation of changes in format and terminology.

The proposed revisions to CPPM Chapter 1 are shown in Exhibit 1. Details of these revisions are discussed below.

**Discussion of Proposed Revisions**

Mission Statement and Philosophy

The Board's mission statement is included in the proposed new subsection CPPM 105.003. The mission statement defines the purpose of the Board as serving the public through fair, effective, and efficient tax administration. This subsection also informs staff that the Board is committed to a philosophy of service and accountability to the public. Both the mission statement and philosophy are basic to informing staff about the proper attitude and conduct for the administration of the tax programs under the authority of the Board.

Legislative Changes

It is proposed that two legislative changes be incorporated into Chapter 1: Assembly Bill (AB) 1965, Chapter 962, Statutes of 2000; and Senate Bill (SB) 489, Chapter 1005, Statutes of 1998. AB 1965 amended the Information Practices Act, section 1798 et seq., of the Civil Code. With this amendment, the Board is barred from releasing the names and addresses of individuals registered or licensed by the Board except to the extent that is necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code. In 1998, the California Confidential Address Program (Cal CAP) was established in the Government Code ((SB489) Ch 1005, Stats. 1998). This program requires state agencies to keep confidential the address of an individual who has been certified as a victim of domestic violence.

Information concerning these two legislative changes is primarily contained in the proposed new section CPPM 145.000, Accounts Classified Confidential. References to AB 1965 are also included in CPPM 130.040, 130.042, 135.074. General information about Cal CAP is provided in CPPM 145.200 through 145.220.

Clarification of Existing Policies on Information

Clarifications of existing policy primarily concern the provision of information to the public or to federal and other state agencies. The following revisions are proposed:

**INITIAL DISCUSSION FOR ISSUE PAPER**  
**Proposed Revisions Compliance Policy and Procedures**  
**Manual Chapter 1, General**

CPPM 120.030 – include the information that copies of non-confidential operations memos may be given to the public. Also, provide information in this section that a copy of Form BOE-11, Report of Telephone Call, which is completed when advice is given to a taxpayer over the telephone, should be sent to the taxpayer’s headquarters file when there is no district file.

CPPM 135.075 – insert a section describing the Public Records Act and Board procedures for complying with the Act.

CPPM 150.010 – provide policy concerning acknowledgement deadlines for Public Records Act (PRA) requests and other correspondence. PRA requests must be responded to in 10 days, as required by law. Other requests must be responded to or acknowledged within 12 days of receipt. These timelines also apply to requests received by e-mail.

CPPM 140.010– add the directive that any questions concerning an exchange of information with a federal or other state agency be directed to the Board’s Disclosure Officer.

CPPM 140.030 – add the instruction that disclosures made pursuant to an Order of the Governor be accounted for by placing pertinent information in the taxpayer’s file.

Taxpayer’s Rights

To ensure that compliance staff is aware of taxpayer’s rights, the proposed revisions add Sections 155.000 and 156.000. Section 155.000 summarizes Revenue and Taxation Code (RTC) sections 7083 through 7099.1, which comprise the Taxpayers’ Bill of Rights. Section 156.000 provides information about the Taxpayers’ Rights Advocate (TRA) Office and guidelines for referring taxpayers to the TRA. This section also provides procedures for the TRA Office when responding to taxpayer problems.

Update of Information

Proposed updates primarily concern Special Taxes programs. The revisions delete information about programs no longer administered by the Board including the hazardous spill prevention, oil recycling enhancement, and the propane safety inspection fees or surcharges. Additions include information about the Ballast Water Management Fee, the Natural Gas Surcharge, and more current information about the Hazardous Substances, Tire Recycling, and Underground Storage Tank Fees.

Updates are also needed to CPPM 105.020, which discusses the organization of the Board. The update of this subdivision will be completed in time for the second discussion paper.

**INITIAL DISCUSSION FOR ISSUE PAPER**  
**Proposed Revisions Compliance Policy and Procedures**  
**Manual Chapter 1, General**

Transfer of Information

The proposed revisions to Chapter 1 include moving the subdivisions about local tax reallocation inquiries from Chapter 1 to CPPM Chapter 9, *Miscellaneous*. The information about reallocation inquiries concerns a specific process rather than general information and should appropriately be placed elsewhere in the CPPM.

Format and Terminology Changes

It is proposed that the chapter format be similar to the other revised CPPM chapters. It is also proposed that gender specific language be replaced with more inclusive language and that current titles be used for Board units.

**Summary**

An understanding of the tax programs administered by the Board and standards of conduct required of Board staff is essential for the fair and efficient administration of the compliance functions. The proposed revisions to Chapter 1 ensure that the list of tax programs is current. They also ensure that the standards of conduct comply with current legal mandates and that staff knows how to refer taxpayers to the Taxpayers' Rights Advocate when issues cannot be resolved through standard compliance practices.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 06/13/01

G:\BTC\BTC TOPICS - 2001\19 CPPM Chapter 1 - General\Working Files\CPPM1 - IDP.doc

# COMPLIANCE POLICY and PROCEDURES MANUAL

## Chapter 1

### General



Sales and Use Tax Department  
*California State*  
*Board of Equalization*

*This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda.*

*Please contact any board office if there are concerns regarding any section of this publication.*



GENERAL

Table of Contents

	<u>Section</u>
<b>GENERAL</b>	<b>100.000</b>
<b>THE BOARD, <a href="#">ITS MISSION</a>, HISTORY, ORGANIZATION AND BUSINESS TAX LAWS ADMINISTERED</b>	<b>105.000</b>
<a href="#">Mission and Philosophy</a>	<a href="#">105.003</a>
<a href="#">Purpose of Compliance Manual</a>	<a href="#">105.005</a>
History	105.010
Organization	105.020
Business Taxes	105.030
Map of the Board of Equalization Districts	105.031
Chart of District and Branch Offices	105.032
<b>BUSINESS TAX LAWS ADMINISTERED</b>	<b>110.000</b>
Business Tax Laws—Basics	110.005
Sales and Use Tax	110.010
Bradley-Burns Uniform Local Sales and Use Tax	110.015
County Public Transportation Fund	110.020
Transactions (Sales) and Use Tax	110.025
Motor Vehicle Fuel License Tax <a href="#">and the Motor Vehicle Fuel Tax</a>	110.030
Diesel Fuel Tax	110.033
Use Fuel Tax	110.035
<a href="#">Fuel Tax Enforcement</a>	<a href="#">110.036</a>
Fuel Tax Rates	110.037
Tax on Insurers	110.038
Cigarette and Tobacco Products Tax	110.040
Alcoholic Beverage Tax	110.045
Energy Resources Surcharge	110.046
Emergency Telephone Users Surcharge	110.047
<del>Propane Safety Inspection and Enforcement Program Surcharge</del>	<del>110.048</del>
Hazardous Substances Tax	110.050
<del>Hazardous Spill Prevention Fee</del>	<del>110.051</del>
Occupational Lead Poisoning Prevention Fee	110.052
Childhood Lead Poisoning Prevention Fees	110.053
Underground Storage Tank Maintenance Fee	110.054
Integrated Waste Management Fee	110.055
<del>Moore Universal Telephone Service Act Tax</del>	<del>110.060</del>
<a href="#">Tire Recycling Fee</a>	<a href="#">110.065</a>
Oil Spill Response, Prevention, and Administration Fee	110.070
Oil Recycling Enhancement Fee	110.080
<a href="#">Ballast Water Management Fee</a>	<a href="#">110.075</a>
<a href="#">Natural Gas Surcharge</a>	<a href="#">110.080</a>

GENERAL

Table of Contents (Cont. 1)

	<u>Section</u>
<b>COMPLIANCE RESPONSIBILITIES AND FUNCTIONS</b>	<b>120.000</b>
Compliance Responsibilities.....	120.010
Compliance Functions.....	120.020
Advice to Taxpayers.....	120.030
<b>STANDARDS OF CONDUCT</b>	<b>130.000</b>
Conduct on the Job.....	130.010
Use of Business Cards.....	130.020
Identification Cards.....	130.025
Confidential Board Records.....	130.030
Release of Registration Information to the Public.....	130.040
Verification of Resale Certificates and Permits.....	130.041
Searching Service.....	130.042
Interdistrict Cooperation.....	130.050
<b>LEGAL CASES - EMPLOYEE RESPONSIBILITY</b>	<b>135.000</b>
Signature of Employee on Documents.....	135.010
Conflict of Interest - Sheriff's or Marshal's Sales.....	135.020
Contact by Taxpayers in Attorney General Cases.....	135.030
Service of Legal Process.....	135.040
Small Claims Court Actions.....	135.045
Examining Records - Authority for.....	135.050
Claims Against Public Employees.....	135.060
Right to Financial Privacy Act.....	135.070
Loan Companies.....	135.071
Release of Financial Information - <a href="#">Form BOE-869</a> .....	135.072
Financial Privacy Act - Service of Subpoenas.....	135.073
Information Practices Act.....	135.074
<a href="#">Public Records Act</a> .....	<a href="#">135.075</a>
Guidelines for Release of an Informant's Name.....	135.076
<b>EXCHANGES OF CONFIDENTIAL INFORMATION</b>	<b>140.000</b>
General.....	140.010
Authorized Agencies.....	140.020
Exchange of Confidential Information—File Documentation.....	140.030

GENERAL

Table of Contents (Cont. 2)

	<u>Section</u>
<b><u>ACCOUNTS CLASSIFIED CONFIDENTIAL</u></b>	<b><u>145.000</u></b>
<u>Confidential Indicator.....</u>	<u>145.100</u>
<u>California Confidential Address Program (CAL CAP).....</u>	<u>145.200</u>
<u>Sales and Use Tax Applications – District Offices and CATS.....</u>	<u>145.205</u>
<u>Special Taxes Applications.....</u>	<u>145.210</u>
<u>Internal Security and Audit Division.....</u>	<u>145.215</u>
<u>Registration/Update Procedures.....</u>	<u>145.220</u>
<b><u>CORRESPONDENCE</u></b>	<b><u>150.000</u></b>
<u>Acknowledgement.....</u>	<u>150.005</u>
<u>Format and Contents.....</u>	<u>150.010</u>
<u>Review.....</u>	<u>150.020</u>
<u>Modification/Rescission of Prior Advice.....</u>	<u>150.025</u>
<u>Disposition of Correspondence.....</u>	<u>150.030</u>
<u>Guidelines for Relief - Reliance on Written Advice.....</u>	<u>150.040</u>
<b><u>TAXPAYER’S RIGHTS</u></b>	<b><u>155.000</u></b>
<u>The Taxpayers’ Bill of Rights.....</u>	<u>155.005</u>
<u>The Taxpayers’ Bill of Rights Law Sections.....</u>	<u>155.010</u>
<u>Section 7083, Taxpayers’ Rights Advocate.....</u>	<u>155.011</u>
<u>Section 7084, Education and Information Program.....</u>	<u>155.012</u>
<u>Section 7085, Identification of Taxpayer Noncompliance by Board.....</u>	<u>155.013</u>
<u>Section 7086, Preparation of Statements by Board.....</u>	<u>155.014</u>
<u>Section 7087, Limit on Revenue Collected or Assessed.....</u>	<u>155.015</u>
<u>Section 7088, Evaluation of Employee’s Contact with Taxpayers.....</u>	<u>155.016</u>
<u>Section 7089, Plan to Timely Resolve Claims and Petitions.....</u>	<u>155.017</u>
<u>Section 7090, Procedures Relating to Protest Hearing.....</u>	<u>155.018</u>
<u>Section 7091, Reimbursement to Taxpayer.....</u>	<u>155.019</u>
<u>Section 7092, Investigations for Non-tax Administration Purposes.....</u>	<u>155.020</u>
<u>Section 7093.5, Settlement Authority.....</u>	<u>155.021</u>
<u>Section 7094, Release of Levy.....</u>	<u>155.022</u>
<u>Section 7094.1, Return of Property.....</u>	<u>155.023</u>
<u>Section 7095, Exemptions From Levy.....</u>	<u>155.024</u>
<u>Section 7096, Claims for Reimbursement of Bank Charges by Taxpayer.....</u>	<u>155.025</u>
<u>Section 7097, Preliminary Notice to Taxpayer Prior to Lien.....</u>	<u>155.026</u>
<u>Section 7098, Notice Preliminary to Suspension.....</u>	<u>155.027</u>
<u>Section 7099, Disregard by Board Employee of Officer.....</u>	<u>155.028</u>
<b><u>TAXPAYER’S RIGHTS ADVOCATE</u></b>	<b><u>156.000</u></b>
<u>The Taxpayers’ Rights Advocate’s Office.....</u>	<u>156.005</u>
<u>Staff Referrals to the Taxpayers’ Rights Advocate’s Office.....</u>	<u>156.010</u>
<u>Taxpayers’ Rights Advocate’s Office Procedures.....</u>	<u>156.015</u>

GENERAL

<b>PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES</b>	<b>160.000</b>
Submitting Inquiries	160.010
Acknowledgement of Inquiry/Date of Knowledge	160.020
Staff Review	160.030
Notification of Results	160.040
Time Limitations	160.050
Appeal Rights of Jurisdictions That Will Lose Revenue As The Result Of A Reallocation	160.060
<b>ACCOUNTS CLASSIFIED CONFIDENTIAL</b>	<b>170.000</b>
Confidential Indicator	170.010
Verification Resale Certificates And Permits	170.020

Draft

GENERAL

CHAPTER I

<b>GENERAL</b>	<b>100.000</b>
<b>THE BOARD, ITS <u>MISSION</u>, HISTORY, ORGANIZATION AND BUSINESS TAX LAWS ADMINISTERED</b>	<b>105.000</b>

**MISSION AND PHILOSOPHY** **105.003**

The mission of the State Board of Equalization is to serve the public through fair, effective, and efficient tax administration.

The State Board of Equalization is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. The Board's compliance policies and procedures are some of the many ways in which it provides assistance and information to the public while, at the same time, providing a fair and firm enforcement program that ensures that taxes are reported properly.

**PURPOSE OF COMPLIANCE MANUAL** **105.005**

This manual contains working information, which will assist compliance staff in the equitable and uniform administration of the tax programs administered by the Board. It incorporates processes, procedures and techniques that have evolved over a period of years and that have proved to be sound and practical.

**HISTORY** **105.010**

The California Constitution of 1879 created the State Board of Equalization as a successor to an agency of the same name but of different composition. The Board inherited the duty of maintaining a uniform level of property assessment between counties. The Constitution added the duty of assessing intercounty railroad property and utilities. It is the oldest Board in existence in California and is the only elected Board in California State Government.

Since 1879, the Board it has been given many additional duties - some by the Legislature, others by the voters. It is As the state's major revenue agency, with it has a staff of more than 3,94200 employees and collectsing about one-half of the state's revenue.

The members of the Board are responsible to the people. One member is elected from each of the four equalization districts shown on the map in CPPM Subsection 105.031. Each member has the duty of investigating the administration of the laws within the district from which he or she is elected and for which the Board, as a whole, has statewide responsibility. The fifth member of the Board is the State Controller who serves ex-officio.

**ORGANIZATION** **105.020**

The Executive Director is the chief administrative officer of the Board. He is The -Executive Director is assisted by a Deputy Director in each of the following departments: Sales; Sales and Use Tax, Special Taxes, Property Taxes, and Administration, and Technology Services.

The Deputy Director, Property Taxes, directs the functions of the Board relating to property taxes. These include: a continuous sampling program designed to determine whether the average assessed values of property in the separate counties are equalized within certain allowable tolerances; a program of assistance and instruction to county assessors and their staffs to enable them to perform their duties better and more efficiently; a contract mapping service for the counties; an assessment of privately owned public utilities for purposes of local taxation; and assessment and collection of tax on privately owned cars operated over California railroads.

The Property Taxes Department has on its staff property appraisers, property auditor appraisers, and forest property appraisers operating out of offices in Sacramento, Norwalk, Eureka, and Redding. The Property Tax divisions are staffed by specialists operating out of offices in Eureka, Fresno, Redding, Sacramento, Santa Ana and Union City

## GENERAL

### ORGANIZATION

(Cont. 1) 105.020

The Deputy Director, Sales and Use Tax Department (SUTD), directs the administration of the Sales and Use Tax, Bradley-Burns Uniform Local Sales and Use Tax, and Transactions and Use Tax.

The Deputy Director, Special Taxes Department (STD), [comprised of the Environmental Fees, Excise Taxes, and Fuel Taxes Divisions](#), directs the administration of the remaining [seventeen](#) business taxes programs.

The revenue laws, code sections, and responsible departments are:

- a. Sales and Use Tax (R&T 6001-7176) (SUTD)
- b. Bradley-Burns Uniform Local Sales and Use Tax (R&T 7200-7212) (SUTD)
- c. Transactions and Use Tax (R&T 7251-7279.6) (SUTD)
- d. Motor Vehicle Fuel License Tax (R&T 7301-8404) (STD-Fuel)
- e. Use Fuel Tax (R&T 8601-9355) (STD-Fuel)
- f. Insurance Tax (R&T 12001-13170) (STD-Excise)
- g. Cigarette and Tobacco Products Tax (R&T 30001-30481) (STD-Excise)
- h. Alcoholic Beverage Tax (R&T 32001-32556) (STD-Excise)
- i. Energy Resources Surcharge (R&T 40001-40216) (STD-Excise)
- j. Emergency Telephone Users Surcharge (R&T 41001-41176) (STD-Excise)
- ~~k. Propane Safety Inspection and Enforcement Program Surcharge (R&T 42000 et seq.; Public Utilities 4451-4461) (STD-Fuel)~~
- ~~l. Hazardous Substances Tax (R&T 43001-43651; misc. Health & Safety) (STD-Env.Fees)~~
- ~~m. Childhood Lead Poisoning Prevention Fee (R&T 43001-43651; Health & Safety [105190-372-372.7](#)) (STD-Fuel)~~
- ~~nn. Occupational Lead Poisoning Prevention Fee (R&T 43001-43651; Health & Safety [105175-105197-429.11-429.15](#)) (STD-Env. Fees)~~
- ~~oo. Integrated Waste Management Fee (formerly known as the Solid Waste Disposal Site Cleanup and Maintenance Fee) (R&T 45001-45984; Public Resources 48000-48008) (STD-Excise)~~
- ~~pp. Oil Spill Response, Prevention, and Administration Fees (R&T 46001-46751; Public Resources 8750-8760; Govt. 8670.40-8670.48) (STD-Fuel)~~
- ~~qq. Underground Storage Tank Maintenance Fee (R&T 50101-50162; Govt. [Health & Safety](#) 25299.10-25299.51) (STD-Fuel)~~
- ~~r. Oil Recycling Enhancement Fee (R&T 55001-55381; Public Resources 48600-48691) (STD-Excise)~~
- ~~sq. Diesel Fuel Tax (R&T 60001-60709630) (STD-Fuel)~~
- ~~t. Hazardous Spill Prevention Fee (Public Utilities 7713-7718) (STD Env. Fees)~~
- ~~u. [r.](#) Tire Recycling Fee ([R&T 55001-55381](#); Public Resources 42860-42895; Govt. [66799.140-66799.142](#)) (STD-Excise)~~
- ~~s. [Ballast Water Management Fee \(R&T 55001-55381, Pub Res Code 71200-71271\) \(STD-Env Fees\)](#)~~
- ~~t. [Natural Gas Surcharge \(R&T 55001-55381, Public Utilities Code 890-900\) \(STD-Excise\)](#)~~

These laws are the subject matter of this manual and are those with which the compliance staff is mainly concerned. ~~Each~~ ~~employees~~ must have sufficient legal knowledge to enable ~~him or her~~ ~~them~~ to perform ~~his or her~~ ~~their~~ duties in an efficient and effective manner. ~~This manual contains working information which will assist employees in equitable and uniform administration of the laws.~~

The Board contracts with counties and cities to collect the tax due under the Bradley-Burns Uniform Local Sales and Use Tax Law. This tax is reported and paid on the same returns used for the state sales and use tax.

## GENERAL

The Board also contracts to collect tax for districts authorized by law to impose a transactions and use tax. This is also reported and paid on the same returns used for state sales and use tax.

The Board also contracts with (or is otherwise required to collect for) the following agencies:

Integrated Waste Management Board to collect the Integrated Waste Management Fee and the Tire Recycling Fee.

State Lands Commission to collect the Ballast Water Management Fee.

Department of Health Services to collect the Childhood Lead and Occupational Lead Poisoning Prevention Fees.

Department of Toxic Substances Control to collect the Hazardous Substances Tax.

California Energy Commission for the collection of the Energy Resources Surcharge.

California Public Utilities Commission to collect the Natural Gas Surcharge.

See CPPM Section 110.000 for a description of each program.

### BUSINESS TAXES

**105.030**

Business taxes ~~are administered by~~ is composed of the Sales and Use Tax Department (SUTD) and the Special Taxes Department (STD) ~~which are the largest departments of the Board.~~ For public convenience and efficient administration, the four equalization districts are divided into ~~145~~ administrative districts, each under the direction of a district administrator who reports directly to the Chief of Field Operations. Each district administrator oversees the operation of the district and its branch offices (See CPPM ~~Subsection-105.031~~).

The Out-of-State District, ~~in the charge of a district administrator,~~ is located in Sacramento, making a total of ~~156~~ administrative districts. The Out-of-State District has branch offices in New York City, Chicago and Houston to service accounts which do business in California or incur tax liability in this state but are headquartered outside this State (See CPPM ~~Subsection-105.032~~).

The staff of these ~~156~~ administrative districts ~~is~~ are primarily responsible for the sales and use tax program. Special Taxes Department staff is headquartered in Sacramento and includes Excise Taxes, Environmental Fees, and Fuel Taxes Divisions ~~which~~ are responsible for all remaining programs except property taxes, but are occasionally assisted by the district offices.

The ~~duties of the~~ Sales and Use Tax and the Special Taxes Departments ~~are divided functionally into~~ include both compliance and audit ~~activities~~ functions. The ~~mission~~ function of the field auditing staff is to audit the records of taxpayers to determine the accuracy of the self-assessed taxes and fees and recommend, when necessary, amounts to be assessed or refunded. The compliance function is detailed in ~~later sections~~ CPPM 120.000.

Draft

**GENERAL**

**DISTRICT AND BRANCH OFFICES AND GEOGRAPHIC DESIGNATORS**

**105.032**

<u>EQUALIZATION</u>	<u>DISTRICT</u>	<u>BRANCH OFFICES &amp; GEOGRAPHIC DESIGNATORS</u>	
<u>DISTRICT</u>	<u>OFFICE</u>		
4	AA Norwalk		
3	AB Torrance		
4	AC Van Nuys		
4	AP West Covina		
2	AR Ventura	ARF	Fresno
		ARH	Bakersfield
4	AS Culver City		
1	BH San Francisco	BHA	No Office (formerly San Mateo)
1	CH Oakland	CHA	No Office (formerly Union City)
		CHB	No Office (formerly Concord)
3	EA Santa Ana	EAA	Laguna Hills
2 & 3	EH Riverside	EHC	Rancho Mirage
3	FH San Diego	FHA	Satellite (El Centro)
		FHB	San Marcos
		FHC	Satellite (Kearney Mesa)
1	GH San Jose	GHC	Salinas
		GHD	No Office (formerly Santa Cruz)
1	JH Santa Rosa	JHB	Eureka
		JHF	Suisun City
		JHH	Redding
2	KH Sacramento	KHE	Stockton
	OH Out-of-State	OHA	Chicago
		OHB	New York
		OHC	Houston
2	Environmental Fees	EF	Sacramento (HQTRS)
2	Excise Taxes	ET	Sacramento (HQTRS)
	Fuel Taxes	MT	Sacramento (HQTRS)

<u>EQUALIZATION</u>	<u>DISTRICT</u>	<u>BRANCH OFFICES &amp; GEOGRAPHIC DESIGNATORS</u>	
<u>DISTRICT</u>	<u>OFFICE</u>		
III & IV	AA Norwalk		
III & IV	AB Torrance		
II & IV	AC Van Nuys		
III & IV	AP Industry		
II	AR Ventura	ARD	No Office (formerly Arroyo Grande)
		ARH	Bakersfield
		ARJ	No Office (formerly Bishop, Inyo County DHE)
		ARK	No Office (Lancaster, Palmdale, LA County 98 & 99)
III & IV	AS Culver City		
I	BH San Francisco	BHA	No Office (formerly San Mateo)
	CH Oakland	CHA	No Office (formerly Union City)
		CHB	Concord
II	DH Fresno	DHD	No Office (formerly Visalia)
		DHF	No Office (formerly Merced)

**June 2001**

## GENERAL

		DHH	Stockton
		DHK	No Office (formerly Sonora)
		DHM	No Office (formerly Mono County DHE)
		DHJ	No Office (formerly Modesto)
III	EA Santa Ana	EAA	Laguna Hills
II & III	EH Riverside	EHC	Rancho Mirage
III	FH San Diego	FHA	Satellite No Office (formerly El Centro)
		FHB	San Marcos
I	GH San Jose	GHC	Salinas
		GHD	No Office (formerly Santa Cruz)
I	JH Santa Rosa	JHB	Eureka
		JHA	No Office (formerly Crescent City)
		JHD	No Office (formerly San Rafael)
		JHE	No Office (formerly Ukiah)
		JHF	Suisun City
		JHH	Redding
		JHG	No Office (formerly Yreka)
		JHJ	No Office (formerly Susanville)
II	KH Sacramento	KHA	No Office (formerly Auburn)
		KHB	No Office (formerly Chico)
		KHC	No Office (formerly Modesto)
		KHD	No Office (formerly Marysville)
		KHG	No Office (formerly Grass Valley)
		KHJ	No Office (formerly Placerville)
		KHK	No Office (formerly Quincy)
		KHL	No Office (formerly South Lake Tahoe)
	OH Out of State	OHA	Chicago
		OHB	New York
		OHC	Houston

## GENERAL

### **BUSINESS TAXES LAWS ADMINISTERED**

**110.000**

### **BUSINESS TAX LAWS**

**110.005**

The next sections of the manual outline the fundamentals of the tax laws administered by the Sales and Use Tax and Special Taxes Departments. Only the basics of each law are mentioned. Refer to the Business Taxes Law Guide or contact the appropriate [sales and use tax or special taxes division](#) for specific applications of tax or fees.

All future references to the terms "tax(es)" ~~and~~ and "taxpayer(s)" should be interpreted to include "fee(s)" and "surcharge(s)" and "feepayer(s)" and "surcharge payer(s)" where applicable.

### **SALES AND USE TAX**

**110.010**

The sales tax is imposed on retailers for the privilege of selling tangible personal property at retail. It is measured by gross receipts from retail sales. "Gross Receipts" and "Sales Price" mean the total amount of the sales price including all receipts, cash receipts, cash credits and property of any kind or nature.

The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer. Generally, the use tax, rather than the sales tax, applies when the property purchased is delivered to the purchaser at a point outside this state for use in California or is shipped or delivered from an out-of-state point to a California consumer. The use tax is measured by the sales (purchase) price of the property. The rates are the same for both taxes.

The use tax is not imposed when the sale of the property to the consumer is subject to the sales tax.

### **BRADLEY--BURNS UNIFORM LOCAL SALES AND USE TAX**

**110.015**

This law authorizes counties to impose a sales and use tax at the rate of one and one-quarter percent of the selling price of tangible personal property sold at retail in the county, or purchased outside the county for use within the county, unless the sale is subject to a local tax under a Uniform Local Sales and Use Tax Law ordinance in the county of purchase. Each county desiring to ~~have~~ impose a local tax must contract with the Board for administration of the tax. The provisions of the ordinance required to be adopted ~~passed~~ by the county must conform to the provisions of the State Sales and Use Tax Law. There are a few additional exemptions in the local tax law that do not apply to the state sales and use tax law.

This law authorizes each city in a county, which adopts an ordinance under the Bradley-Burns Law, to levy a state-administered city tax with the same base and a rate of one percent or less which would be credited against the county tax.

This law also authorized a redevelopment agency of any city to levy a state-administered redevelopment agency tax at a rate of one percent or less to be credited against the city tax, provided the city ordinance includes a provision for the credit. Effective January 1, 1994, legislation was enacted which provides that no new redevelopment agencies may be implemented.

### **COUNTY PUBLIC TRANSPORTATION FUND**

**110.020**

The one and one-quarter percent local tax includes one-quarter percent ~~separately funded~~ that is directly deposited to ~~each the County's~~ each the County's Public Transportation Fund ~~Account~~. ~~For reporting and accounting purposes, the 1/4 percent is included with the state tax on the tax return.~~

## GENERAL

### TRANSACTIONS (SALES) AND USE TAX

110.025

This law authorizes districts, with voter approval, to adopt an ordinance which imposes a transactions (sales) and use tax. Tax rates may be in ~~1/4~~ one-eighth to one-half percent increments but the total rate of all districts in a locality may not exceed one and one-half percent of the selling price of tangible personal property sold at retail in the locality, or purchased outside the locality for use within the locality (unless the sale is subject to a transactions (sales) and use tax at the place of purchase). Each district desiring to have a transactions (sales) and use tax must contract with the Board to administer the Transactions and Use Tax Law.

### MOTOR VEHICLE FUEL LICENSE TAX AND THE MOTOR VEHICLE FUEL TAX

110.030

~~A~~ Until December 31, 2001, the Motor Vehicle Fuel License Tax is imposed for the privilege of distributing motor vehicle fuel (gasoline, etc.). See the chart in CPPM ~~Subsection~~ 110.037 for the current rate for each gallon of fuel distributed. All fuel refined, manufactured, produced, blended, blended or compounded in this state, or imported into this state and no longer in the possession of the distributor, is presumed under the law to have been distributed.

Persons who have paid the license tax, either directly or to a vendor, shall be reimbursed the amount of the tax paid if the gasoline fuel was used in an exempt manner under Sections 8101 through 8101.7 of the Revenue and Taxation Code. To receive this reimbursement, the claimant must file a claim with the State Controller.

Aircraft jet fuel dealers who make taxable sales or taxable use of aircraft jet fuel must be registered and pay two cents (\$0.02) license tax for each gallon of aircraft jet fuel sold or used or sold. For information on exempt sales or use, refer to Section 7374 of the Motor Vehicle Fuel License Tax Law.

Effective January 1, 2002, the Motor Vehicle Fuel License Tax is replaced with the Motor Vehicle Fuel Tax. The Motor Vehicle Fuel Tax shifts the imposition of the tax from the distribution of the fuel to the removal of motor vehicle fuel from a refinery or terminal rack. The tax is paid by refiners, position holders, enterers, and blenders. The application of tax to motor vehicle fuel is the same as the Diesel Fuel Tax.

### DIESEL FUEL TAX

110.033

The Diesel Fuel Tax is imposed upon suppliers (refiners, position holders, enterers and blenders). The tax applies to the removal of diesel fuel from a terminal or a refinery at the rack, the entry of diesel fuel into this state if not by bulk transfer, and the removal or sale of previously untaxed blended fuel by the blender. Diesel fuel is dyed for ~~exempt~~ off-highway and other exempt uses. In addition, the Interstate Users Tax (Component b) is imposed on persons who use diesel fuel in the operation of a qualified motor vehicle in this state and who operate the vehicle within and without this state or the United States. Interstate users must obtain a fuel trip permit or an International Fuel Tax Agreement (IFTA) license to assure the proper payment of diesel fuel tax for gallons of diesel fuel used on the public highways of California.

Exempted from the tax is diesel fuel for purposes other than operating motor vehicles upon public highways of the state. A partial exemption applies to diesel fuel used in certain bus operations described in Section 60039 of the Diesel Fuel Tax Law. Fuel usage which that qualifies for the partial exemption is subject to a tax of one cent per gallon.

### USE FUEL TAX

110.035

An excise tax is imposed on alternative fuels (liquefied petroleum gases (LPG), liquid natural gas (LNG), compressed natural gas (CNG), alcohol fuels, kerosene, and distillate) ~~used~~ used to propel a motor vehicle on highways except fuel that is subject to the tax imposed by Part 2 or Part 31 of the Revenue and Taxation Code (gasoline or diesel tax). The tax is imposed upon the user of the fuel. Any vendor who sells and delivers the fuel into a vehicle's fuel tank shall, at the time of sale, collect the tax from the user. The vendor then becomes liable for the tax. See the chart in CPPM ~~Subsection~~ 110.037 for the current rate for each gallon of fuel.

The user ~~must~~ user ~~file~~ must file a return and account for his or her fuel sales and usage even though he or she has paid all of the tax to the vendor and has no liability. A user of fuel cannot claim a deduction for tax paid to a vendor unless he or she has actually paid the bill.

The full and partial exemptions for Use Fuel Tax are the same as for the Diesel Fuel Tax.

## GENERAL

~~Exempted from the tax is any fuel used to propel an implement of husbandry, truck or tractor used in agricultural operations and operated only incidentally upon the highways. A partial exemption applies to use fuel used in pupil transportation or local transit passenger carrier services by the entities described in Section 8655 of the Use Fuel Tax Law. Fuel usage which qualifies for the partial exemption is subject to a tax of one cent per gallon.~~

Users of fuel who own or operate vehicles propelled by LPG, LNG or CNG have the option of paying the applicable ~~unitary~~ use fuel tax directly to the vendor, or to the state if the user has bulk storage, or paying an annual flat rate fuel tax to this Board. Payment of the annual flat rate tax entitles the user to purchase LPG, LNG or CNG without payment of the ~~unitary~~ use fuel tax to the vendor or state, regardless of the type of conversion system installed on the vehicle.

Additionally, some users are exempt from obtaining permits and filing returns (see ~~Subsection~~ 920.090), or may obtain a four day use fuel tax permit (see CPPM Chapter 2).

### FUEL TAX ENFORCEMENT

110.036

A sound enforcement program is essential to effective diesel or use fuel tax administration. Since such a program results in the apprehension of those who have not complied with permit or license requirements, it helps protect the tax base and ensure that those who comply with the law do not suffer a competitive disadvantage.

Special Taxes' enhanced truck stop program is a major means of enforcing the Diesel Fuel Tax. (See CPPM ~~Subsection~~ 110.033) The program may thwart the importation and unlawful use of untaxed diesel fuel, encourages voluntary compliance, and deters tax evasion attempts to import untaxed diesel fuel into California for delivery to a wholesaler or retailer or by unregistered interstate truckers using untaxed fuel on the highways. A truck check is also a valuable tool for collecting liabilities and clearing delinquencies under all Board programs. Furthermore, examination of bills of lading provides leads to sales and use tax evasion and to sales of contraband cigarette and tobacco products or untaxed alcoholic beverages.

Under the enhanced truck stop program, Business Taxes Representatives (BTR) are ~~will be~~ stationed at permanent and temporary truck stops set up by the CHP and their hours will be expanded. In addition to registration, reinstatement, and routine collection duties, these BTR's duties include seizure, sale, and assessment of criminal penalties.

### FUEL TAX RATES

110.037

Effective Date and Rate (per gallon)				
Fuel	1-1-92	1-1-93	1-1-94	
Gasoline	\$0.16	\$0.17	\$0.18	
Alcohol	\$0.08	\$0.085	\$0.09	
LNG & LPG	\$0.06	\$0.06	\$0.06	
CNG	\$0.07	\$0.07	\$0.07	
Diesel	\$0.16	\$0.17	\$0.18	
<u>Diesel- Component b</u>	<u>See Note</u>			

There has been no change in fuel tax rates since 1994.

Note on Diesel Fuel Tax – Component b: RTC section 60116, effective October 3, 1997, establishes the interstate user component of the Diesel Fuel Tax. The rate of Component b may vary from year-to-year. The rate is established each year on January 1 and is based the average retail sales price per gallon of diesel in California multiplied by a percentage equal to the combined state and local sales tax rate. The current rate of Component b is available from the Fuel Taxes Division or can be accessed through the IFTA website: [www.IFTACH.org](http://www.IFTACH.org).

## GENERAL

### TAX ON INSURERS

110.038

The insurance tax is levied against insurance companies in lieu of all other taxes except license fees and real estate taxes. The tax is based on the gross amount of premiums for insurance sold in California or, in the case of ocean marine insurance, on underwriting profits.

### CIGARETTE AND TOBACCO PRODUCTS TAX

110.040

A tax for each cigarette is imposed upon cigarette distributors. A distributor is a person who sells cigarettes upon which the tax liability has not yet accrued. The tax is prepaid by the distributor through the use of stamps, which must be affixed to each pack of cigarettes before its distribution. The Bank of America holds the current contract to supply stamps to the distributors.

Effective January 1, 1989, a tax is imposed upon distributors of tobacco products, based on the wholesale cost of the products, at a rate determined annually. If you need the current rates or have other questions, contact the Excise Taxes Division.

### ALCOHOLIC BEVERAGE TAX

110.045

The tax imposed upon beer, wine, and distilled spirits varies with the type of beverage and alcoholic content. Issuance of a license to any manufacturer, wine grower, distilled spirits manufacturer's agent, rectifier, wine rectifier, wholesaler, importer, or customs broker or industrial alcohol dealer by the Department of Alcoholic Beverage Control (ABC) constitutes registration with the Board insofar as the Alcoholic Beverage Tax Law requirements are concerned.

ABC furnishes the Board with a notice that a license has been applied for requiring a supporting surety bond. The Excise Taxes Division then requests a bond or other acceptable security in the required amount. The ABC also notifies the Board of surrenders or transfers.

### ENERGY RESOURCES SURCHARGE

110.046

The Energy Resources Surcharge is imposed on the consumption of electrical energy. The surcharge is collected by the electric utilities from the consumers or paid directly by public institutions, water districts and irrigation districts that have purchased [electrical](#) energy from the federal government.

### EMERGENCY TELEPHONE USERS SURCHARGE

110.047

The Emergency Telephone (9-1-1) Users Surcharge is imposed on the charges for intrastate telecommunication services. The surcharge is collected by the telephone service supplier from the service user with the bill for telephone service.

### PROPANE SAFETY INSPECTION AND ENFORCEMENT PROGRAM SURCHARGE

110.048

The Propane Safety Inspection and Enforcement Program Surcharge is imposed upon operators of propane distribution systems.

### HAZARDOUS SUBSTANCES TAX

110.050

#### DISPOSAL FEE

The Disposal Fee is imposed on persons who dispose of or submit for disposal hazardous waste in California. The fee is [collected by the operator of the disposal facility where the waste is submitted for disposal. The facility operator reports and pays the fees on a monthly basis, quarterly or semiannual basis and is based upon tons of waste disposed.](#)

#### GENERATOR FEE

The Generator Fee is imposed upon persons who generate hazardous waste in California and it applies to persons who generate certain types of hazardous waste outside this state [if where the waste is shipped into California.](#) The Generator Fee is a site-specific fee. It is based upon the amount of waste generated at a specific generating site and is reported on a yearly basis. [Accounts meeting certain criteria may be required to file prepayment returns.](#)

The Waste Reporting Surcharge is a surcharge to the Generator Fee.

## GENERAL

### FACILITY FEE

The Facility Fee is imposed on persons who have been issued a Hazardous Waste Facility Permit or who have been granted interim status to operate a hazardous waste facility. Facility permits are required of persons who treat, ~~or store,~~ hazardous waste, or dispose of hazardous waste on-site. The fee is reported on an annual basis, with a ~~two~~ two prepayments of 50% each.

### ACTIVITY FEE

The Activity Fees are imposed on persons who have filed various applications with ~~required a regulating activity from~~ the California Department of Toxic Substances Control (DTSC), including applications for permits and variances. The fees are based upon the type of activity i.e., ~~applications for variance, application for permit, waste classification, and preliminary endangerment assessment.~~ These fees are billed based upon information provided to the Board by the DTSC.

### ENVIRONMENTAL FEE

The Environmental Fee is imposed upon all corporations identified by a standard classification code that consists of corporations ~~who operate in an industry~~ that uses, generates, stores, or conducts activities related to hazardous materials. The fee is based upon the number of employees employed in California and is reported on an annual basis.

In addition, the Occupational Lead Poisoning Prevention and the Childhood Lead Poisoning Prevention fees are administered under provisions of the Hazardous Substances Tax but are separately imposed. (See CPPM Subsections 100.052-100.053)

### **HAZARDOUS SPILL PREVENTION FEE 110.051**

~~The Hazardous Spill Prevention Fee is imposed annually on motor carriers and railroads which are registered with the California Department of Toxic Substances Control or with the California Highway Patrol to transport hazardous materials or wastes on California highways and railroad lines.~~

### **OCCUPATIONAL LEAD POISONING PREVENTION FEE 110.052**

The Occupational Lead Poisoning Prevention Fee is imposed on persons who operate in industries identified as having a potential for causing occupational lead poisoning. The fee is reported on an annual basis.

### **CHILDHOOD LEAD POISONING PREVENTION FEE 110.053**

The Childhood Lead Poisoning Prevention Fee is imposed on distributors of motor vehicle fuel, distributors of architectural coatings, and on facilities releasing lead into the ambient air. The fees are due annually.

### **UNDERGROUND STORAGE TANK MAINTENANCE FEE 110.054**

The Underground Storage Tank Maintenance Fee is imposed upon underground storage tank owners. The fee is reported on a quarterly basis and the rate per gallon of fuel placed into the underground tank is:

\$0.006	Effective January 1, 1991
\$0.007	Effective January 1, 1995
\$0.009	Effective January 1, 1996
\$0.012	Effective January 1, 1997

### **INTEGRATED WASTE MANAGEMENT FEE 110.055**

A fee is imposed upon solid waste disposal facility operators such as municipal and private landfill operators. The fee is based on tons of solid waste disposed and is reported on a quarterly basis. ~~The annual fee which had the same base was repealed effective January 1, 1994.~~

~~These fees were formerly known as the "Solid Waste Disposal Site Cleanup and Maintenance Fee".~~

## GENERAL

### **MOORE UNIVERSAL TELEPHONE SERVICE ACT** **110.060**

~~This tax was administered by the Board until July 16, 1987, when it was repealed. Currently, the Board is handling only accounts which have notices of determination that are in petition or legal suspension status, or have final outstanding accounts receivables.~~

### **TIRE RECYCLING FEE** **110.065**

The Tire Recycling Fee is imposed upon every person who purchases a new tire ~~leaves tires for disposal with a seller of tires.~~ The fee is set at \$1.00 per tire, effective January 1, 2001. The prior rate was 25 cents per tire. The seller is required to collect the \$1.00 per tire ~~25 cents~~ and remit it on a quarterly basis. The seller is allowed to retain three ten ~~three~~ per cent of the fee, effective January 1, 2001 (ten percent prior to 1/1/01) ~~for~~ for reimbursement of related collection costs.

### **OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES** **110.070**

#### OIL SPILL RESPONSE FEE

Every operator of a refinery must pay a fee for each barrel of crude oil received at a refinery within the state. Every owner of petroleum products must pay a fee for each barrel of petroleum products received at a marine terminal from outside this state. The fee is collected by the marine terminal operator from the owner of the petroleum products. Every operator of a pipeline must pay a fee of \$0.25 for each barrel of petroleum products transported into this state by means of a pipeline operating across, under or through marine waters of this state. The size of this fund is to be maintained at a specified level. Any amount over this level will be refunded to the fee payers. Collection of the fee is suspended whenever sufficient funding exists.

#### OIL SPILL PREVENTION AND ADMINISTRATION FEE

Every owner of crude oil or petroleum products must pay a fee of \$0.04 for each barrel of crude oil received at a marine terminal from within or outside the state and for every barrel of petroleum products received from outside the state. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum products. Every operator of a pipeline shall pay a fee for each barrel of crude oil originating from a production facility in marine waters and transported in this state by means of a pipeline operating across, under or through marine waters of this state.

### **OIL RECYCLING ENHANCEMENT FEE** **110.080**

Every oil manufacturer who sells, transfers or imports for use in this state, lubricating or industrial oil, must report to the Board the gallons of lubricating or industrial oil sold, transferred or used within this state. Every oil manufacturer must pay a fee of sixteen (16) cents for each gallon of lubricating oil sold, transferred or used within this state. "Oil Manufacturer" means the first person or entity in the State to take title to lubricating or industrial oil for sale, use or transfer in the State.

These fees are commonly known as the Oil Recycling Fee.

### **BALLAST WATER MANAGEMENT FEE** **110.075**

The Ballast Water Management Fee is imposed upon the owner or operator of any vessel that enters a California port with ballast water loaded from outside the Exclusive Economic Zone (EEZ). The fee is imposed for each voyage and is billed based on information provided to the Board by the Marine Exchanges and other sources.

### **NATURAL GAS SURCHARGE** **110.080**

The Natural Gas Surcharge Program imposes a surcharge on all natural gas consumed in California. The surcharge applies to all consumption, except natural gas, used to generate power for sale, resold to end users, used for oil recovery, utilized in co-generation technology, or produced in California and transported on a proprietary pipeline. All public utility gas corporations operating in this state, and all persons consuming natural gas in this state that has been transported by an interstate pipeline must register. Returns are due quarterly.

## GENERAL

### COMPLIANCE RESPONSIBILITIES AND FUNCTIONS

120.000

#### COMPLIANCE RESPONSIBILITIES

120.010

The compliance staff is responsible for enforcing the provisions of the various business tax laws and regulations administered by the Board of Equalization equitably and uniformly. Staff must ensure that persons engaged in business in this state comply with the laws and must inform them of any violations. Staff will license those required to report and pay business taxes; and and making certain that taxes are reported correctly and paid timely assist taxpayers to report and pay timely the correct amount of tax. Staff must also promote voluntary compliance through education of the taxpayer and ensure that follow-up actions on any unfiled returns or unpaid liabilities are prompt and timely.

#### COMPLIANCE FUNCTIONS

120.020

In executing its delegated responsibilities, the compliance staff performs the following functions:

- a. **REGISTRATION:** Registration identifies the correct legal ownership required to report and pay any business taxes to the Board. After identification, there is a standard procedure for registering accounts correctly and maintaining an accurate record for each active account.
- b. **SECURITY:** The compliance staff must ascertain the size and scope of the proposed business, the manner in which it will operate and the financial stability and integrity of those persons responsible for the operation. The staff member must follow standard procedures for obtaining deposits in proper form; making adjustments of security when warranted; recommending refunds of deposits; applying deposits to clear tax liability; and establishing and maintaining security deposit files.
- c. **RETURNS:** The compliance staff advises and educates taxpayers to prepare tax returns properly. The staff members must recognize and investigate irregularities in reporting and maintain adequate delinquent controls.
- d. **CLOSE OUTS:** The compliance staff examines the books, records, and returns of an account closing out in order to determine which of whether the following actions should be taken:
  1. Recommend an audit by the Board's auditing staff.
  2. Prepare a field billing order to establish additional tax liability disclosed by investigation when an audit is not warranted.

The compliance staff also clears delinquencies, makes demands on escrows, prepares escrow withholds, and issues escrow clearances and highway tax clearances on motor vehicles subject to the use fuel tax.

- e. **REVOCATIONS:** The compliance staff enforces the provisions of the business tax laws pertaining to revoked accounts; reinstates licenses or permits of taxpayers who have complied with the laws, obtains evidence and prepares cases for prosecution of taxpayers who continue to operate after revocation; and seizes and impounds vehicles operated in violation of the law.
- f. **COLLECTIONS:** To effect the collection of delinquent taxes, the compliance staff maintains adequate controls of accounts receivable at both the district and Headquarters levels; prepares and serves withhold notices; initiates and prepares warrants; requests recordation of certificates of lien; requests releases, partial releases and subordination of liens; seizes and sells motor vehicles under the Use Fuel and Diesel Fuel Tax Laws; seizes and sells liquor licenses to clear delinquent sales and use taxes; locates assets, including real property, on which to levy; and makes recommendations for revocation of licenses or permits for failure to pay delinquent tax liability.

## GENERAL

### COMPLIANCE FUNCTIONS

(Cont. 1) 120.020

- g. ADVISORY SERVICES AND PUBLIC RELATIONS: A principal objective of the Sales and Use Tax and Special Taxes Departments is to ensure that taxpayers voluntarily report and pay the correct amount of tax. The compliance staff assists taxpayers in preparing tax returns and advises them of the correct application of the laws and regulations. A sincere and helpful attitude by each member of the compliance staff is of paramount importance in maintaining good public relations.

### ADVICE TO TAXPAYERS

120.030

The importance of giving complete and correct advice to taxpayers cannot be over emphasized. Incomplete information or misinformation given a taxpayer by a Board employee has a disastrous effect upon good public relations. In addition, RTC section 6596 under the Sales and Use Tax and similar sections, for taxes administered by Special Taxes may relieve the taxpayer ~~may be relieved~~ of tax, interest, or penalty when failure to report or pay is due to reliance on written advice from the Board (see CPPM ~~Subsection~~ 150.040).

The compliance employee must be sure that an answer is correct. All of the facts must be carefully examined before a conclusion is reached. Snap answers, or answers based upon incomplete information, are inexcusable. Also, it is never appropriate for a Board employee to offer any legal advice, other than interpretation of the tax laws administered by the Board.

Any officially published regulation or informational release intended for public distribution of the Board may be furnished to the taxpayer. Business Taxes General Bulletins which may be released to the public are marked with the symbol (PR) immediately following the bulletin number. Bulletins issued prior to December 30, 1963, which are published in the Business Taxes Law Guide, may also be distributed. Operations Memos which do not have a confidential status notation under the title, "OPERATIONS MEMO" may also be furnished to the public.

Questions pertaining to other agencies or to the laws they administer should be referred to that agency.

### VERBAL INQUIRIES

For verbal inquires, if there is any doubt as to the correct answer, the person should be requested to present the problem in writing stating all of the facts, or the matter should be referred to the next level of supervision. Furthermore, Board staff is to encourage taxpayers to write regarding specific tax questions. Taxpayers who verbally request tax information are to be advised that, although an answer to their question is being provided, they may also wish to put their question in writing so that they may receive a written response for their records (see CPPM 150.000).

Whenever advice is given over the telephone to identified taxpayers, Form BOE-11 (Report of Telephone Call) should be prepared stating the problem, the answer given and any regulations furnished. This is particularly true when such advice pertains to specific exemptions. District administrators and Headquarters supervisors are requested to establish a review mechanism to ensure that BOE-11's are being used and to review the forms for completeness and accuracy prior to filing the form in the taxpayer's file. If there is no District file folder, an on line comment should be entered and the BOE-11 sent to the Headquarters file. The use of such forms and comments should be periodically re-emphasized by supervisors to staff.

## GENERAL

### STANDARDS OF CONDUCT

130.000

#### CONDUCT ON THE JOB

130.010

This manual does not belabor the obvious by listing the commonly understood and universally acceptable rules of business etiquette. It is sufficient to point out that the compliance representative is a businessman or businesswoman on the staff of a multi-billion dollar firm and acts as such. The Board's compliance employee must remember that he or she represents the State of California and the Board of Equalization and at no time does the position carry with it the authority to be argumentative or offensive. [More information about the Board's policies on conduct is provided in the pamphlet, \*Ethics: Guidelines for Professional Conduct\*.](#)

While it is rare, there have been occasions where Board compliance representatives have been offered or have solicited bribes. Allegations or suspicions of this nature are to be immediately reported to the ~~your~~ a supervisor and the Internal Security and Audit Division Office (ISADO). [Detailed information about how to report such attempts are in the Board pamphlet, \*Bribery – A Guide to Recognition and Prosecution\*.](#)

Some specific rules of conduct about the nature of the compliance function itself are set forth below.

#### USE OF BUSINESS CARDS

130.020

Business cards are issued to compliance representatives for their convenience and to help introduce ~~themselves~~ [the representatives](#) to the public in a businesslike manner.

Business cards do not replace, nor should they be used as a substitute for the identification card, Form GA-1102, which has a photograph and the authorized signature of the representative.

#### IDENTIFICATION CARDS

130.025

The identification card is to be used for verification of authorization to conduct business of the Board of Equalization. The identification card, Form GA-1102, must be kept in a secure manner so as to prevent loss and possible misuse by an unauthorized person. See BEAM Sections 2940 through 2945 for procedure to follow when [an](#) identification card is damaged, [or](#) lost, or [when an](#) employee [who has been](#) issued an identification card is separated from the Board.

#### CONFIDENTIAL BOARD RECORDS

130.030

The Government Code, [Civil Code](#), and most of the business tax laws contain provisions making it illegal to divulge to any unauthorized persons information regarding a taxpayer's affairs obtained through investigation or from returns or reports. Such information [must](#) be treated in strict confidence. The Governor may, by general or special order, authorize the examination of records maintained by the Board by other state officers, tax officers of another state, by the Federal Government if reciprocal agreement exists, or by any other person.

[The Underground Storage Tank Law, under RTC subdivision 50159\(c\), authorizes the Board to give confidential information regarding the leasee/lessee and the leasee's/lessee's suppliers to the tank owner to the extent necessary for assessment, administration and verification of the fee.](#)

If directly interested, successors, receivers, trustees, executors, administrators, assignees and guarantors may be given information regarding unpaid tax liability of a predecessor.

Except as provided under the various codes, if ~~so~~ requested, the Board must identify the source of information [to the taxpayer](#). See CPPM Subsection 135.074, and the Information Procedures Handbook, Pamphlet No. 58.

## GENERAL

### RELEASE OF REGISTRATION INFORMATION TO THE PUBLIC

130.040

#### SALES TAX

Section 7056 of the Revenue and Taxation Code excludes the information appearing on sales and use tax permits from provisions prohibiting the Board and its employees from divulging information on sales and use tax accounts. [See also CPPM 901.060 regarding Resolutions of Local Taxing Jurisdictions \(LTJ\) or Special Taxing Jurisdictions \(STJ\)](#). This section does not preclude our furnishing the type of information customarily supplied to the public from registration records (see CPPM Subsection 135.074). [However, the Board is prohibited from releasing the names and addresses of individuals who are registered with, or hold licenses or permits issued with the Board, except to verify resale certificates, administer the tax and fee provisions of the Revenue and Taxation Code, or to provide information to federal or state agencies or local governments as authorized by law \(Civil Code Section 1798.69\).](#)

Sales tax permits do not show all information contained in the registration record. The content of permit forms is set forth in Chapter II which gives procedural instructions rather than regulations or statutory requirements. The entries are governed principally by practical limitations of form design, processing time, etc., and not by restrictions on the type of information displayed in the permit. The Board does, however, provide private sector ~~requesters~~ requesters with [certain additional information](#) 3" x 5" card printouts and other information giving more details than shown by permit forms (see CPPM Subsection 135.074).

In some instances, copies of a composite example also have been furnished explaining the identification and location of data on sales tax registration records in general terms. The example does not, however, give the detailed meanings of all code numbers and letters used.

~~Upon review with the legal staff, it was concluded that the furnishing of information indicated does not violate Section 7056, since the descriptions of code items provided do not reveal anything concerning the affairs of any particular permittee.~~

Regarding a closed-out account, the legal staff has consistently taken the position that the closed-out status and the date of the close out of an account are not confidential. The mailing address of an account may also be given out, since this information appears on the face of the seller's permit.

#### SPECIAL TAXES

The provisions governing the release of taxpayer information vary among the special tax programs and in some cases are much more restrictive. For example, under the Hazardous Substances Tax, we can not disclose whether or not a person is registered. Therefore, requests for the release of special taxes feepayer information should be referred to the appropriate [division in the Special Taxes Department](#) division.

### VERIFICATION OF RESALE CERTIFICATES AND PERMITS

130.041

The Board has an obligation to assist taxpayers in verifying the validity of resale certificates. [Taxpayers may use the Board's website to verify an account number on a resale certificate. The website address is \[www.boe.ca.gov\]\(http://www.boe.ca.gov\) and taxpayers may click on the Sellers' Permit Verification menu item.](#) The responsibility for answering these inquiries is primarily that of the districts. Sellers seeking to verify resale certificates should provide the district with the [name of the business, its location, and the purchaser's seller's permit account number](#). With this information, the district can then verify and inform the seller whether the account is active or closed out. In the absence of providing this information, the inquiry should be considered a [searching service](#) request and forwarded to the Headquarters ~~Account Reference Section~~ [Account Analysis and Control Section](#) (see below).

If a district receives a long list of accounts for which resale certificates are to be verified, the district should refer the list to the Headquarters ~~Account Reference Section~~ [Account Analysis and Control Section](#) for verification. The verified information will then be mailed directly to the requesting seller unless otherwise instructed by the district.

Districts also may assist purchasers in verifying that persons with whom they are dealing have the required permits to collect California sales and use taxes. When the requester cannot provide the district with the sales tax permit number, the request should generally be considered a [searching service](#) request.

## GENERAL

### SEARCHING SERVICE

130.042

Alphabetical searching service is furnished only by the Headquarters ~~Account Reference Section~~ [Account Analysis and Control Section](#). No charge is made for verification of resale certificates and permits. The fee for other requests, such as those received from attorneys and collection agencies, is \$~~3.00~~1.75 per ~~name~~ searched. These customers are billed quarterly. [The release of information regarding individuals and confidential accounts is restricted \(see CPPM 135.074, 145.100, 145.200\).](#)

The ~~Account Reference Section~~ [Account Analysis and Control Section](#)'s searching service may disclose the following information [regarding partnerships, corporations, LLPs, and LLCs, but not individuals](#), ~~without regard to the type of ownership of the business:~~ Owner's name ~~\_(including "et al" names but~~ (including a.k.a.'s, [corporate officers](#) and limited partners as they don't appear on the permit), firm name (dba), business address, mailing address (if different from business address), account number, business code, starting date, whether account is active or closed and, if closed, the closing date.

If a video printout of Registration 1 (RG1) is used to supply the requested information, all entries below city and state will be deleted (see CPPM Subsection 130.040).

### INTERDISTRICT COOPERATION

130.050

All compliance employees, regardless of where they may be located, are working for the same organization. It is immaterial where an assignment originates or in what area a taxpayer incurred the tax liability. The responsibility for doing a conscientious job is not limited by district boundaries. Even though the assignment originated in another district, there will be no difference in the way the case is worked or in the amount of effort expended. Refer to CPPM Section 721.000 for detailed information in interdistrict assignments.

Draft

## GENERAL

### **LEGAL CASES--EMPLOYEE RESPONSIBILITY 135.000**

#### **SIGNATURE OF EMPLOYEE ON DOCUMENTS 135.010**

Employees will not sign stipulations, agreements or other documents authorized by the taxpayer or his or her representatives. Board forms, or facsimiles of forms, will be used. See also CPPM ~~Subsection~~-505.080, Preparation of Tax Returns by Board Employee.

#### **CONFLICT OF INTEREST - SHERIFF'S OR MARSHAL'S SALES 135.020**

To avoid any question of conflict of interest, no Board employee, member of the employee's family or any other relative should purchase or attempt to purchase any asset being offered for sale pursuant to a marshal's or sheriff's seizure and sale held to satisfy delinquent taxes administered by the Board. Likewise, no individual should bid on behalf of a Board employee or his or her family.

The above does not prohibit a designated employee entering a protective bid on a motor vehicle on behalf of the Attorney General's Office as provided for in CPPM ~~Subsection~~-742.060.

#### **CONTACT BY TAXPAYERS IN ATTORNEY GENERAL CASES 135.030**

Occasionally a taxpayer (or his or her representative) involved in a court case in which the Board is a party will ask a Board employee for information regarding the case. In such an event, he or she should be told to contact the Deputy Attorney General representing the Board in the litigation. To avoid the possibility of adversely affecting the outcome of the litigation, no information should be given unless authorized by the Deputy Attorney General involved.

#### **SERVICE OF LEGAL PROCESS 135.040**

I. Summons and complaints, restraining orders, orders to show cause, and similar legal process directed to the State Board of Equalization.

##### A. Authorized Methods of Service.

1. A summons and complaint in an action against the Board may be served by:

- a. ~~By p~~Personal delivery of a copy to the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director. Service is complete at the time of delivery.
- b. ~~By m~~Mailing a copy to the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director, together with two copies of a notice and acknowledgement form and a return envelope, postage prepaid, addressed to the sender. Service is complete on the date the acknowledgement of receipt is executed by the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director. If the acknowledgement form is not completed and returned within 20 days after the copy of the summons and complaint is mailed, the party to whom it was mailed is liable for reasonable expense thereafter incurred in serving or attempting to serve by another authorized method.
- c. ~~By l~~Leaving a copy in the office of the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director. The copy must be left during usual office hours with "a person who is apparently in charge of the office.". This will include a secretary of the person to be served. Thereafter, a copy must be mailed to the person to be served. Service is complete on the 10th day after such mailing.

2. A restraining order, an order to show cause, etc., directed to the Board, may be served by:

- a. ~~By p~~Personal delivery of a copy to the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director, or our attorney of record in the action.
- b. ~~By m~~Mailing a copy to the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director, or our attorney of record in the action with postage prepaid, addressed to the person to be served at his or her office address. Service is complete at the time of mailing.

## GENERAL

- c. ~~By~~ leaving a copy in the office of the ~~Chairman~~ of the Board, Executive Director, Acting Executive Director, or our attorney of record in the action. The copy is to be left during usual office hours with "a person who is apparently in charge of the office." This will include a secretary of the person to be served.

### SERVICE OF LEGAL PROCESS

(Cont. 1) 135.040

#### B. Procedure When Served.

1. Whenever a copy of a summons and complaint, restraining order, order to show cause, etc., directed against the Board is served by personal delivery or by mail, properly or improperly, it should be sent immediately to the Chief Counsel, unless it is improperly served by personal delivery and returned to the server as specified below. No written acknowledgement should be made to the server prior to review by the Chief Counsel.
2. If an attempt is made to personally serve a person other than the ~~Chairman~~ of the Board, Executive Director, or Acting Executive Director, with a copy of a summons and complaint, restraining order to show cause, etc., directed against the Board, the server should be told that the ~~Chairman~~ of the Board or, preferably, the Executive Director, must be served. The copy should be returned to the server unless he or she insists on leaving it. If the server has left the documents despite being advised that the Board would not accept service in that manner, the documents should be forwarded immediately to the Chief Counsel. If the person served is individually named as defendant, he or she must accept service insofar as he or she personally is concerned, but this service is not binding on the Board. Under these circumstances, however, he or she or his or her supervisor should send the copy served to the Chief Counsel immediately.

#### II. Subpoenas and Subpoenas Duces Tecum

##### A. Authorized Methods of Service.

The service of a subpoena is made by showing the original and delivering a copy to the witness personally including, in the case of a subpoena duces tecum, a copy of the affidavit upon which the subpoena was issued. The service must be made so as to allow the witness a reasonable time for preparation or travel to the place of attendance.

A subpoena duces tecum, to be effective to require production of Board records, should be directed to and served upon the Executive Director or Acting Executive Director.

##### B. Procedure When Served.

If a subpoena is directed to the Board, an individual Member thereof, or the Executive Director and is served on an employee, the person so served is not required to appear in obedience to the subpoena. The service is of no effect inasmuch as the subpoena is not directed to him/her. The employee should so inform the server.

If the subpoena is directed to a particular employee of the Board and he or she is served, he or she is required to appear in obedience to the subpoena but is not authorized or required to produce any Board records even though it be a subpoena duces tecum. The employee should inform the server that to require production of Board records, a subpoena duces tecum should be directed to and served upon the Executive Director since he or she is the custodian of the records.

~~By order of the Governor,~~ Board employees are authorized to testify under specified circumstances concerning their own knowledge of ~~sales and use tax~~ records when served with a subpoena directed to the employee personally. When a subpoena has been served upon an employee or when an attempt has been made to serve him/her with a subpoena directed to the Board, an individual Member thereof, or the Executive Director, the employee or his or her supervisor should immediately advise the Chief Counsel, forwarding information as to the nature of the proceeding, the name of the attorney, and the party on whose behalf the subpoena was issued. Further instructions as to procedure will be issued by the Chief Counsel. The Chief of Field Operations should be advised in all cases.

**SMALL CLAIMS COURT ACTIONS**

**135.045**

Occasionally, the Board is named as a defendant in action filed in small claims court (a division of a municipal or justice court). Jurisdiction to resolve tax questions rests with the superior courts. The following procedures should be followed by field offices and headquarters units which receive communications from a small claims court concerning an action brought against the Board of Equalization with respect to sales and use and use fuel taxes.

1. If the action involves the validity of a determination, auditing errors, claims for refund, etc., the following action should be taken:
  - a. Notify ~~the~~ Headquarters ~~Audit Review and Refunds~~ Section immediately by telephone.
  - b. The original correspondence received from the court should be forwarded to ~~Audit Review~~ the Refund Section after a copy has been made for the district or unit file.
  - c. The ~~Audit Review and Refunds~~ Section will provide a letter to the court which documents the Board's jurisdictional objections to the action.
  - d. If this letter is not accepted in lieu of a formal appearance on behalf of the Board, the ~~Audit Review and Refunds~~ Section will advise the district administrator or the unit supervisor, who will make arrangements to have someone appear for the Board, since attorneys are not allowed in small claims court actions.
  - e. The ~~Audit Review and Refund~~ Section will provide the person making the appearance with a letter detailing the legal basis for the jurisdictional objections to the action. The letter should be read to the presiding judge.
  - f. The person representing the Board should also be prepared to explain the provisions of the tax law which are applicable in the case at hand.
2. If the action involves a matter other than those shown above (e.g., reimbursement for accounting fees, claim for damages, etc.) the ~~Collection~~ Special Procedures Section (ATSS CalNet 485-1122, Public Number (916) 445-1122) should be substituted for the Headquarters ~~Audit Review and Refunds~~ Section in steps a. through f. shown above.
3. All actions involving special taxes programs should immediately be referred to the appropriate division which will perform the ~~above~~ functions similar to those referenced above.

**EXAMINING RECORDS - AUTHORITY FOR**

**135.050**

Section 15618 of the Government Code confers the authority upon the members of the staff of the Board to examine records as follows: "The Board may examine, as a Board, individually, or through its staff, the books, accounts, and papers of all persons required to report to it, or having knowledge of the affairs of those required so to report."

Should the authority of the representative to examine records of taxpayers be challenged, the challenger should be referred to the Government Code section or to one of the following code sections:

- |   |   |
|---|---|
| Sales and Use Tax -- <del>Section</del> 7054                  | Hazardous Substances Tax -- <del>Section</del> 43502                    |
| Motor Vehicle Fuel License Tax -- <del>Section</del> 8253     | Childhood Lead Poisoning/Prev. Fee -- Sect. 43502                       |
| Use Fuel Tax -- <del>Section</del> 9254                       | Occupational Lead Poisoning Prev. Fee - Sect. 43502                     |
| Cigarette and Tobacco Products Tax - Sec. 30454               | Integrated Waste Management Fee - Sect. 45852                           |
| Alcoholic Beverage Tax -- <del>Section</del> 32453            | Oil Spill Response, Prevention Fee - Sect. 46603                        |
| Tax on Insurers - no separate provision                       | Underground Storage Tank Maint. Fee - Sect. 50153                       |
| Energy Resources Surcharge -- <del>Section</del> 40174        | <del>Oil Recycling Fee -- Section 55302</del>                           |
| Emerg. Telephone Users Surcharge - Sect. 41130                |   |
| <u>Ballast Water Management Fee -- Sec. 55302</u>             | <u>Fee Collection Procedures Natural Gas Surcharge -- Section 55302</u> |
| Tire Recycling Fee -- <u>Sec. 55302</u> no separate provision | Diesel Fuel Tax -- <del>Section</del> 60606                             |

## GENERAL

For procedures to obtain a subpoena to produce records (subpoena duces tecum), see ~~CPPM Subsection~~ 135.073 and 799.050.

### CLAIMS AGAINST PUBLIC EMPLOYEES

135.060

Section 860.2 of the Government Code provides as follows:

"Neither a public entity nor a public employee is liable for an injury caused by:

- (a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- (b) An act or omission in the interpretation or application of any law relating to a tax."

This section was added to the code in 1963 as part of Division 3.6 of Title 1, of which Chapter 6 is entitled "Administration of Tax Laws." The Legislative Committee Comment to Section 860 states that:

"This chapter confers immunity upon public employees and public entities for their discretionary acts in the administration of tax laws. It is likely that the courts would confer an immunity for these acts under the general provisions of Section 820.2; but it appears desirable to make the immunity explicit in order to obviate the necessity for test cases to determine whether the discretionary immunity extends this far."

Section 820.2, referred to in the Legislative Committee Comment, provides as follows:

"Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

In one court case against a public employee, a discretionary act was defined as one which requires the exercise of judgment or choice.

Good judgment is a prerequisite of a successful compliance person. Any employee who is acting in the course and scope of his or her employment when he or she is engaged in work he or she was employed to perform, or when an act is an incident to this duty and was performed for the benefit of his or her employer and not to serve his or her own purposes or convenience, the employee will be protected from personal liability for acts performed in tax collection.

### RIGHT TO FINANCIAL PRIVACY ACT

135.070

When obtaining financial information from banks and other financial institutions, the Board must comply with the requirements of "Governmental Access to Financial Records." These provisions, commencing with Section 7460 of the Government Code, are known as the "California Right to Financial Privacy Act."

The Act covers the records of customers of financial institutions which are defined as including state and national banks, state and federal savings and loan associations, trust companies, industrial loan companies, and state and federal credit unions. Since all phases of operations are covered, the records of customers of the escrow and leasing operations departments of financial institutions are protected, even though the Act does not protect the records of customers of escrow or leasing companies.

There is no prohibition in this Act against Board of Equalization employees requesting a financial institution and that financial institution responding to a request as to whether a person has an account or accounts at that office or branch, and, if so, any identifying numbers of such account or accounts. In addition, [Government Code](#) Section 7480 of the Act specifically provides for disclosure to the Board of Equalization of:

- (1) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Parts 1, 2, 3, 13, 14, and 17 of the Revenue and Taxation Code.

~~[Parts 19, Energy Resources Surcharge; 20, Emergency Telephone Users Surcharge; 22, Hazardous Substances; 23, Integrated Waste Management Fee; 26, Underground Storage Tank Maintenance Fee; 24, Oil Spill Response, Prevention, and Administration Fees; and 30, Oil Recycling Fee are not included in Government Code Section 7480 of the California Right to Financial Privacy Act.]~~

## COMPLIANCE POLICY AND PROCEDURES MANUAL

- (2) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.
- (3) The information required by the following sections of the Revenue and Taxation Code which pertain to the Notice to Withhold and Notice of Levy:

SECTION	LAW
6702, 6703	Sales and Use Tax <a href="#">Law</a>
8954, 8957	Use Fuel Tax <a href="#">Law</a>
30313, 30315	Cigarette Tax and Tobacco Products Tax <a href="#">Law</a>
32383, 32387	Alcoholic Beverage Tax <a href="#">Law</a>
40153, 40155	Energy Resources Surcharge <a href="#">Law</a>
<del>41122, 41123.5</del>	<del>Emergency Telephone Users Surcharge Tax <a href="#">Law</a></del>
<del>43443, 43444.2</del>	<del>Hazardous Substances Tax <a href="#">Law</a></del>
<del>44144</del>	<del>Moore Universal Telephone Service Act</del>
<del>45603, 45605</del>	<del>Solid Integrated Waste Disposal Site Cleanup and Maintenance Management Fee Law</del>
<del>46404, 46466</del>	<del>Oil Spill Response, Prevention and Administration Fee Law</del>
<del>50134, 50136</del>	<del>Underground Storage Tank Maintenance Fee Law</del>
<del>55203, 55205</del>	<del>Fee Collection Procedures Tax Law (Tire Recycling, Ballast Water, Natural Gas)</del>
<del>60404, 60407</del>	<del>Diesel Fuel Tax Law</del>

When serving a Notice of Levy on a bank, finance company, etc., the usual Form BT-425-L is used. However, specialized Form BT-465-B, BT-465-B1, or BT-465-UB is used to serve a Notice to Withhold. If the financial institution is the employer of our taxpayer, Form BT-425-E, Earnings Withholding Order for Taxes, is used (see CPPM Subsections 742.100, 736.070 and 742.105).

### **LOAN COMPANIES**

**135.071**

The Board's legal staff has completed an in depth study of industrial loan companies as defined in Financial Code Section 18003. They have determined that all loan companies are not industrial loan companies as had been previously believed and therefore not all should be considered to be financial institutions.

If you are in doubt whether a lender is an industrial loan company, and therefore a financial institution subject to the California Right to Privacy Act, you should call the Department of Corporations, Los Angeles Central Index at (ATSS) 677-2481. They will be able to tell you if the lender is licensed by the state as an industrial loan company. If you have any questions that the Central Index cannot answer, the Sacramento Office of the Department of Corporations can help you. Their telephone number is (ATSS) 485-4986.

Form letter BOET-941 may be used when making inquiries of loan companies that are not licensed as industrial loan companies.

In summary, any lending company not licensed by the state as an industrial loan company is not considered to be a financial institution and therefore can be approached for any information about their customers that a state employee may require.

Although loan companies not licensed as industrial loan companies are under no legal obligation to give information, a request is not illegal and therefore not subject to the fine (see CPPM 135.072).

## GENERAL

### RELEASE OF FINANCIAL INFORMATION - [FORM BOE-869](#)

135.072

#### ~~FORM BT 869~~

Except as noted in CPM ~~Subsection~~-135.070, employees may not request a financial institution to disclose any information regarding its customers' records unless the customer has authorized the disclosure, and proper procedures are followed. In addition, no ~~employee~~, [employee](#) may examine or receive copies of, or the information contained in, the financial records of a financial institution without prior authorization of the customer involved. Also, the specific financial records to be reviewed must be described and be consistent with the scope and requirements of the investigation (Government Code, ~~Ch. 20~~, Section 7473).

The financial institution must also maintain a record of all examinations and disclosures of the financial records of a customer including the identity of the person examining the financial records, the department represented, and a copy of the customer's authorization, subpoena, etc., providing for such examination (Government Code, ~~Ch. 20~~, Section 7473).

Before attempting to obtain information from a financial institution, Board policy is first to insist that the taxpayer obtain any data or documents which should have been retained in accordance with Section 7053 of the Sales and Use Tax Law [or similar requirements under the tax programs administered by the Board](#).

If all other available avenues of information have been exhausted and approval of the district administrator has been obtained, Form ~~BOE~~-869 (Release of Financial Information) should be used to secure access to the information. Form ~~BOE~~-869 is a four-part multicolored form which sets forth the period to be examined by the Board representative, the identity of financial records to be examined, and the applicable tax law involved. It also informs taxpayers of the expiration date of the authorization and their right to revoke the authorization at any time. Initially, all four copies will be completed to the point of signature of the Board representative. The blue copy will be given to the taxpayer who authorizes the examination. The pink copy will be given to the financial institution who holds the records. The remaining two copies will be retained with the assignment file.

#### FORM BT 869 (Cont.)

Preparation of Form ~~BOE~~-869 is self-explanatory, but it must be completed in full detail and be properly executed by all parties involved. The expiration of the authorization normally should be dated no more than 60 days from the date of request of the authorization. The expiration date may exceed 60 days from the date of request of the authorization only when it is felt that more time is needed to examine the financial institution's records.

Every attempt should normally be made to examine and extract the data at the institution and directly from the available records in order to avoid the expense to the institution of making copies or otherwise delivering the information to the Board. Because there is no legal obligation for the institution to provide the information requested under Form ~~BOE~~-869, if the needed information will be costly and time consuming to produce, the institution may condition its production of the data on the Board's payment of the related expenses. If obtaining the data is deemed necessary and unavoidable and in the Board's best interests, reasonable charges will be paid by the Board to secure the required information or documents, even though the Board is not legally bound to pay any such charges. These charges must be borne by the Board since there is no statutory authority for passing them on to the taxpayer. The district administrator has the responsibility for approving any charges which the financial institutions may make for the needed information and/or documents.

After the examination has been completed, the bottom receipt portion of the yellow and white copies must be signed by an official of the financial institution to acknowledge return of the records. The white copy will be retained by the financial institution. The original yellow copy will be retained in the district file of the account. Within 30 days of the examination, the taxpayer must be notified, in writing, that the examination has been completed and that the reason for such examination will be furnished upon written request. An acknowledgment letter (see sample included in this ~~subsection~~) must be used by the district of control for this purpose and a copy retained in the district file of the account (Government Code, ~~Ch. 20~~, Section 7473).

Since the expiration of the authorization normally will be 60 days from the date of request, priority must be given to the completion of the examination of the records provided by the financial institution.

Should the taxpayer refuse to authorize the release of information requested, the district administrator will follow the standard Board procedures for administrative subpoena or summons, search warrant or subpoena duces tecum (see [CPM Subsection](#)-135.073).

[June 2001](#)

**RELEASE OF FINANCIAL INFORMATION - FORM BOE-869**

**(Cont.1) 135.072**

It is imperative that the procedures detailed above be followed in all activities of this nature to ensure compliance with the California Right to Financial Privacy Act. This Act provides that "Any person, who, with the intent to violate, knowingly participates in a violation of this chapter is guilty of a misdemeanor, and upon conviction shall be imprisoned for not more than one year, or fined not more than five thousand dollars (\$5,000), or both".

Any problems or questions which arise as a result of the Act, and which cannot be resolved in the district, should be referred to the Supervisor of the ~~Collection~~ [Special Procedures](#) Section.

Draft

GENERAL

RELEASE OF FINANCIAL INFORMATION - [FORM BOE-869](#)

(Cont.2) 135.072

~~FORM BT-869~~

BOE-869 (10-92) STATE OF CALIFORNIA

**RELEASE OF FINANCIAL INFORMATION** **BOARD OF EQUALIZATION**

**AUTHORIZATION TO RELEASE INFORMATION TO  
STATE BOARD OF EQUALIZATION**

I/we, \_\_\_\_\_ hereby authorize  
(NAME OF TAXPAYER)

\_\_\_\_\_ to release to  
(NAME AND ADDRESS OF FINANCIAL INSTITUTION)

\_\_\_\_\_ an official  
(NAME AND TITLE)

representative of the California State Board of Equalization, the following financial records covering  
 the period from \_\_\_\_\_ to \_\_\_\_\_

Description of records  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

This authorization expires \_\_\_\_\_ . However, I reserve the right at any time to revoke this  
(DATE)  
 authorization.

\_\_\_\_\_ Account No. \_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_ (TITLE) \_\_\_\_\_ (DATE)

These records have been received for the purpose of making an examination pursuant to the provisions of  
 the \_\_\_\_\_ tax law.

\_\_\_\_\_ (DISTRICT ADMINISTRATOR) \_\_\_\_\_ (DATE)

By \_\_\_\_\_ (TITLE)

Return of the above-described records is acknowledged:

\_\_\_\_\_ (NAME OF FINANCIAL INSTITUTION) \_\_\_\_\_ (DATE)

By \_\_\_\_\_ (TITLE)

FINANCIAL INSTITUTION RETURN RECEIPT COPY

RELEASE OF FINANCIAL INFORMATION - FORM BOE-869

(Cont. 3) 135.072

RECOMMENDED ACKNOWLEDGMENT LETTER

To: \_\_\_\_\_ Account No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This is to notify you that the records listed below for the period from \_\_\_\_\_  
to \_\_\_\_\_ were examined by the California State Board of Equalization pursuant to the  
provisions of the \_\_\_\_\_ tax law.

These records have been returned to the possession of \_\_\_\_\_  
(NAME OF FINANCIAL INSTITUTION)

on \_\_\_\_\_  
(DATE)

DESCRIPTION OF RECORDS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You may request the reason for the examination if you wish

Very truly yours,

By \_\_\_\_\_  
Title \_\_\_\_\_

DRAFT

## GENERAL

### FINANCIAL PRIVACY ACT -- SERVICE OF SUBPOENAS

135.073

The procedures to be followed for the issuance of a subpoena for records are contained in CPPM ~~Subsection~~ 799.050. Requests for the issuance of a subpoena must be directed to and coordinated with the legal staff.

The California Right to Financial Privacy Act provides in Section 7474 of the Government Code that when an administrative subpoena is served on a financial institution, a copy must be served on its customer under provisions in Chapter 4 of the Code of Civil Procedure (CCP), commencing with Section 413.10. The customer must be allowed 10 days after service to move to quash the subpoena, if he or she wishes. The legal staff advises the following methods of serving a copy on the customer may be used.

1. Personal service (CCP Section 415.10).
2. Leaving a copy at the customer's office in the presence of an adult apparently in charge or  
— at the customer's home in the presence of a competent adult member of the household, and  
— then mailing a copy to the customer at the office or home where a copy was left. Service is  
— complete 10 days after mailing (CCP Section 415.20).
3. Mailing a copy with a form for acknowledgment. Service is complete when acknowledged.  
— If not acknowledged, the customer may be held liable for cost of personal service  
— (CCP Section 415.30).
4. If the person is outside the state, a copy may be sent airmail requiring a return receipt.  
— Service is complete 10 days after mailing (CCP Section 415.40).
5. If no other service is feasible, service by publication in a newspaper may be used.  
— This requires a court order, and it must be shown that the customer has an interest  
— in property in this state or that certain other requirements are met (CCP Section 415.50).

In most cases, one of the above methods of service would probably be feasible; although for these purposes, method No. 3 is largely impractical and should only be considered if methods No. 1 or 2 fail.

### INFORMATION PRACTICES ACT (IPA)

135.074

The Information Practices Act of 1977 (Title 1.8 of the Civil Code [Section 1798 et seq.](#)) (IPA) is a “private access” statute. That is, it provides that individuals are to be allowed access to any personal information about them which is maintained in the files and records of any state agency. It also restricts the disclosure of such personal information to members of the public-at-large. The IPA places strict requirements on state agencies in the collection, use, maintenance, and dissemination of information relating to individuals— Since an individual is defined as a natural person, the act applies to sole proprietorships, but does not apply to partnerships or corporations, as such.

The term “personal information”; as amended by SB626 (Chapter 595, Statutes of 1985), includes, but is not limited to, the individual's name, social security number, home address, home telephone number, financial matters, and statements made by, or attributed to, the individual.

**INFORMATION PRACTICES ACT (IPA)**

**(Cont. 1) 135.074**

~~Although the act generally prohibits the distribution of individual's names and addresses for commercial purposes (for purpose of financial gain), it specifically allows the release of names and addresses of persons who are registered with, or are holding licenses or permits issued by the Board of Equalization. Therefore, the Board makes nonconfidential registration information available to private sector requestors. Requests for information from the Board's master registration file on magnetic tape, cards, and listings should be referred to the Deputy Director, Administration (see also CPPM Subsection 130.041 and 130.042). As amended by AB 1965 (Chapter 962, Statutes 2000), the State Board of Equalization may not release the names and addresses of individuals (sole proprietorships) who are registered with, or are holding licenses or permits issued by the Board, except to the extent necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code. The Board may also provide names and addresses to any federal or state agency or local government if the release of the information is authorized by law.~~

The Board may disclose other personal information about "individual" taxpayers under the conditions shown in Civil Code Section 1798.24. These include:

1. To the individual to whom the information pertains (with proof of identity).
2. With written, voluntary consent of the subject individual, if consent was obtained not more than 30 days prior to disclosure, or in the time limit agreed to by the individual in the written consent.
3. To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected. (Disclosure or accounting requirements as specified in the act must be met.)
4. To another person or governmental organization to the extent necessary to obtain information required for the Board's investigation of failure to comply with a specific law which the Board is responsible for enforcing.

Section 1798.67 also provides for the disclosure of information relating to the identity of a person against whom a lien or encumbrance on real property has been recorded in order to distinguish the person from another with the same or similar name.

The Board must maintain the source of information collected and, when requested, provide it unless the source is exempt from disclosure.

[Some of the programs administered by the Special Taxes Department do not allow disclosure of registration information. Please refer to the appropriate division for guidance before making any disclosure.](#)

The Information Practices Act provides penalties for persons who intentionally violate its provisions. The penalties apply to those who furnish or obtain information improperly.

Questions concerning policies and procedures related to the Information Practices Act should be referred to the [Board's Information Disclosure Security Officer](#).

**[PUBLIC RECORDS ACT \(PRA\)](#)**

**[135.075](#)**

[In contrast to the IPA, the Public Records Act \(PRA\) \(Government Code Section 6250 et.seq.\) provides that "public records" include any writing containing information relating to the conduct of the public business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and](#)

## GENERAL

every person has a right to inspect any public record, except as otherwise provided. Information that is covered by the IPA statutes would generally not be available to the public under the PRA.

The application of the PRA to the Board of Equalization is provided in Regulations 8000 through 8016 of the California Code of Regulations. A copy of these regulations is available from Board offices free of charge or can be accessed through the Board's website at <http://www.boe.ca.gov>. Government Code section 6253.4 also requires the Board to post a notice at all of its offices providing information about the PRA and how to obtain copies of Regulations 8000 through 8016.

These regulations provide "public records" covered by the PRA include

Annotations and their backup opinions.

Staff memoranda and letters, including policy memoranda issued to Districts.

Business Taxes law guides, regulations, Current Legal Digests, and Business Taxes General Bulletins.

Decision and recommendations (D and R) resulting from appeal's hearings.

Manuals and guidelines with the exception of those the disclosure of which would compromise the Board's administration of tax programs.

Memorandum Opinions.

Newsletters and pamphlets.

Operations Memoranda with the exception of confidential information contained in the memoranda.

Rulemaking files.

Settlement agreements over \$500 that have been approved by the Board.

Training materials.

Government Code Section 6254 (k) does not allow nondisclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as taxpayer's names and account numbers, should be redacted, and the remainder of the document should then be released.

In general, requests for public records must be in writing and should be addressed to the Board's Executive Director or the Disclosure Officer. However, copies of law sections, regulations, annotations, non-confidential operations memoranda, or other publicly available materials such as pamphlets or newsletters may be requested orally or may be available on the Board's website. Requests may be made in person at Board offices or may be made by telephone using the Board's Customer Service number, 1-800-400-7115.

All other document requests must be in writing. A request must provide a sufficiently specific description so as to allow the Board to identify the requested records. Requests received at District offices or headquarters sections must be forwarded to the Disclosure Officer for review and processing. By law, all requests must be acknowledged within 10 working days of receipt of the request.

Additional information about the PRA may be found in Operations Memo 1041, *Release of Sales and Use Tax Information to the Public*, and Beam sections 7223 and 7223.1.

### **GUIDELINES FOR RELEASE OF AN INFORMANT'S NAME**

**135.0756**

#### **Background and Legal Requirements**

Periodically, members of the public (informants) will contact the Board with information regarding a taxpayer's alleged fraudulent activity. In some cases, the information is verbal, while in others, copies of documents might be provided. Some informants choose to remain anonymous, while others identify themselves or can be identified from the information provided.

**GUIDELINES FOR RELEASE OF AN INFORMANT'S NAME**

**(Cont. 1) 135.0756**

The Information Practices Act (California Civil Code, § 1798 et seq.) requires the disclosure of all information found in an individual taxpayer's files when the individual so requests. Some exceptions to the disclosure rule include situations where the information:

1. "Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, ..."

(Civil Code Section 1798.40(b))

2. "Is maintained for the purpose of an investigation of ... a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38."

(Civil Code Section 1798.40(d))

Under Civil Code Section 1798.38 [and 1798.40 \(d\)](#), an agency may withhold the identity of a source if there has been a promise of confidentiality and the information is withheld because it led to civil investigation of the individual involved. However, even though the identity of the source may be withheld, the agency is still required to:

"... fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material."

(Civil Code Section 1798.38)

The promise of confidentiality is a requirement if the Board is to withhold an informant's name. It is essential that any promise of confidentiality to an informant be documented and clearly noted on or attached to any information which divulges the identity of the informant. This should prevent improper release of the informant's name.

Information obtained from an informant is to be withheld during the pendency [pending completion](#) of an investigation (audit or other inquiry). At the conclusion of the investigation, the identity of the informant will be withheld if a promise of confidentiality has been made. The information provided by the informant, however, must be provided if the taxpayer requests it. As provided by the Civil Code, either copies of the information, with the identification of the informant properly deleted, or a comprehensive summary of the substance of the material will be provided in response to such a request.

Providing a comprehensive summary of the information is the preferable approach if there are any physical characteristics of the information (handwriting, spelling or grammar, identifying marks, unique details) which would result in the identification of the informant.

Whichever method is used, the Board shall ensure that full disclosure is made to the individual of any personal information that could reflect or convey anything detrimental, disparaging, or threatening to the individual's reputation, rights, benefits, privileges, or qualifications.

Finally, the Information Practices Act is not the only law which impacts the Board's actions in withholding information revealed by informants. Occasionally, circumstances involving discovery proceedings in active court cases or a defendant's right to face his or her accuser may require the disclosure of specific information, including the informant's name. These situations would result from court proceedings, and the Board's records would be subpoenaed. Should this circumstance arise, the matter must be referred to the Board's legal staff and/or the Deputy Attorney General assigned to the matter for decision and response.

GENERAL

EXCHANGES OF CONFIDENTIAL INFORMATION

140.000

GENERAL

140.010

It is extremely important that only authorized parties release and receive confidential information. For complete details, refer to the Board of Equalization Administrative Manual (BEAM), Section 7200 et seq. or the Information Procedures Handbook, Pamphlet No. 58. Any questions regarding the exchange of information should be directed to the Board's Disclosure Officer.

AUTHORIZED AGENCIES

140.020

Arrangements have been made for the exchange of "confidential" information by the Board and other state agencies and the Federal Government. See BEAM, Section 7200 et seq., for authorized California, other states, and federal agencies, the tax programs the agreements relate to, authorized personnel and other provisions of authorization.

California state agencies include, but are not limited to:

- \_\_\_\_\_ Department of Alcoholic Beverage Control
- \_\_\_\_\_ Franchise Tax Board
- \_\_\_\_\_ Employment Development Department
- \_\_\_\_\_ Department of Motor Vehicles
- \_\_\_\_\_ Public Utilities Commission
- \_\_\_\_\_ Department of Industrial Relations

~~Each authorized agency will make available to any properly identified officer or employee of another authorized agency, all information including that of a confidential nature in their possession, providing that the information will be used in the proper administration of the state tax laws with which each agency is charged. (Exchanges with the Department of Alcoholic Beverage Control are limited to authorized representatives.)~~

~~Arrangements have also been made to honor requests for confidential information by authorized employees for agencies of other states. These include, but are not limited to:~~

- \_\_\_\_\_ Tax Commission, State of Nevada
- \_\_\_\_\_ State Tax Commission and  
\_\_\_\_\_ Department of Taxation and Finance
- \_\_\_\_\_ State of New York

~~The Federal agreement includes, but is not limited to:~~

- \_\_\_\_\_ Interstate Commerce Commission (Requests for information must be made in writing).
- \_\_\_\_\_ Internal Revenue Service (Names of Board of Equalization employees authorized to inspect IRS records are required prior to inspection).

All reciprocal agreements provide that information may only be given after proper identification. Therefore, officers or employees of other agencies and of this Board must present their credentials when making a personal request for information (see CPMG Section 170.000).

**EXCHANGE OF CONFIDENTIAL INFORMATION – FILE DOCUMENTATION**

**140.030**

Documentation of disclosures made pursuant to an Order of the Governor authorizing such disclosures is not required under the Revenue and Taxation Code. In ~~limited~~[certain](#) circumstances, the Information Practices Act (Civil Code Section 1798 et seq.) requires an accurate accounting of the date, nature, and purpose of each disclosure made about individuals, (Civil Code Section 1798.25). ~~Such an~~[This](#) accounting is not necessary if notice of the disclosure has been provided to the individuals pursuant to Civil Code Sections 1798.9 and 1798.10. ~~The Board of Equalization has complied with the provisions of Section 1798.9 and 1798.10 by filing a privacy notice notifying individual that information is exchanged with other state agencies. As such, no further documentation of disclosures of information need~~[should be sent to Taxpayer Records and also may be recorded](#) made in a taxpayer's [on-line](#) file.

Draft

GENERAL

**ACCOUNTS CLASSIFIED CONFIDENTIAL**

**145.000**

**CONFIDENTIAL INDICATOR**

**145.100**

As amended by AB 1965 (Chapter 962, Statutes 2000), the Information Practices Act prohibits the release of the names and addresses of individuals (sole proprietors) who hold any permits issued by the Board except to the extent necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code. In addition to this prohibition, for reasons of personal safety, some accounts have been flagged to prevent the release of the taxpayers business or mailing address. If an account has been flagged as confidential, the Board will only verify the name on the account, the account number, and the status of the account. Justification to withhold the business and mailing address, even for purposes of permit verification, must be provided by the taxpayer to the Board's Disclosure Officer.

Confidential accounts will show a red "CONFIDENTIAL" ON THE REGISTRATION SCREEN.

**CALIFORNIA CONFIDENTIAL ADDRESS PROGRAM (CAL CAP)**

**145.200**

The California Confidential Address Program (Cal CAP) was enacted by Government Code section 6205. This program addresses confidentiality for victims of domestic violence. The law, effective July 1, 1999, will remain in effect until January 1, 2005, and then is repealed unless extended by statute. The Cal CAP program is administered by the Secretary of State's (SOS) office. Participants in the Cal CAP program designate the SOS as agent for service of process and receipt of mail. SOS provides the participant an identification card certifying participation.

Participants in the Cal CAP program require special administrative procedures as detailed in CPPM 205.035.

DRAFT

**CORRESPONDENCE**

**150.000**

**CORRESPONDENCE — 150.000**

**ACKNOWLEDGEMENT**

**150.005**

All incoming correspondence not subject to the Public Records Act (PRA) must be either responded to or acknowledged within 12 days of receipt. PRA requests must be responded to within 10 days, as required by law. This also applies to incoming E-mail. The Board of Equalization's Administrative Manual (BEAM) Sections 7600-7660 provide uniform guidelines for correspondence acknowledgement.

**FORMAT AND CONTENTS**

**150.010**

Letters to taxpayers, organizations and the general public will be on letterhead of the Board of Equalization and will contain the signature, typewritten name, and working title of the authorized signer. (See Operations Memo 984 the "Working Titles at the Board" section of the Writer's Manual.) The interoffice memorandum form should not be used.

Section 7525 of the Government Code requires state agencies to place telephone numbers on official stationary used in communications with the public. This requirement includes Data Processing printed forms in addition to manually prepared forms, and letters and E-mails. Therefore, the Business Taxes Systems Coordinator and the Document Design and Control Unit should each be notified by memorandum whenever changes are made in district or branch office telephone numbers or addresses. The notices should be given as soon as firm information is available and should include the effective date of the change so data processing originated information and preprinted forms, envelopes, and phone listings may be corrected.

All board correspondence must serve as a complete source of the questions asked, the facts presented and the answer given. Accordingly, all letters by the board staff in response to tax questions obtained through personal contact with the taxpayer after receipt of the letter will be included in the response and will be identified as to source.

In responding to accountants, attorneys, or other taxpayer representatives in situations where the representative has not divulged the name of the taxpayer, the writer will ask that the representative divulge the name of the taxpayer to enable the Board to maintain appropriate records with respect to the information provided. Tax advice to trade associations, taxpayer representatives failing to identify their clients or taxpayers whose questions are vague or general in nature, should include a statement indicating that the answer given is intended to provide general information regarding the application of the tax. Where individual taxpayers are identified, but background information is incomplete, the taxpayer should be encouraged to write again, setting forth the specific facts. The staff is encouraged not to make presumptions, however, should it become necessary to do so, they should be clearly identified as such in the letter.

When correspondence may cause recipients to contact ~~their own or another~~ a Board Member, the Board Members should be copied. An example of such correspondence would be a letter sent to an entire class of taxpayers. (Always send a cc to the Executive Director when sending a cc to Board Members.)

**REVIEW**

**150.020**

District administrators and Headquarters supervisors will review all letters involving tax questions to ensure that the information is correct and in the proper format. The review with respect to letters which state a particular activity or transaction is exempt from tax (exempt letter) will be completed before the letters are mailed.

Copies of all correspondence should be initialed in the lower right hand corner after being reviewed.

## GENERAL

### MODIFICATION/RESCISSION OF PRIOR ADVICE

150.025

Where an opinion has been issued, and it is subsequently determined that the tax advice as applied to the facts given is incomplete or incorrect, appropriate modification or rescission letters should be sent to the taxpayer.

Written advice may also be invalidated by statutory or constitutional law, a change in the Board's regulations, or a final decision of a court, rendering the Board's earlier written advice no longer valid.

Tax advice may only be relied upon by the taxpayer to whom ~~its~~ it was originally issued. Accordingly, whenever a change in legal ownership occurs, successors relying on this prior advice in the continuing operation of the business would not be entitled to relief based upon reasonable reliance on written advice from the Board.

### DISPOSITION OF CORRESPONDENCE

150.030

District administrators and Headquarters supervisors will maintain records regarding the number of letters and E-mails received and responded to. This data, along with copies of all letters confirming transactions of an exempt nature or rescinding prior "exempt" correspondence should be accumulated monthly. This information, including the taxpayer's original inquiry, will then be forwarded to the ~~Audit Evaluation and Planning~~ Public Information and Administration Section (MIC:44). That section will be responsible for a final review of the letter's accuracy. Any correspondence requiring adjustment will be returned to the originating party.

Special Taxes Division ~~Chiefs administrators~~ will maintain records and accumulate information as noted above and will be responsible for a final review of the letter's accuracy. ~~Pertinent information will then be forwarded to the Program Planning and Evaluation Division.~~ (see BEAM 760 et.seq.)

### ~~GUIDELINES FOR RELIEF OF TAX AND PENALTY OR INTEREST~~

#### GUIDELINES FOR RELIEF - RELIANCE ON WRITTEN ADVICE

150.040

Section 6596 of the Revenue and Taxation Code provides statutory authority for the Board to relieve taxpayers of sales and use tax and any penalty or interest added where the Board finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the Board. The majority of the tax and fee programs contain statutes with similar provisions; therefore special taxes staff should also be guided by the procedures of this section.

Relief is provided only where there has been written advice by the Board in response to a request, in writing, from a specifically identified taxpayer who, in turn, described fully the specific facts and circumstances of the activity or transaction for which advice was requested.

#### PERIODS OPEN TO SECTION 6596 REQUESTS

Section 6596 does not specifically limit requests for relief to periods after January 1, 1985. Accordingly, relief may be granted to taxpayers under this section, regardless of when the advice was given, provided the taxpayer has not exhausted all administrative remedies.

The taxpayer will be required to demonstrate that all of the conditions set forth in Section 6596 have been met.

**GUIDELINES FOR RELIEF OF TAX AND PENALTY OR INTEREST - RELIANCE ON WRITTEN ADVICE(Cont.) 150.040**

SECTION 6596 CLAIMS/PETITIONS

Any taxpayer seeking relief under ~~Section~~ [RTC section 6596](#) should be informed that they must furnish a copy of their original written inquiry to the Board, along with a copy of the Board's written advice. Documentation furnished should also include a statement under penalty of perjury, setting forth the facts on which the claim for relief is based. Only the person making the original tax inquiry is entitled to rely on the written advice received from the Board. If any of these conditions are not met, the taxpayer should be informed that his or her request cannot be accepted as a valid claim/petition under ~~S~~section 6596. ~~Taxpayers~~ [Taxpayers](#), whose claims/petitions are not accepted, should be informed of the Board's appeals procedures.

Petitions for redetermination, late protests, or claims for refund received in district offices, under ~~S~~section 6596, should be forwarded to the appropriate headquarters unit or Special Taxes Division. ~~District personnel should comment as they deem appropriate. While the Board has not authorized the staff to make Ssection 6596 adjustments or credits, district personnel are encouraged to submit recommendations regarding the acceptability of the documentation provided by taxpayers.~~ [Limited authority to grant relief under section 6596 was delegated by the Board to the Deputy Director, Sales and Use Tax Department, or a designee pursuant to a Statement of Action adopted on September 30, 1992.](#)

Draft

## **TAXPAYER RIGHTS**

**155.000**

### **THE TAXPAYERS' BILL OF RIGHTS**

**155.005**

In January 1989, the original Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes. Effective January 1993, the Special Taxes Bill of Rights was established, expanding Bill of Rights statutory authority to the special taxes programs administered by the Board of Equalization (Board). As the Board accepts responsibility for new special taxes and fee programs, the Bill of Rights protections are added for each program. In 1994, Taxpayers' Bill of Rights provisions were added for Property Taxes with the goal to ensure that taxpayers receive fair and uniform treatment under the property taxation laws.

### **TAXPAYERS' BILL OF RIGHTS LAW SECTIONS**

**155.010**

The following is an explanation of the active and applicable Bill of Rights law sections. While Sales and Use Tax Revenue and Taxation Code sections are stated, comparable provisions for special taxes and fees and property taxes are noted in the chart in Publication 70, *The California Taxpayers' Bill of Rights*. Additional information and guidance on Taxpayers' Bill of Rights provisions are included in discussions of specific actions required by staff.

### **SECTION 7083, TAXPAYERS' RIGHTS ADVOCATE**

**155.011**

The Taxpayer's Right Advocate, or his or her designee, facilitates resolution of taxpayer complaints and problems. The TRA Office:

Investigates and resolves taxpayer complaints and problems, including complaints regarding unsatisfactory treatment by employees.

Institutes staying actions and/or orders the release of levies when failure to take such action would result in irreparable loss or threaten the health or welfare of the taxpayer.

Oversees the Board's programs to evaluate employees' performance with respect to public contacts.

Recommends changes in statutes, regulations, policies, and procedures to improve service to taxpayers.

Monitors compliance with all provisions of the Taxpayers' Bill of Rights.

Carries out various other duties related to the Taxpayers' Bill of Rights.

### **SECTION 7084, EDUCATION AND INFORMATION PROGRAM**

**155.012**

The Board is required to develop and implement a taxpayer education and information program. Special efforts are made to address the needs of newly registered taxpayers, specific groups of taxpayers identified by the staff as having problems complying with the law, as well as Board audit and compliance personnel.

The program includes:

Special mailings to targeted industry groups.

Classes for newly registered taxpayers explaining their duties and responsibilities and the most common areas of noncompliance.

Active participation in business seminars.

Revision of board publications to make them easier to understand.

Continuing education programs for Board staff covering new legislation and areas of noncompliance.

**SECTION 7085, IDENTIFICATION OF TAXPAYER NONCOMPLIANCE BY BOARD** **155.013**

The Board must identify annually the most common areas of recurring taxpayer noncompliance with the Sales and Use Tax Law. A procedure has been developed to gather such information from the audit process. This data will be used as a foundation for developing educational programs and making changes that will improve both taxpayer compliance and uniform administration of the law. This information also must be included in the Board's Annual Report. This section also requires the Board to conduct an annual hearing where industry representatives and individual taxpayers can make suggestions for simplification, improvement, or clarification of business tax laws, regulations, policies, and practices.

**SECTION 7086, PREPARATION OF STATEMENTS BY BOARD** **155.014**

The Board is required to publish brief, but comprehensive, statements in simple language which explain procedures, remedies, rights, and obligations of taxpayers and the Board. These statements must be provided on the initial notice of audit, other substantive notices, and in annual Tax Information Bulletins.

**SECTION 7087, LIMIT ON REVENUE COLLECTED OR ASSESSED** **155.015**

The Taxpayers' Bill of Rights prohibits the use of sales tax audit, assessment, or collection statistics to evaluate employees' performance or to impose or suggest production quotas or goals. Headquarters preparation of individual auditor statistical reports has been discontinued, and all supervisors are reminded that the recording of audited or collected taxes on an individual employee basis is a violation of the law.

It has never been the policy of the Board to measure the performance of an employee based on the amount of taxes assessed or collected. The Board must certify in its Annual Report that this is not done. Accordingly, each appointing power is required to certify annually that the amount of revenue collected or assessed under the Sales and Use Tax and Special Taxes and Fees Law has not been used personally or by those under their direction to evaluate individual employees or to impose or suggest production quotas or goals. Each District Administrator must submit an annual certification to the Chief of Field operations by September 1. Each Headquarters manager with audit and/or compliance staff must submit an annual certification to their Deputy Director by September 15. The annual certifications are forwarded to the Taxpayers' Rights Advocate.

**SECTION 7088, EVALUATION OF EMPLOYEE'S CONTACT WITH TAXPAYERS** **155.016**

The Board is required to implement a program to evaluate individual employee performance with respect to contacts with taxpayers. Procedures, including taxpayer surveys, have been developed for field offices and for each headquarters unit that has significant public contacts. In addition, all probationary reports and performance appraisals must contain comments on the employee's public contact skills under the Relationships with People factor on these reports and appraisals. Evaluations may include active solicitation of feedback by observation, review of correspondence, participation in meetings or conferences with the public and through any other available methods. (See BEAM Sections 1655 and 1664). The Board must include a report on the implementation of this program in its Annual Report.

## GENERAL

### **SECTION 7089, PLAN TO TIMELY RESOLVE CLAIMS AND PETITIONS**

**155.017**

The Board, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, and other interested taxpayer-oriented groups, has developed a plan to reduce the time required to resolve petitions for redetermination and claims for refund. The plan includes standard time frames and requires a review of cases that exceed the established standard. In addition, the Board has implemented the following mandated policies with respect to Appeals Review Section Conferences:

Taxpayers must be informed before the conference that they are entitled to representation.

The conference will be held at a reasonable time at a Board office that is convenient to the taxpayer.

The conference may be recorded only if prior notice is given to the taxpayer. The taxpayer is entitled to a copy of the recording.

### **SECTION 7090, PROCEDURES RELATING TO PROTEST HEARINGS**

**155.018**

For protest hearings before hearing officers, the board must:

Hold the hearing at a reasonable time at a board office which is convenient to the taxpayer.

Provide the taxpayer prior notice that the hearing will be recorded and the taxpayer is entitled to receive a copy of the recording.

Inform the taxpayer prior to any hearing that they have the right to have their attorney, accountant or other designated agent present.

### **SECTION 7091, REIMBURSEMENT TO TAXPAYER**

**155.019**

Taxpayers are entitled to reimbursement of fees and expenses related to a hearing before the Board if all the following conditions are met:

The taxpayer files a claim with the board within one year of the date the Board's decision becomes final.

The Board finds that the action taken by its staff was unreasonable.

Reimbursement of costs will be limited to fees and expenses incurred after the filing date of the petition for redetermination or the claim for refund. If the Board finds that the staff was unreasonable with respect to some of the issues involved but not others, reimbursement will be limited to expenses related to the issues with respect to which the staff was unreasonable.

### **SECTION 7092, INVESTIGATIONS FOR NON-TAX ADMINISTRATION PURPOSES**

**155.020**

Board employees who knowingly authorize or conduct an investigation of any person for non-tax purposes are subject to disciplinary action under the State Civil Service Act, including discharge from employment. This provision, however, does not apply to any lawful investigation concerning organized crime activities, and is not intended to prevent the exchange of information where multiple violations, including tax or fee program violations, are being investigated.

**SECTION 7093.5, SETTLEMENT AUTHORITY**

**155.021**

The Executive Director, or Chief Counsel if authorized by the Executive Director, may recommend to the Board a settlement of any civil tax matter in dispute. The Attorney General must approve such settlements and a public record of the settlements with a reduction of tax in excess of \$500 are available to the public. Hearing Procedure Regulations (Section 5090-5095) have been developed to implement this authority.

**SECTION 7094, RELEASE OF LEVY**

**155.022**

Section 7094 of the Revenue and Taxation Code provides that the Taxpayers' Rights Advocate may order the release of a levy or notice to withhold, up to \$1500, upon finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or their spouse and dependents or family. The section is recognized as an extension of the existing summary collection action review procedures and will be utilized when disagreements between the staff and the taxpayer exist. Under these circumstances, the taxpayer should be advised of provisions of Section 7094.

Current compliance policy (CPPM Section 742.100) states that when a Notice of Levy is issued, the taxpayer is entitled to be informed of the exemptions provided in the Code of Civil Procedure. Form BT-425, "Exemptions from the Enforcement of Judgements," is sent to the taxpayer with a copy of the Notice of Levy. To comply with Section 7094 (b), the person signing the levy should assure this form is included with the taxpayer's copy or not sign the levy. A Notice to Withhold can have the same effect on health and welfare issues as a Notice of Levy; therefore, it will be treated in the same manner as a Notice of Levy.

When a Headquarters section receives a request for relief under Section 7094, it will be forwarded to the District Principal Compliance Supervisor in the district of account with a copy to the TRA. When a request is received in the district office a copy should be forwarded immediately to the TRA and the original assigned to the person in the district responsible for the case.

The person responsible for the case will contact the party holding the seized or levied property and advise them that an appeal under Section 7094 has been filed. They will request the financial institution's or other party's cooperation by requesting that the property be held pending outcome of the appeal. This will be followed by a letter of confirmation to the party holding the seized or levied property from the district, with a copy to the TRA Office, advising that they will be contacted regarding a final disposition for the funds within fifteen (15) working days.

If the financial institution or other party remits the funds, a cash deposit receipt, Form BT-487-C, should be utilized to accept the payment, with notation at the top in bold type: "APPEAL UNDER SECTION 7094".

In order to minimize hardship, early resolution of each situation is the goal. The authority exists with the district to determine if a hardship exists or will occur and, if so, every effort should be made to take the necessary steps to quickly release all or part of the levied property. Hardship may be defined as the inability of the taxpayer to provide necessities of life for himself or herself or dependents. The district will gather and evaluate financial information to determine if seizure of property or funds will cause irreparable hardship to the taxpayer and/or his or her family. The review will focus on health and welfare issues, i.e. the necessities of life and the means to provide them, such as shelter, food, medical care, etc. Each case will be reviewed and judged independently on the specific facts and circumstances involved. Every effort will be made to resolve the appeal within fifteen (15) working days from receipt of the taxpayer's request.

## GENERAL

### **SECTION 7094, RELEASE OF LEVY**

**(Cont.) 155.022**

The taxpayer or their representative must provide reasonable documentation and disclosure of financial condition for a stay or release of levy to be considered. A financial statement, with documentation, will be completed by the taxpayer as part of the financial disclosure request. Failure of the taxpayer to verify financial statement information will result in denial of the appeal. Examples of such information might include, but are not be limited to:

Evidence of mortgage or rent payments.

Bank statements to demonstrate average amount of gross income.

Paycheck stubs to show average monthly income for comparison to above item.

Income tax returns, to verify item (b) and (c) and to investigate for other sources of income.

Check stubs or receipts to demonstrate payments for food, utilities, medical expenses or other necessities.

Utility bills.

Medical bills.

Prescription drug receipts.

For credit card expenditures, receipts to show how the balance was incurred.

Other specifically identified supporting information as required.

The district will prepare a report on the information submitted by the taxpayer and its recommendation regarding release of the property in question. This report will be submitted to the TRA office for a decision and recommendation. Pending a decision, the district will not apply the funds to the liability. To do so will place the payment in claim for refund status and will preclude immediate release of the funds should the taxpayer prevail in the referral. At the conclusion of the matter, the TRA office will forward a report detailing their analysis and recommendation to the district office with copies to other affected departments within the Sales and Use Tax Department. On those cases where time is critical, the information can be sent to the TRA by FAX machine.

### **SECTION 7094.1, RETURN OF PROPERTY**

**155.023**

The board shall return to a taxpayer the property or the proceeds from the sale of any property levied upon if (1) the levy was not in accordance with law, (2) the taxpayer has entered into, and is in compliance with an installment payment agreement pursuant to Section 6832, or (3) 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 board finds collection of the tax to be in jeopardy.

### **SECTION 7095, EXEMPTIONS FROM LEVY**

**155.024**

Exemptions from levy are to be adjusted for purposes of enforcing the collection of debts to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

### **SECTION 7096, CLAIMS FOR REIMBURSEMENT OF BANK CHARGES BY TAXPAYER**

**155.025**

A taxpayer may file a claim with the Board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the Board. Bank charges include a financial institution's customary charge for overdrafts that are a direct consequence of the erroneous levy. The charges subject to reimbursement are those paid by the taxpayer and not waived or reimbursed by the financial institution. Each claimant applying for reimbursement shall file a claim with the Board.

**SECTION 7096, CLAIMS FOR REIMBURSEMENT OF BANK CHARGES BY TAXPAYER (Cont.) 155.025**

The Board will grant a claim if:

The erroneous levy or notice to withhold was caused by Board error, and

Prior to the levy or notice to withhold, 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.)

Claims pursuant to this section shall, be filed within 90 days from the date of the levy or notice to withhold. 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.

A procedure has been established to process these claims for reimbursement of bank charges. Districts or units receiving claims for reimbursement should forward the following to the Taxpayers' Rights Advocate:

The original claim filed by the taxpayer.

A copy of the notice of charge from the taxpayer's bank.

A statement explaining the facts that lead to the filing of the claim and a recommendation whether the claim should be paid.

The Taxpayers' Rights Advocate will evaluate the claim and notify the taxpayer of his or her decision. If the claim is approved, it will be forwarded to the Accounting Section of the Financial Management Division for payment and the claimant will receive a check from the State Controller approximately two weeks later.

Because the statute requires a response within 30 days, districts should forward claims as soon as they are received.

*Since reimbursements under this section are paid out of the Board's general operating fund and tax liabilities involve other government funds, offsetting transfers between these funds are not routinely possible. Therefore, payment of tax liabilities and reimbursement of bank charges must be handled separately. Requests to internally credit reimbursement of bank charges toward any outstanding tax liability of the taxpayer will not be granted.*

**SECTION 7097, PRELIMINARY NOTICE TO TAXPAYER PRIOR TO LIEN**

**155.026**

At least 30 days before the filing of liens, the Board must mail the taxpayer a preliminary notice specifying the statutory authority for filing the lien, showing the earliest date on which the lien may be recorded, and explaining the remedies available to the taxpayer to prevent the filing of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice must be sent. This notice is not required with respect to liens filed pursuant to a jeopardy determination.

The bill note printed on demand billings has been amended to satisfy this requirement. The procedure for recording liens has been changed accordingly.

If the Board determines that a lien was filed in error, a release must be mailed to the taxpayer and the entity recording the lien as soon as possible, but not later than seven days after identifying the error and receiving the lien recording information. The release must contain a statement that the lien was filed in error. If the erroneous lien is obstructing a lawful transaction, the Board must immediately issue a release of lien to the taxpayer and the entity recording the lien. If requested by the taxpayer, a copy of the release must be mailed to major credit reporting companies in the county in which the lien was filed.

The Headquarters Special Procedures Section has established a procedure to ensure the timely release of erroneous liens and to place a notice on the release that the lien was filed in error. Upon request of the taxpayer, the Headquarters Special Procedures Section will send a copy of the release to major credit companies in the county where the erroneous lien was filed.

Draft

**SECTION 7098, NOTICE PRELIMINARY TO SUSPENSION**

**155.027**

A taxpayer's permit or license cannot be revoked until at least 60 days after the Board has mailed a notice to the taxpayer which indicates that the permit or license will be suspended on a certain date. Accordingly, the date of revocation for each reporting period has been established at 60 days from the date of mailing of the hearing notice. The Annual Calendar of Sales Tax and Use Fuel Tax Functions reflects the dates for these programs. Accounts scheduled to be revoked for balance, security or failure to comply also must be given a 60-day notice before they are revoked or suspended.

All other business tax accounts also will be given a 60-day notice before revocation.

**SECTION 7099, DISREGARD BY BOARD EMPLOYEE OR OFFICER**

**155.028**

An action for damages may be brought against the State of California in Superior Court by a taxpayer aggrieved by the action of any employee of the Board who recklessly disregards Board published procedures. However, if it appears to the court that the taxpayer's case is frivolous, the court may impose a penalty up to \$10,000.

Draft

## GENERAL

### TAXPAYERS' RIGHTS ADVOCATE

**156.000**

#### THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE

**156.005**

The Taxpayers' Rights Advocate's (TRA) Office facilitates resolution of taxpayer issues and concerns; monitors various Board tax and fee programs for compliance with the Taxpayers' Bills of Rights; recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers; and participates on various task forces, committees and public forums. During the year, mandated Taxpayers' Bill of Rights public hearings are held to provide an opportunity for the elected Board Members to hear concerns, suggestions and comments from the public.

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there are apparent rights violations in the audit, compliance, or property tax areas. The TRA Office facilitates communication between taxpayers and Board and county staff to eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so that they can be better prepared to discuss their issues with staff and effect resolution.

The TRA Office functions as an independent third party and reviews the issues in each case before making a recommendation or taking action. The goal of the TRA Office is to facilitate communication and understanding between the taxpayer and the local office and to work cooperatively with both the taxpayer and the staff to resolve the problem.

Generally, the TRA Office will become involved in a case when any of the following events occur:

A taxpayer contacts the TRA directly,

Board management or the program staff refers a taxpayer to the TRA Office,

The Governor's Office, a Legislator's Office, or a Board Member's Office refers a taxpayer to the TRA Office, or

Where a case requires the TRA's involvement due to statutory situations.

#### STAFF REFERRALS TO THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE

**156.010**

The procedures discussed here are intended to provide guidelines for referring taxpayers to the TRA. It should be stressed that it is not intended to create new procedures or rules for handling audit or compliance cases or for dealing with taxpayers. Staff should continue to always treat taxpayers in a professional and courteous manner. It must be emphasized that if the staff has dealt with the taxpayer in an open and objective manner, listened to the circumstances of the situation, discussed options and shared information with the taxpayer, their role as a professional has been fulfilled. Undoubtedly, some issues will arise where differences between the taxpayer and the staff can not be resolved. If appropriate, the issue(s) should be referred to a supervisor for review as the basic responsibility for settling disputes rests with district and/or headquarters staff. If, after supervisory review, the taxpayer asks for review by the TRA's office, the case should be referred accordingly.

Problems that can be resolved via normal inquiries to headquarters should not be referred to the TRA Office. (For example: If a taxpayer asks for an explanation of how payments have been applied to a billing on their account, this should be handled by an inquiry from the field office to Headquarters Special Procedures Section if the information is not available in the district.) Typical items that should be resolved in the district would be the negotiation of installment payment proposals, requests for administratively extending reasonable time limits for reinstatement on revoked accounts when circumstances warrant, and answering questions regarding legal issues or audit procedures. Referrals to the TRA should be primarily to facilitate solutions to issues that may be outside the staff's line authority, or issues that raise questions concerning the adequacy, equity, or fairness of established policies and/or procedures.

**STAFF REFERRALS TO THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE (Cont.) 156.010**

If the staff believes that a course of action cannot be agreed to and the issue(s) remain unresolved, or they feel the taxpayer does not understand the situation, they should bring it to the attention of their immediate supervisor to see if further discussion with the taxpayer would be beneficial. A discussion with the taxpayer could then be held to allow a full explanation of the staff's position and assure that the taxpayer's desired resolution be fully considered in light of the supervisor's review of the situation.

This procedure will ensure that there is ample opportunity to draw on the experience of supervisors and managers to satisfactorily resolve taxpayer issues and give employees direction for future encounters. An independent decision made within the district or headquarters staff based on facts and policy, and taking into consideration the unique circumstances of each case is desired and encouraged. If necessary, the case should be referred through other levels of management for review and recommendation prior to referral to the TRA Office.

If the case cannot be resolved in the local office or headquarters, it should then be referred to the TRA Office. Taxpayers should be advised that the TRA will make an independent and impartial review in light of the law and established policies and procedures, and that solutions will be recommended as the circumstances and facts merit.

**TAXPAYERS' RIGHTS ADVOCATE'S OFFICE PROCEDURES 156.015**

The TRA facilitates resolution of taxpayer problems and ensures that taxpayers' rights, privacy and property are protected during the assessment and collection of taxes. Consequently, the TRA has a responsibility to investigate all issues and requests for assistance. Some cases may be referred to the Internal Security and Audit Division, the program department, or Legal Division when it is determined that the issue may fall under their operational responsibility.

Frequently, taxpayers will call the TRA Office prior to attempting to resolve the issue through normal channels. The TRA staff will communicate and guide the taxpayer back to normal channels, such as contacting the local office to resolve any issues.

When referrals or calls from taxpayers are received, the TRA staff will generally review the taxpayer's master file and the BOE systems for information concerning the taxpayer's case. When contacting the district, the TRA staff will first contact the District Administrator and the appropriate District Principal so they will be aware of the referral and can determine the best way to handle the inquiry with their staff. For Headquarters sections, the section supervisor will generally be the initial contact of the TRA staff.

Typical information requested by the TRA Office includes:

- Date of discussion(s).
- Names of all parties present during discussion.
- Issues discussed.
- Taxpayer's desired resolution.
- Staff's position and full explanation of action taken.
- Copies of case notes.
- Other relevant information.

After review of all information, the TRA Office will discuss its recommendation with the program staff and the taxpayer to facilitate resolution.

## GENERAL

### ~~PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES~~ ~~160.000~~

### ~~SUBMITTING INQUIRIES~~ ~~160.010~~

~~To expedite processing, requests should be submitted by the inquiring jurisdiction or consultant (IJC) on form BT-549-L or BT-549-S. All inquiries are to be sent directly to the Board's headquarters office, rather than to a district office. Inquiries should be mailed to:~~

~~Allocation Group  
Board of Equalization  
450 N Street, MIC 39  
P.O. Box 942879  
Sacramento, CA 94279-0039~~

### ~~ACKNOWLEDGMENT OF INQUIRY/DATE OF KNOWLEDGE~~ ~~160.020~~

~~Inquiries will be acknowledged within 30 days of receipt by the Board (as used in this section, the term *days* refers to calendar days). They will be logged in by account number, jurisdiction (if known), and consultant firm (if any).~~

~~If the inquiry has sufficient facts to indicate the probability of a misallocation, the date of knowledge will be the date the inquiry was received by the Board.~~

~~If the inquiry does not provide sufficient facts, and if the IJC has made a good faith effort to obtain sufficient facts but has been unable to do so, the IJC should include a letter with the inquiry, indicating what it has done to obtain those facts. If such a letter is provided, the Board can use the date the inquiry was received as the date of knowledge.~~

~~If the inquiry does not contain sufficient facts, it will be returned to the IJC with an explanation.~~

### ~~STAFF REVIEW~~ ~~160.030~~

~~Inquiries accepted for investigation will be coded for type of misallocation and assigned to an auditor. The auditor will attempt to resolve all inquiries through correspondence with taxpayers. If for some reason a satisfactory response cannot be obtained, the inquiry may be referred to the appropriate district office for action.~~

~~Whenever any action is taken, such as writing to the taxpayer for information, or if necessary, referring the inquiry to the district office, this action will be noted in the log with the appropriate follow up established (45 days for taxpayers, 60 days for in-state district offices, and 90 days for out-of-state district offices).~~

~~A copy of any correspondence will be sent to the inquiring entity. The IJC should receive copies of correspondence within 90 days of acknowledgment of receipt of the inquiry. The follow ups for each week will be distributed each Monday morning to the auditor for appropriate action.~~

### ~~NOTIFICATION OF RESULTS~~ ~~160.040~~

~~After an inquiry has been reviewed, the inquiring entity will be notified of the results.~~

#### ~~Approved Reallocations~~

~~If staff's investigation confirms a misallocation and the recommended reallocation is less than five thousand dollars, a fund transfer will be processed.~~

~~All recommended reallocations over five thousand dollars must be approved by the auditor's supervisor and forwarded to Legal for review. If both the supervisor and legal staff approve the reallocation, the fund transfer will be processed.~~

~~A monthly recap of all approved reallocations will be maintained.~~

**NOTIFICATION OF RESULTS**

(cont.) 160.040

**Denied Reallocations**

If the auditor recommends that the reallocation request be denied, his or her supervisor will review the recommendation. If the supervisor upholds the denial, the IJC can ask that the denial be reviewed at subsequent stages by the supervisor of the Audit Refund Section, the Audit Program Manager, or by a Board Management team, as described below. The IJC can also ask the Members of the Board to review their request if it is denied.

If any previously denied request for reallocation is recommended for approval at any level prior to consideration by Board Management, that recommendation must be reviewed by the legal staff. If the legal staff approves the recommendation, the reallocation will be processed.

**Review by the auditor's supervisor**

If the auditor determines that a misallocation has not occurred and recommends that a request for reallocation be denied, his or her supervisor will review the denial and discuss it with the IJC. The discussion will be memorialized in writing and sent to the IJC. The supervisor may uphold the denial, or, if deemed appropriate, order that additional investigation be done by the staff.

If the auditor's supervisor upholds the denial, the IJC will be advised in writing that they have 30 days from the date of the written denial to request a meeting with the supervisor of the Audit Refund Section, or his or her designee.

**Review by the Audit Refund Section supervisor**

If requested by the IJC, the Audit Refund Section supervisor will review the alleged misallocation. The Section supervisor will give the IJC the opportunity to meet and discuss the recommended denial. The IJC may, at its option, provide a written brief or additional information instead of attending a meeting. The section supervisor may uphold the denial, order that additional investigation be done by the staff, or approve the request for reallocation.

If after the meeting or after reviewing the brief, the Section supervisor upholds the staff's recommendation, the IJC will be so advised in writing and informed that it has 30 days from the date of the written notification to file a written request for reconsideration (RFR) with the Audit Program Manager's office. In its request for reconsideration, the IJC may request a meeting with the Audit Program Manager or submit supporting factual information and arguments.

**Review by the Audit Program Manager**

The Audit Program Manager will issue a Report of Analysis and Conclusions setting forth his decision. The Audit Program Manager may uphold the denial, order that additional investigation be done by the staff, or approve the request for reallocation.

If the staff's previous recommendation is upheld, the notification will include instructions that the IJC may within 30 days file a written request for a final reconsideration of the denial.

**Review by Board Management**

The final reconsideration by staff will be a review by Board Management consisting of the Executive Director, Chief Counsel, Assistant Chief Counsel for Sales and Use Taxes, and the Deputy Director of the Sales and Use Tax Department. The Board management will consider the facts as developed and may uphold the denial, order additional investigation by the staff, or approve the request for reallocation. A summary of the facts and conclusions will be prepared in writing and provided to the IJC.

**Review by Members of the Board**

An IJC may request any Board Member to bring its request for a reallocation to the Board's attention. If any of the Board Members wish to do so, they may request that the Board hear the matter. However, such a request must be approved by a majority vote of the Board Members.

## GENERAL

### **TIME LIMITATIONS**

160.050

~~To avoid unnecessary delays, a consultant or jurisdiction will be limited to one extension of the time limit established for each level of review.~~

~~If staff fail to take action beyond acknowledgment on any inquiry for a period of six months, the IJC may request advancement to the next level of review. For the purpose of these procedures, action does not mean approving or denying the inquiry, but rather taking the steps necessary to investigate the inquiry.~~

~~By following the above time limits, any date of knowledge established by the original inquiry will remain intact even if additional supporting information is provided prior to final closure. However, if the above time limits or any extensions which are granted are not met, or if final closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.~~

### **APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE**

160.060

#### **AS THE RESULT OF A REALLOCATION**

~~If at any time during the process the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its quarterly allocation or \$50,000, whichever is less, will be informed of the decision and, if requested, given 30 days to request a meeting with the section supervisor. The losing jurisdiction may follow the same appeals procedure as described above. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the section supervisor has expired. If the losing jurisdiction does request a meeting, the postponement will be extended pending final outcome of the appeal.~~

~~There are times when Board staff becomes aware of a misallocation through independent means, for example an audit of a taxpayer. In these situations jurisdictions losing 5% or \$50,000, whichever is less, of its quarterly allocation will be informed of the proposed reallocation, and if requested given 30 days to request a meeting with the section supervisor. These jurisdictions may follow the appeals procedure described above.~~

DRAFT

**ACCOUNTS CLASSIFIED CONFIDENTIAL** **170.000**

**CONFIDENTIAL INDICATOR** **170.010**

~~The Board routinely makes available taxpayer names and business addresses to a number of persons as required by the California Public Records Act. However, for reasons of personal safety, a few accounts are programmatically flagged to prevent release of these taxpayer names and addresses. Justification to withhold this information is required under section 6254 of the Public Records Act and must be approved by the Information Security Officer. The Unysis Registration System will flash, “**Confidential! Do Not Release Information About This Account!**” for a confidential account. The Teale Registration System will flash in red “**CONFIDENTIAL.**” Information should not be provided to the general public on these accounts.~~

**VERIFICATION RESALE CERTIFICATES AND PERMITS** **170.020**

~~Sellers seeking to verify resale certificates should provide the district with the name of the business, its location, and the purchaser's seller's permit account number. With this information, the district can then verify and inform the seller whether the account is active or closed-out. No other information may be given to the public on an account which has been flagged as confidential.~~

Draft