

Business Taxpayers'
BILL OF RIGHTS
2000-01
ANNUAL REPORT

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Letter to Executive Director

November 2001

Mr. James E. Speed
Executive Director

Dear Mr. Speed:

The Taxpayers' Rights Advocate's (TRA) Office staff and I are pleased to present the 2000-2001 Business Taxpayers' Bill of Rights Annual Report for the Board's and your consideration. This report highlights our accomplishments over the past year, current issues in the process of solution development, and emerging issues we recommend for consideration in the coming year.

Problem resolution continues to be a primary focus of the TRA Office. Since 1990, the number of new business contacts has increased significantly and in some years more than doubled. Although this past year's caseload statistics show a decrease, we anticipate and are already experiencing increases due to the economic downturn. Last year, Customer Service complaints decreased further and we feel that these statistics reflect positively on the Board staff's efforts to strive towards excellence in public relations, public education and staff adherence to laws, policies, and procedures.

Public education to increase voluntary tax compliance and avoid potential problems is another TRA Office focus. We are expanding our education and outreach with the Advocate Offices of the Franchise Tax Board, Employment Development Department, and the Internal Revenue Service in seminars for enrolled agents and CPAs. In addition, will continue meetings with the district and headquarters staff to provide further education of the TRA Office's roles and responsibilities and how they can make referrals to our Office.

We look forward to continuing to work with staff and the public as we identify trends and issues, develop viable solutions, and strive to better serve our customers.

Respectfully submitted,

Jennifer L. Willis
Taxpayers' Rights Advocate



Contents

LETTER TO EXECUTIVE DIRECTOR

- 1 TAXPAYERS' RIGHTS ADVOCATE OFFICE: BACKGROUND
- 2 ACCOMPLISHMENTS
- 5 CURRENT ISSUES
- 7 EMERGING ISSUES
- 8 TAXPAYER CONTACTS WITH TRA OFFICE
 - 8 Historical Caseload
 - 9 Taxpayer Inquiries Cover a Wide Range of Issues
 - 10 How Taxpayers were Referred to the Advocate's Office
- 11 APPENDICES
 - 11 Taxpayers' Rights Advocate Office Case Summary
 - 12 Taxpayer Contacts By Business Taxes Office



Taxpayers' Rights Advocate's Office Background

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. Currently, approximately 975,000 taxpayers are provided protection under this law. 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), currently impacting approximately 148,000 tax and fee payers. As the Board accepts responsibility for new special taxes and fee programs, the Bill of Rights protections are added for each program. Since these programs primarily impact business owners, they will be referred to generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The Taxpayers' Rights Advocate's (TRA) Office facilitates resolution of taxpayer complaints or problems; monitors various Board tax and fee programs for compliance with the Taxpayers' Bill 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 Taxpayer Bill of Rights hearings are held to provide the public opportunity to express their concerns, suggestions and comments to the Board Members.

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 appear to be rights violations in either the audit or compliance areas. Taxpayers also call just wanting to convey their frustration, seeking assurance or confirmation that staff action is lawful and just. When a customer or Board employee alleges discrimination or harassment, the TRA staff works with the Equal Employment Opportunity staff and program managers to resolve the complaint. Allegations of misconduct or threats by taxpayers or Board staff are referred to the Internal Security and Audit Division for investigation. Working together with program management, these offices support the Board's commitment to a discrimination/harassment-free taxpayer environment by investigating complaints and ensuring that Board staff is properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment towards Board staff is appropriately addressed.

In cases where the law, policy, or procedure does not allow any change to the staff action, but a change appears justified the TRA Office is alerted to a potential area that may need clarification or modification. Several of the past suggestions for *Taxpayer Information Bulletin* articles, recommendations for policy or procedural changes, and legislative proposals have resulted from these types of contacts with taxpayers.

The TRA Office provides assistance to taxpayers and Board staff to facilitate better communication between both parties and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss their issues with staff and effect resolution.



Accomplishments

The primary function of the TRA Office is to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes, and to identify changes in policies, procedures and statutes to improve and/or ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights (TBOR) hearings, and issues identified by the TRA Office, suggestions are presented to the program staff for evaluation. With the cooperation of Board staff, the following are changes that were accomplished this past year.

- ***Modified Security Requirements*** — The TRA Office suggested increasing the minimum-security requirements to coincide with the minimum lien threshold (currently \$2,000). The Board took these suggestions under consideration and agreed to allow the increase. The new threshold is included in the recently revised Chapter 4, *Security*, of the Compliance Policy and Procedures Manual (CPPM).
- ***Levy Notification Procedures Modified*** — In the 1998/99 *TRA Annual Report*, the TRA Office staff expressed concern over whether taxpayers were given timely notification when levies were issued. Although the taxpayer has ten days from the date of receipt of their copy to file a claim of exemption, often the bank's ten day hold had elapsed and the funds had already transferred to the State by the time the taxpayer received notice of the levy. The program staff has since defined the time to serve the taxpayer as three days from the date of mailing to the financial institution, and up to a maximum of five days under unusual circumstances (e.g., bank branch office required to forward levy request to out-of-state central processing location which creates delay in levy process). The new procedures are included in the revision of CPPM, Chapter 7 *Collections*.
- ***Partnership Notification of Liabilities Procedures Modified*** — In Fiscal Year 1999/00, the TRA Office had several cases involving partnership liabilities, where one or more of the partners were not timely notified that a liability existed. One of the requirements is to bill the partnership entity at the business address or other address of record, and also bill the individual partners at their address of record (obtained from the Seller's Permit Application or communication from the partner). This billing procedure extends to all billings on partnership accounts, including the demand billing which contains the first 30-day lien warning. These procedures on handling partnerships in general, according to the new Revised Uniform Partnership Act (RUPA) guidelines, have been outlined in a new Operations Memo, which has been distributed to all Board staff.
- ***Supervisor Review of Certain Levies*** — Through the collection process there have been instances where letters and notices of levy were inadvertently sent to vendors based on mailing lists for a certain type of business. This happened in three cases that were brought to the TRA Office in FY 1999-00. The Sales and Use Tax Department (SUTD) reviewed current practices to determine how common this practice was, and found that it was not a common practice at the Board. To ensure levies are not sent out inadvertently, the District Administrators and Principals were notified that levies must go through supervisor review before being mailed.
- ***Periodic Review of Personal Guarantees*** — Currently, one of the options when posting security for an account is to file a personal guarantee. The personal guarantee stays in place



and can be acted upon by the Board until rescinded by the guarantor. This holds true even if the guarantor is no longer involved in the business (e.g., corporate officer that retires). Taxpayers' accounts with security are reviewed after three years to see if they are eligible to have the security released. In the past, security posted by a guarantor was not included in the review. The CPPM Chapter 4, *Security* has been revised to instruct staff to review the guarantor similar to how they review other security on an account. In addition, if the security is not going to be released after the three year period, and if the account is secured by a guarantor, the staff is required to contact the guarantor to verify that everything is current on the guarantee and they understand they are still being held as the guarantor on the account.

- ***Increased Cross-Referencing for Board Permit Registration*** — The TRA Office has received some cases this past year regarding Underground Storage Tanks. In an earlier TRA Annual Report, the issue was raised that the Board should make the effort to improve the procedures and staff training in the permit registration process involving the 20 plus tax and fee programs administered by the Board. In order to assist in this process, the TRA Office suggested making changes to the Audit Report to prompt the auditor to ask pertinent questions to determine if a taxpayer may need to be registered for the Underground Storage Tank program. As a result, SUTD in cooperation with the Special Taxes Department has revised the Audit Reports and the Audit Field Waiver. The Integrated Revenue Information System (IRIS) will capture this information in a report and pass it on to the Special Taxes Department for review. In addition, the report and waiver are being modified to include programs from Excise Taxes and Environmental Fees.
- ***Customer Satisfaction Surveys*** — In the 1997/98 TRA Annual Report, an issue was presented that Customer Satisfaction Surveys are good tools for determining how the public perceives the level of service the Board provides. As a result, the TRA Office has developed a survey and procedure to determine how our office is perceived in its job of handling cases. In addition, the Board has translated the “How are we doing?” questionnaire in Spanish this year to be sent to Spanish speaking taxpayers.
- ***Effective Dates of Restitution Payments Clarified*** — An issue regarding the effective dates of restitution payments was brought to our attention this past year. Taxpayers that are ordered to pay restitution to the Board make the payments through the county, which remits them to the Board. The process takes about three to four weeks. There was some confusion regarding the effective date of payment as the Board's CPPM did not state what the effective date should be. The TRA Office felt that the payment effective date should be similar to other payments that are collected by third parties as provided in Civil Code Section 1504. In the case of restitution payments, this would be the date that the taxpayer paid it to the county. The SUTD was in agreement with this and has made a change in the Board's written *Cashiering* procedures.
- ***Ex parte Communications Between Appeals Conference Holders and Department Representatives*** — During the November 2000 TBOR Hearing, a taxpayer representative stated that he felt that there was a need to instruct the auditors and attorneys representing the Board as Appeals Conference Holders to refrain from ex parte meetings or communications with department representatives immediately before and after the



conference, so as to avoid the appearance of impropriety. As a result of this suggestion, the staff has been advised accordingly.

- ***Proposed Legislation to Modify Reimbursement of Bank Fees*** — Currently, the law allows the Board to reimburse bank fees and returned check charges as a result of erroneous levies. However, frequently there are other charges that are not reimbursable, but are caused by the erroneous levy. Examples include third party return check charges and expenses relating to proving your identity to the Board (same name as debtor, but no relationship). The TRA Office and the program staff agreed that the taxpayer should be reimbursed the third party return check charges. As a result, the TRA Office proposed legislation to accommodate the reimbursement of these third party charges. SB 1185 Chapter 543 goes into effect January 1, 2002.
- ***Proposed Legislation to Abate Interest*** — Effective January 1, 1999 legislation was passed to grant relief from interest due to unreasonable error or delay by a Board or DMV employee where interest is imposed pursuant to a determination. A clarifying bill was suggested by the TRA Office to allow the abatement of interest imposed due to an audit determination or a late prepayment of sales tax on diesel or other fuels. AB 1123. Chapter 251, goes into effect January 1, 2002.
- ***Notify Taxpayers that Field Audit Waivers Do Not Provide Section 6596 Relief*** — Regulation 1705 interprets RTC section 6596. The regulation provides relief from tax, penalty, and interest if a taxpayer requests and subsequently relies on written advice from the Board. Advice provided in a prior audit could be considered as written advice. There are circumstances where only a limited examination of a taxpayer's books and records is made to determine that a complete audit is not necessary. If this is the case, a field audit waiver may be issued, which provides a brief description of what was examined, the conclusions reached, and any work papers that support these conclusions. It was determined that generally waivers do not provide 6596 relief. In addition, a standard letter notifying the taxpayer after a waiver is completed was developed to include language regarding section 6596. It states that generally, a field audit waiver can not be relied upon as written advice.
- ***IRS Restructuring and Reform Act (ACT) Conformity*** — In the 1998/99 Taxpayers' Rights Annual Report, TRA and SUTD staff identified sections of the IRS Act that were being developed for administrative conformity within the Board of Equalization. Although many changes have been made as a result of the Act, the following additional conformity changes were made this past fiscal year:
 1. ***Notice of Penalty Codes*** — Penalty code sections were added to the bill notes.
 2. ***Notice of Interest Charges*** — Interest code section was added to the bill notes.



Current Issues

The following issues, identified during last year's hearing and throughout this year, are in the process of being reviewed with program management to develop solutions.

- ***Implement Property Searches for Liens on Discharged Liabilities*** — In several cases involving bankruptcies, it was determined that although the liability had been discharged, a lien that was filed for the liability still existed. The Legal Division reviewed this issue and determined that although a liability may be discharged in bankruptcy, if the original lien attaches to pre-petition property owned by the taxpayer, the lien is enforceable but restricted to the pre-petitioned property. Currently, if a taxpayer has a certified property search conducted and provides it to the Special Procedures Section, the lien will be released if it attaches only to post-petition property. The cost to the taxpayer to obtain this property search is considerable, especially for those taxpayers who have no real property (pre- or post-petition). In order to provide better customer service, on a case by case basis, TRA Office proposed and SUTD has agreed to consider the feasibility of conducting property searches in-house to ensure that the lien attaches to pre-petitioned property only. Additional software that is more effective in conducting property searches has been ordered by the SUTD in order to accomplish this. Upon receipt of the software, staff will be able to readily determine whether the lien attaches to pre- or post-petition property and issue appropriate lien releases.
- ***Notify Taxpayers Regarding Payment Plan: Relief of Finality Penalty*** — When a taxpayer enters into a formal payment plan, one benefit is that the finality penalty will be waived if the payment plan is followed until the liability is paid in full. The TRA Office has handled cases where taxpayers were late on payments, but were never notified of any problems until the conclusion of the payment plan, when they were told that the finality penalty would not be relieved. SUTD has agreed to develop a warning letter to be sent to the taxpayer notifying them that the finality penalty may not be waived due to breach of the payment agreement. In addition, a reference is now included on the billing and refund documents regarding payment plans and waiver of finality penalty on a successfully completed plan. An Operations Memo will be written to clarify the procedures.
- ***Modify Lien Release Timeframe When Liability Paid by Personal Check*** — Under current guidelines in the CPPM, the Board waits 60 days to release a lien if payment of the liability is made by personal check. The lien will be released in less than 60 days only if the taxpayer or bank provides front and back copies of the cancelled check. The TRA Office suggested and SUTD agreed to review the current procedures. As a result of that review, SUTD recommended that the standard waiting time be reduced from 60 to 30 days. This can be accomplished due to return processing improvements and implementation of IRIS. The CPPM will be updated with this change.
- ***Reply to Request for Release of Security*** — A taxpayer contacted the TRA Office to seek assistance with obtaining a release of the security that was posted to their account. The Board's standard letter BOE-930 was sent to them as is the normal procedure; however, the letter contained outdated information. Currently, the letter states "The law does not specify



a period of time for which the security may be held. In most cases, the Board holds security until the business ceases to operate.” Changes are in process to adopt the TRA Office suggestion that the letter be updated to be consistent with section 6701 and quote, “Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.” In addition, SUTD staff has agreed that the Board’s standard letters should be reviewed periodically to ensure that they are consistent with current law and policy.

- ***Notice Changes After Bankruptcy is Dismissed*** — A taxpayer contacted the TRA Office regarding a levy that was placed on his bank account. The taxpayer’s issue was lack of notification prior to collection action. The taxpayer had recently been dismissed out of bankruptcy. After contact with the TRA Office, the SUTD agreed that CPPM Chapter 7 should be clarified regarding this issue. Currently, Chapter 7 of the CPPM provides that when a bankruptcy is discharged, contact with the taxpayer should be attempted and documented before any collection action is taken. Currently, the CPPM sections do not provide this guidance concerning bankruptcy dismissals and SUTD has agreed to include the same guidance regarding bankruptcy dismissals. Additionally, the CPPM will instruct that a statement of account is to be sent to the taxpayer prior to collection action after a bankruptcy is discharged or dismissed.



Emerging Issues

As a result of taxpayer contacts and review of trends, policies and procedures within the Board, the Taxpayers' Rights Advocate's Office recommends consideration of the following issues:

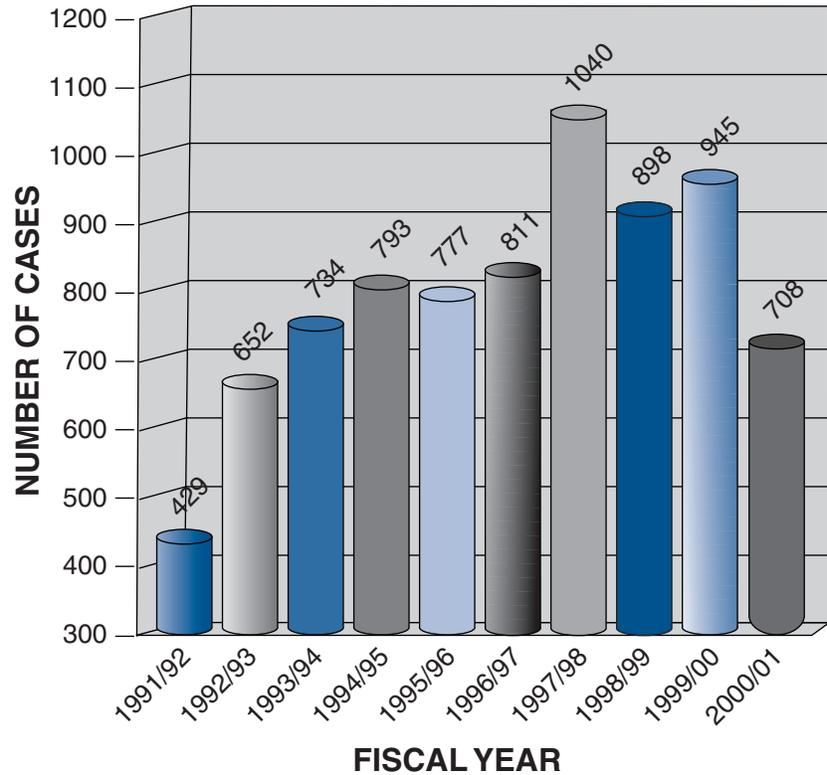
- ***Improve Processing Time for Reimbursement of Bank Fees*** — The TRA Office currently reviews and approves reimbursement of bank fees where the Board's operations have caused erroneous levies to be issued. Once TRA staff approves the reimbursement of bank fees, a payment request is submitted to the Accounting Section, which must then prepare a claim to the State Controller for a warrant to be issued. This process takes approximately three to four weeks to complete. The TRA Office receives about 15 to 20 claims a year averaging \$50 to \$100 each. Based on recent legislation granting reimbursement of third party claims, this dollar amount may double and needs to be taken into consideration. The TRA Office would like to explore the alternatives and associated operational impact of accelerating the processing of these claims for payment.
- ***Relief from Penalty Requests*** — Existing statute requires the assessment of penalties for taxpayers who fail to comply with the statutory requirements to remit taxes by Electronic Fund Transfer (EFT), file a return timely, and remit taxes timely. In cases where the taxpayer believes that the failure was the result of circumstances beyond the taxpayer's control, a request for relief of penalty may be made through the Administration Department, Return Analysis and Allocation Division, Return Analysis Section (RAS). RAS staff reviews and considers the approval or denial of these taxpayer requests based on established criteria in accordance with the statutes. If relief is not granted, the taxpayer may submit additional information and request to have the decision reconsidered by management. To appeal beyond the Administration Department, the taxpayer must pay the penalty and file a claim for refund for further consideration through the legal appeals process. The TRA Office, in coordination with the Administration Department and the Legal Division, would like to further review this issue and review the potential administrative, legislative and operational impact of modifying this process to allow for further appeal without requiring the taxpayer to pay the penalty and file for a claim for refund.



Taxpayer Contacts with TRA Office

Historical Caseload

During fiscal year 2000/2001, the TRA Office handled 708 new Business Taxes cases. As the chart indicates, Business Taxes contacts have shown a relatively consistent growth pattern in the past ten years with the exception of this past fiscal year. Growth in previous years was attributed to the increased public awareness of taxpayer rights and the existence of the TRA Office. The reduction of cases in this past fiscal year may be partially attributed to staff vacancies and illnesses in the TRA Office, which resulted in less accurate record-keeping. The decrease may also be partially attributed to better taxpayer understanding due



to the distribution of the *Collection Procedures*, Publication 54 developed in 1999/00 by SUTD, Customer and Taxpayer Services Division (CATS) and TRA staff. In recent years, both Federal and State agencies have increased public awareness of alternatives that are available if rights are being violated through legislation, public hearings and outreach. The TRA Office expects to see an increase in taxpayer contacts due to the declining economy. Historically a declining economy brings increased collection activities, as taxpayers are unable to meet their tax obligations.

Appendixes 1 and 2 provide a breakdown of contacts by district and headquarters offices. Cases were assigned to a specific district or headquarters office if the taxpayer contacted the TRA Office due to a specific action taken by that office. Taxpayers who wanted information and guidance regarding a Board process or procedure were assigned to the TRA Office as the office of origin. When reviewing these appendices, it should be noted that there are many contributing factors that may cause certain districts to reflect a higher number of cases than other districts. These factors may include the number of taxpayers within the district, the type and size of business operations, geographical proximity to Sacramento, and district policy regarding referrals to the TRA Office.

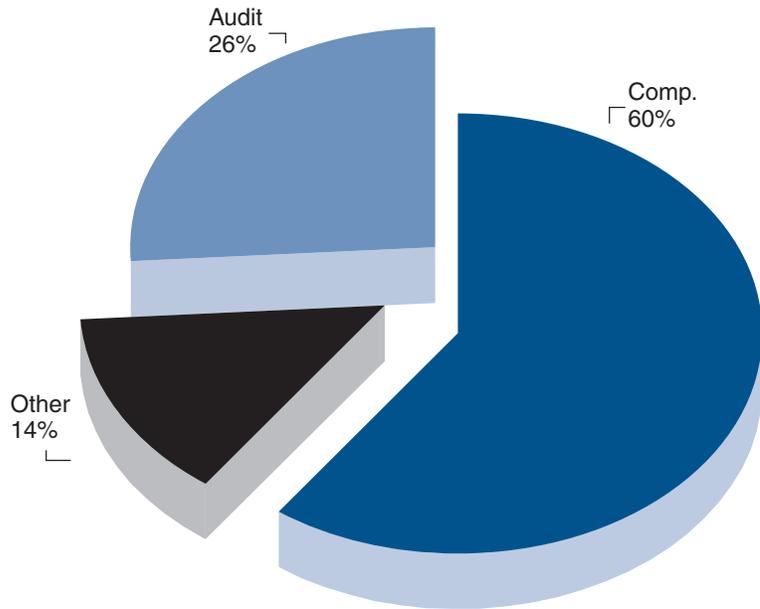


Taxpayer Inquiries Cover a Wide Range of Issues

Of the cases received, 60% involved sales tax compliance-related issues, 26% involved sales tax audit-related issues, and 14% involved other issues, such as consumer use tax, special taxes and fees and FTB appeal matters.

In addition, during the 2000/2001 fiscal year, we tracked the reasons that taxpayers contacted our office. In some cases, there were multiple reasons; therefore, we allowed for up to three reasons per contact in our statistics.

The most common reasons why taxpayers contacted our office were to obtain information and guidance on a particular process, or to determine if an action taken by the Board staff was appropriate and in compliance with law and procedures. The remaining issues in descending order were: TRA Intervention Requested, Questioning Liability, Levy/Earnings Withholding Order (EWO), Penalty, Lien, Refund, Interest, Audit Procedures, Account Maintenance, Payment Plan, Petition, Policy/Procedure, Legal Issue, Security, Late Protest, Ownership/Dual/Successor, Revocation, Bankruptcy, Return, Suggestion, and Offers in Compromise.



Customer service issues are segregated into three broad categories: *communication problems*, *Board delay*, and *staff*. Communication issues include: misinformation, refusal to allow the taxpayer to talk to a supervisor, failure to answer specific taxpayer questions, not receiving a communication or notice; delays by the Board in responding to inquiries, issuing refunds or resolving the taxpayer's case; and complaints about staff courtesy. This fiscal year, approximately three percent of the total TRA Office contacts had customer service issues compared to ten-percent last fiscal year. The TRA Office feels that these statistics reflect positively on the Board's efforts to become more customer oriented and responsive to the needs of the public, and to provide clear, timely, and courteous treatment to taxpayers.

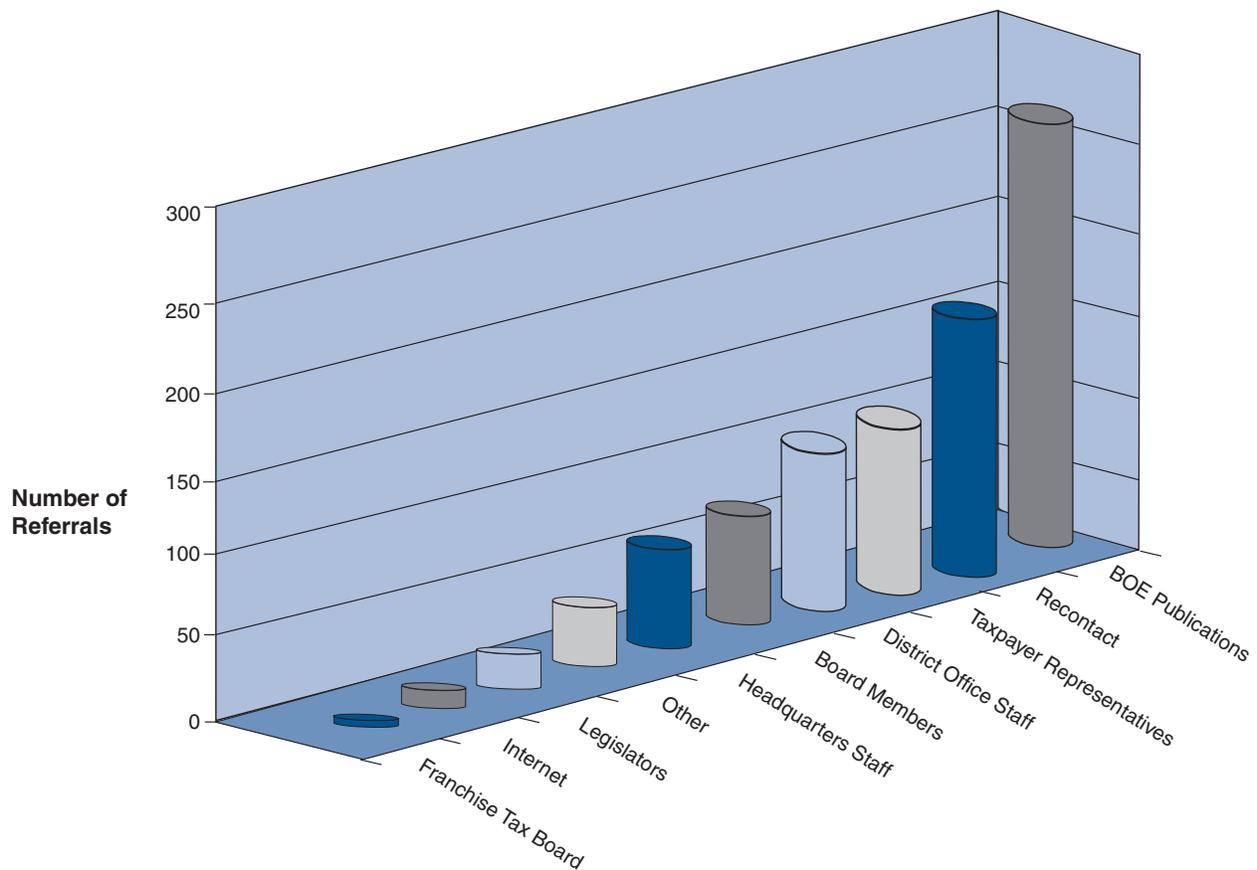
The customer service statistics were captured solely based on the taxpayers' statements or impression of the situation; therefore, these statistics are not necessarily verified problems but reflect the taxpayers' perceptions of the situation. For example, if a taxpayer stated that a collector made rude comments, we would record a "staff courtesy" complaint. However, oftentimes the taxpayer's contentions did not match staff's recollection of the situation or were portrayed in a different light or perspective.



How Taxpayers Were Referred to the Advocate's Office

In an effort to improve our service to the public, our office attempts to identify the source of referrals. Of those accounts that identified a referral source, the majority are referred by Board publications which reflected approximately a 70% increase over last year. The TRA Office attributes these increases to the efforts we have made in taxpayer outreach in both written publications and oral presentations.

The following chart gives a breakdown of how taxpayers were referred to our office based on those accounts that identified a referral source.





APPENDIX 1

Taxpayers' Rights Advocate's Office Case Summary
(FY 2000/01)

Entity Working Case	Cases by Issue Type			Total Cases	Confirmed Staff Case Handling		Case Handling Changed		Satisfied with Outcome		Referred To		
	Audit	Compliance	Other		Yes	No	Yes	No	Yes	No	District	HQ	Other
Norwalk (AA)	1	8	2	11	6	1	3	3	6	2	6	0	5
Torrance (AB)	6	4	0	10	7	2	3	4	8	2	8	1	1
Van Nuys (AC)	7	11	0	18	11	1	5	7	12	2	9	2	7
Industry (AP)	0	13	0	13	12	0	7	5	9	2	11	1	1
Ventura (AR)	6	19	0	25	18	1	10	8	19	2	15	4	6
Culver City (AS)	4	10	0	14	10	1	5	6	11	1	8	1	5
San Francisco (BH)	4	9	0	13	10	0	3	8	11	1	10	0	3
Oakland (CH)	5	14	0	19	13	2	11	4	16	3	12	2	5
Santa Ana (EA)	8	21	0	29	20	0	8	11	20	4	21	2	6
Riverside (EH)	7	15	0	22	16	2	6	10	12	7	13	5	4
San Diego (FH)	3	7	0	10	10	0	6	4	8	2	7	2	1
San Jose (GH)	3	9	0	12	7	4	3	8	7	3	7	3	2
Santa Rosa (JH)	1	17	1	19	15	0	6	10	15	2	15	1	3
Sacramento (KH)	3	29	0	32	22	1	16	7	27	0	15	6	11
Out-of-State (OH)	9	1	0	10	6	0	3	3	5	2	4	1	5
Appeals Section	16	1	2	19	15	2	11	6	11	7	2	10	7
Board Member's Office	0	3	0	3	2	0	1	1	1	1	0	3	0
Centralized Collection	2	19	4	25	20	0	7	11	14	8	1	17	7
Consumer Use Tax	2	2	10	14	6	1	0	6	10	1	1	9	4
Franchise Tax Board	0	0	1	1	0	0	0	0	0	0	0	0	1
HQ - General	16	12	10	38	22	2	12	12	20	7	3	26	9
Petition Section	17	7	2	26	16	2	16	3	20	3	0	20	6
Refund Section	12	4	0	16	11	1	10	2	13	2	0	8	8
Return Analysis	1	34	0	35	27	3	14	16	23	8	1	27	7
Special Procedures	0	25	1	26	18	3	8	12	16	6	0	18	8
Special Taxes	1	5	10	16	12	3	6	8	12	2	0	13	3
State Controller's Office	0	1	0	1	0	0	0	0	1	0	0	0	1
Taxpayer's Rights Adv.	47	127	57	231	71	7	18	57	138	24	21	55	155
Total	181	427	100	708	403	39	198	232	465	104	190	237	281

Note: The columns "Confirmed Staff Case Handling," "Case Handling Changed," "Satisfied with Outcome" and "Referred To" will not always equal the total cases since they are not applicable in all cases.



APPENDIX 2

Taxpayer Contacts By Business Taxes Office

