

*Our vision is: To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers and the government. Our mission is: To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection process.*

**TAXPAYERS'  
RIGHTS  
ADVOCATE'S  
PROPERTY AND  
BUSINESS TAXES  
ANNUAL REPORT**

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Second District

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# LETTER TO THE EXECUTIVE DIRECTOR

January 2008

Mr. Ramon J. Hirsig  
Executive Director

Dear Mr. Hirsig:

I am pleased to present the Taxpayers' Rights Advocate's 2006-07 Property and Business Taxes Annual Report. This report:

- Highlights accomplishments of the Taxpayers' Rights Advocate Office during the past year;
- Describes our involvement in important new projects to assist taxpayers;
- Identifies current issues we are working to resolve; and
- Contains examples of cases illustrating the services our office provides.

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,



Todd C. Gilman  
Taxpayers' Rights Advocate

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TAXPAYERS'  
RIGHTS  
ADVOCATE  
OFFICE

# TAXPAYERS' RIGHTS ADVOCATE OFFICE

## Vision

To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers<sup>1</sup> and the government.

## Mission

To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection of taxes.

## Goals

- To ensure that taxpayers coming to us with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed.
- To identify laws, policies, and procedures that present barriers or undue burdens to taxpayers attempting to comply with the tax laws; to bring those issues to the attention of Board of Equalization (BOE) and county management; and to work cooperatively on making changes to laws, policies, and procedures where necessary.
- To meet taxpayer needs by opening appropriate channels of communication, providing education, and finding creative solutions to unresolved problems.
- To promote BOE staff's commitment to honor and safeguard the rights of taxpayers.

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<sup>1</sup>The term "taxpayers" in this publication means payers of sales and use taxes, special taxes and fees, and property tax.

## Profile

### Taxpayers' Bills of Rights Mandate a Taxpayers' Advocate

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* (please see Appendix 1) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. Approximately 864,000 taxpayers are currently provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to the special taxes programs administered by the BOE, currently affecting approximately 253,000 tax and fee payers in 20 programs. Since these programs primarily affect business owners, we will refer to these generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The *Morgan Property Taxpayers' Bill of Rights* (please see Appendix 2) was added in January 1994, governing the assessment, audit, and collection of property tax, with the goal of ensuring that millions of taxpayers receive fair and uniform treatment under the property tax laws.

Each Taxpayers' Bill of Rights provides for a Taxpayers' Advocate. For instance, the designation of an Advocate for sales and use tax matters is found in Revenue and Taxation Code section 7083 (see Appendix 1), and beginning with section 5904 for property tax issues (see Appendix 2).

### Legal Responsibilities of the Taxpayers' Rights Advocate

The responsibilities of the Advocate are specifically delineated in the law. Consistent with the Taxpayers' Bills of Rights, the Advocate:

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by BOE employees;
- Monitors various BOE tax and fee programs for compliance with the Taxpayers' Bill of Rights; and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;
- Ensures taxpayer educational materials are clear and understandable; and
- Coordinates statutory Taxpayers' Bill of Rights Hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members.

### How Legal Responsibilities are Fulfilled

The TRA Office fulfills its legal responsibilities by taking the following actions:

#### *Facilitates resolution of taxpayer complaints or problems*

The Taxpayers' Rights Advocate (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 to convey their frustration or to seek assurance or confirmation that staff action is lawful and just. We provide assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps to eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff. When a taxpayer or BOE employee alleges discrimination or harassment, TRA Office staff work with appropriate BOE management to resolve the complaint. The BOE is committed to a discrimination/harassment-free environment and the Advocate ensures that BOE staff are properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment toward Board staff is not tolerated and is appropriately addressed.

*Monitors programs and recommends policy or procedural changes*

In cases where the law, policy, or procedures do not currently allow any change to the staff's actions, but a change to the law, policy, or procedure appears warranted, our office actively works toward clarification or modification. Several of the past recommendations for policy or procedural changes, suggestions for enhancements to staff training materials, and proposals for legislative change have resulted from direct contacts with taxpayers.

*Ensures easily understood information and guidance*

The TRA Office suggests new legislation, participates in task forces and committees charged with procedure and regulation revisions, and routinely reviews proposed revisions to taxpayer educational materials. We assist in providing information to the public at large through participation in public forums and business fairs.

*Coordinates Taxpayers' Bill of Rights hearings*

The TRA Office is responsible for making arrangements, in cooperation with the Board Proceedings Division, for yearly property tax and business taxes hearings in both Northern and Southern California, including publicizing the hearings.

**Enhancing Customer Service in Cooperation with Advocates of Other Government Agencies**

The BOE's advocate meets on a regular basis with the advocates from the Employment Development Department, the Franchise Tax Board, and the Internal Revenue Service to discuss common problems and systemic issues facing California taxpayers. These meetings, along with the maintenance of close working relationships among the advocate offices, have allowed all the agencies serving California taxpayers to provide better customer service. A good example of this improved service is the Joint Offer in Compromise Application for those taxpayers with more than one tax agency liability (see page 25).

## **Differences Between Implementation of the Business and the Property Taxpayers' Bills of Rights**

The major difference between the Business Taxpayers' Bill of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints.

### *Business Taxes*

The Board is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Executive Director has administrative control over these functions and the staff carrying them out. The Advocate reports directly to the Executive Director and is independent of the business and property taxes programs. When complaints relating to the BOE's business taxes programs are received in the TRA Office, the office has direct access to all BOE documents and staff involved in the taxpayers' issues. The TRA Office acts as a liaison between taxpayers and BOE staff in resolving problems. If the Advocate disagrees with actions taken by BOE staff and is unable to resolve the situation satisfactorily, the issue is elevated to the Executive Director for resolution.

### *Property Tax*

In contrast, in responding to property taxpayers' concerns, the TRA Office works with the individual county assessors, tax collectors, and auditor-controllers (most of whom are elected officials), plus clerks to the county boards of supervisors. We also work cooperatively with the California Assessors' Association on statewide issues. Although the TRA Office does not have the legal authority to overturn local actions, TRA office staff is generally successful in soliciting cooperation and ensuring that taxpayers receive proper treatment under the law. In cases where there is no procedural or legal authority to remedy a

problem—and a change does appear justified—the TRA Office recommends specific policy, procedural, and/or legislative changes.

Please see the Business Taxes Issues and Property Tax Issues chapters of this report for examples of how taxpayers' complaints are resolved in each of these areas.

## **Public Outreach**

The public becomes aware of the services offered by our office in a number of ways. For instance, information is included about the TRA Office in many BOE publications and standard correspondence, the public can learn about and contact our office via the Internet or by telephone, and TRA Office staff members make presentations at public events.

### **Publications and Standard Correspondence**

- Information about specific taxpayer rights under the law and the Advocate's role in protecting those rights is contained in publication 70, *Understanding Your Rights as a California Taxpayer* (November 2005), which is available in all BOE offices and on the BOE's website.
- Publication 145, *California Taxpayer Advocates—We're Here for You* (April 2007), provides contact information for the Advocates from the Board of Equalization, Franchise Tax Board, Employment Development Department, and Internal Revenue Service. Publication 145 is posted on the websites of the participating state agencies, the State of California (California home page), and the California Tax Service Center, [www.taxes.ca.gov](http://www.taxes.ca.gov).
- The TRA Office's toll-free number is printed on the BOE's permits and licenses.

- An article about the services provided by the TRA Office is published each year in the newsletters provided to taxpayers with their tax or fee returns.
- Contact information for the TRA Office is included on many standard audit letters sent to taxpayers.

### Internet and Telephone Contacts

- The Advocate's web page, [www.boe.ca.gov/traltra.htm](http://www.boe.ca.gov/traltra.htm), can be accessed from the BOE's home page. The Advocate's page provides a means for taxpayers to communicate with our office directly via e-mail.
- The TRA Office's toll-free number is included as an option on the automated phone tree for all district offices in the Second and Third Equalization Districts.

### Public Events

- Board Hearings: The Advocate and/or TRA Office staff is present and available to answer questions or assist taxpayers arriving for their appeal hearings before the Board Members. Publications 70 and 145 (described on page 6) are also available to those attending the Board hearings.
- Board Member-Sponsored Events: The Advocate or designee attends all of the Small Business Fairs/Taxpayer Service Days throughout the state, and many of the Nonprofit Seminars. At these events sponsored by the Board Members, the TRA Office interacts with business owners and charitable organization representatives and provides written material about the TRA Office. In addition, the Advocate leads a joint presentation on common advocate

responsibilities with Advocate Office representatives of the Internal Revenue Service, Franchise Tax Board, and Employment Development Department.

- Non Board-Sponsored Events: Direct contacts with the public are made at conventions and fairs sponsored by consortiums of industry or business groups to assist California business owners, such as the Professional Business Women's Conference. In addition, the BOE Advocate partners with the other California and IRS advocates to make presentations at meetings of individual business groups. Recent examples include presentations to the Korean Restaurant Owners Association and the Automotive Service Council.

## Contacts Received In 2006-07

### Total Cases Increased

TRA Office cases totaled 999 in fiscal year 2006-07, a six percent increase from the 938 cases last year. This year's composition of cases shifted slightly: Last year our caseload was comprised of 71 percent business taxes cases and 29 percent property tax cases; this year the mix was 74 percent business taxes cases and 26 percent property tax cases.

During the past two years, the Internet accounted for the largest source of referrals for all TRA Office cases. For example, in fiscal year 2005-06, taxpayers told us they learned about the TRA Office via the Internet in 33 percent of the business taxes cases and in 37 percent of the property tax cases. However, in fiscal 2006-07,

the major sources of referrals for business taxes cases and property tax cases differed somewhat. For business taxes cases, the largest number of referrals was from BOE publications—24 percent, followed by the Internet—20 percent, and Board Members' offices—10 percent (the latter up from 7 percent in fiscal year 2005-06). For property tax cases, the largest percentage of referrals continued to be the Internet—35 percent, followed by BOE publications—17 percent, and county assessors—13 percent.

### **Telephone Call Volume Increased**

Our telephone call volume continues to increase. The average number of telephone calls per month (not including calls that resulted in new cases) increased nearly 18 percent, from 468 calls per month in fiscal year 2005-06 to 550 calls per month in fiscal year 2006-07.

## **Major Projects In Process**

### **Tax Appeals Assistance Program**

The BOE serves as the administrative appellate body for the tax and fee programs it administers. Its appellate duties also include review of final actions of the Franchise Tax Board involving the state's Bank and Corporation Franchise Tax, Personal Income Tax, and Homeowner and Renter Property Tax Assistance Laws.

Board Members expressed concern that some taxpayers involved in the appeals process are at a disadvantage because they are not adequately represented. In recent years, an increasing number of appeals have been filed by taxpayers who lack an understanding of the relevant

tax laws and the BOE's rules, policies, and decision-making processes, and who cannot afford to hire legal counsel. Board Members asked the Taxpayers' Rights Advocate to investigate how such taxpayers could receive assistance with their appeals prior to and during a Board hearing.

To remedy this situation, the TRA Office created the Tax Appeals Assistance Program in fiscal year 2005-06, following a successful pilot program in fiscal year 2004-05. This program allows low-income taxpayers who have filed an appeal the opportunity to seek free legal assistance, which is provided by law students. All interactions with participating law schools are managed by the TRA Office, which also provides an instructor for the students. The program is offered to appellants who are appealing decisions of the Franchise Tax Board, including denials of applications for Homeowner and Renter Property Tax Assistance and income tax disputes of less than \$20,000 if the dispute relates to penalties, federal actions, "California method," interest abatement, statutes of limitations, or head of household issues.

In early 2007, a fourth law school, Golden Gate University School of Law in San Francisco, joined the three law schools already participating in the Tax Appeals Assistance Program: the University of the Pacific McGeorge School of Law in Sacramento, the Loyola University Law School in Los Angeles, and the Chapman University School of Law in Orange. In addition, the TRA Office is in discussions with a fifth law school that has expressed interest in joining the program.

Since its inception, the Tax Appeals Assistance Program has grown from one school with five students to four schools and over 25 students. As of June 30,

2007, the program has accepted 189 appeals, 78 of which were active as of the end of the year. Of the remaining cases, 88 were successfully resolved without a formal Board hearing either because the appellant prevailed in his or her claim or because he or she ultimately agreed with the Franchise Tax Board's decision.

The program has been well received by all four law schools and the program's clients, and it has been the subject of favorable news articles. As a result, Board Members asked that the Tax Appeals Assistance Program be expanded to include business taxes cases. The Board approved the TRA Office's request to seek a staffing augmentation to allow the program to begin accepting clients with business taxes appeals. In the interim, the TRA Office will work with the Appeals Division, the Sales and Use Tax Department, and the Property and Special Taxes Department in fiscal year 2007-08 to develop guidelines and parameters for adding business taxes appeals to the Tax Appeals Assistance Program. We will also be considering allowing additional types of income tax disputes to qualify for the program.

### **Assisting with Implementation of the Tax Gap Proposal**

The BOE has identified a gap of approximately \$2 billion between sales and use tax owed in this state and the amount that is paid. The Sales and Use Tax Department (SUTD) has been developing plans to narrow this gap, which is estimated to include three components: \$1.2 billion related to use tax, \$450 million related to non-filers and tax evaders, and \$400 million related to registered taxpayers. The SUTD

recently publicized a set of individual proposals to address each of these components, collectively known as the "Tax Gap Proposal." The Tax Gap Proposal is built upon a foundation of:

- Promoting voluntary compliance through education and outreach;
- Implementing new programs;
- Improving current programs; and
- Augmenting staff to adequately address these efforts.

The TRA Office fully supports the goal of ensuring payment of the taxes and fees administered by the BOE by all those who are liable, and we have offered our expertise and knowledge of taxpayers' rights issues to assist in the development and review of new policies and procedures to implement the Tax Gap Proposal. Consistent with the TRA Office's responsibilities to monitor BOE procedures and policies for compliance with taxpayer rights and to promote understandable and simple tax laws, regulations, policies, procedures, and publications, TRA Office staff will look for opportunities to work cooperatively with BOE staff as new policies and educational materials are developed to assist all taxpayers in understanding and complying with the tax laws.

PROPERTY  
TAX ISSUES

## PROPERTY TAX ISSUES

### Case Resolution

The TRA Office opens new cases when contact is made with our office regarding a property tax matter. Our primary contact is with individual taxpayers but cases also originate from contact with attorneys, brokers, lenders, title and escrow companies, and government officials such as assessors, tax collectors, recorders, auditor-controllers, county supervisors, Board Members, and legislators. All cases are treated equally and resolved as quickly as possible.

The variety of issues represented by the cases requires that technical advisors in the TRA Office have broad experience in property assessment and taxation. The technical advisors are appraisers by profession with experience in a county assessor's office or at the Board of Equalization (BOE). This firsthand knowledge of the property assessment and taxation process enables the technical advisors to quickly determine the best resource for information and proper location for resolution of the case.

### About the Property Tax Case Statistics—By County

The TRA Office worked 262 property tax cases in fiscal year 2006-07. We tracked the number of cases by county of origin and found for the most part, the size of the county tends to determine the number of cases from each county. This year, when we use total assessed value per county as the indicator of size, the following counties appear in the column "Total Assessed Value." The ten counties that generated the most contact with our office are listed in the column "Contact Volume."

As you can see, there are two counties that appear in the second column but not the first. Yolo County and Solano County generated more contact with our office than the size of their county would otherwise indicate. Yolo County had more contact because one issue involved multiple taxpayers and therefore more cases. That issue has been resolved so we do not see this trend continuing in the future. No particular trends were noted with the cases from Solano County.

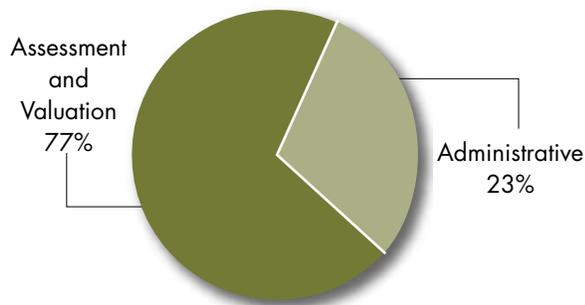
#### Contact Volume by County Relative to County's Total Assessed Value

Total Assessed Value	Contact Volume
Los Angeles	Los Angeles
Orange	San Diego
San Diego	Orange
Santa Clara	Riverside
Riverside	Yolo
Alameda	Santa Clara
San Bernardino	San Bernardino
Contra Costa	Alameda
San Mateo	Sacramento
Sacramento	Solano

Another important item to note is that Los Angeles County has a Property Owners' Advocate that resolves issues very similar to the issues we address. Since we work closely with their Advocate, we can handle more cases from Los Angeles County. The use of local advocates is a practice we hope will expand to more counties in the future.

**About the Property Tax Case Statistics—By Case Type**

In fiscal year 2006-07, 77 percent of our cases were in the assessment and valuation category which includes topics such as changes in ownership, new construction, appraisal methodology, exclusions, exemptions, assessment appeals, general property tax information and definitions, and actual enrollment of values. The administrative category, making up the remaining 23%, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and accessing data by the public.



We track specific issues in property tax cases. Although there are numerous issues with relatively few occurrences, two specific issues, base year value transfers between parents and children and base year value transfers for senior citizens (Revenue and Taxation

Code sections 63.1 and 69.5 respectively) accounted for 17% of the total cases in fiscal year 2006-07. Roughly one out of six property tax cases involved one of these two statutes that exclude these types of property transfers from the definition of change in ownership. These statistics suggest a need for our focus on change in ownership issues, especially the exclusions from change in ownership under sections 63.1 and 69.5.

**Examples of Property Tax Cases**

The following cases are examples of the type of issues the TRA Office encounters and our role in resolving them.

*Collection Continues While Audit Reduces Assessment*

The TRA Office was contacted by a business owner who was having his bank account levied for failure to pay an escape assessment on business personal property. The assessor's office had just completed an audit that showed that the escape assessment was incorrect and that a refund was due to the property owner. In the meantime however, the tax collector was continuing to press the collection of the bill for the escape assessment.

We contacted the assessor's office to confirm that the audit would result in changing the escape assessment. The audit staff explained that a reduction was forthcoming and stated the time it would take to be reflected on the tax roll. They also understood that collection actions on the escape assessment were still being undertaken by the tax collector and agreed to expedite the enrollment of the corrected value.

We contacted the tax collector's staff to ask them to stop the collection process since a new assessment was forthcoming. We were told that they had to continue because the new amount was not available to them. After facilitating communication between the assessor's office and the tax collector's office, the collection process was stopped. Eventually the business owner received the refund he was due.

Facilitating communication between taxpayers and government entities is one of the most important tasks the TRA Office performs. The business owner, in this case, would have had his bank account drawn down to a point where he could no longer operate the business. The business and its customers, employees and suppliers would have been harmed unnecessarily.

### ***Large Utility Company Gets \$3.7 Million Liability Cancelled***

The TRA Office works with all types of taxpayers, from individuals to large corporations. Large corporate taxpayers typically do not present significantly more complicated issues but the dollar amounts involved are usually much higher. In this case, for example, a large utility company was trying to resolve a \$3.7 million liability with the county tax collector and asked for our assistance.

On the due date, December 10, 1990, the utility company paid, with one check, the first installment of taxes on 21 parcels they owned in the county. However, in 2003, they were notified that there was \$3.7 million outstanding on the largest parcel. The \$3.7 million was a combination of a ten percent delinquency fee plus other redemption fees and interest since 1991.

After some research, the utility company representative posed the question that if this parcel was delinquent, shouldn't the other 20 parcels have delinquencies also since all were paid with one check? He found out from the county that the other 20 parcels had penalties also but the county had cancelled these penalties without notifying the company about the penalties or the cancellations. He thought if the 20 penalties were cancelled, then the \$3.7 million should be cancelled also.

The utility company tried unsuccessfully to resolve this with the county for many months. We encouraged the utility company to remain in contact with the county while we wrote a letter to the tax collector asking for a summary of what had occurred. Shortly thereafter, the utility company was notified that the \$3.7 million liability was cancelled.

We believe this matter was brought to a successful conclusion through the combined efforts of the TRA Office's intervention and the taxpayer's continued dialog with the county, based on the TRA Office's encouragement.

## Other Activities

Each year, in addition to resolving cases, the TRA Office tries to improve the property tax system by participating in a variety of other activities. These other activities enable us to reach more taxpayers than just those we help through case resolutions. We were involved in and/or will continue to be involved in the following activities.

### *Better Statistical Information Gathering*

By gathering better statistical data about the cases we resolve, we are better able to track the systemic issues that need our attention. This year we will continue to modify our case processing and the data we gather so that we'll become aware of trends that could affect the rights of taxpayers.

### *In-Person Contact with County Officials*

The Advocate and the property tax technical advisors attended California Assessors' Association (CAA) conferences in Redding and Lakeport in order to maintain contact with the assessors and their key staff. The confidence we build with the 58 assessors and their staff allows us to more effectively assist all taxpayers by making use of cooperative working relationships with the counties. This is also true when we meet periodically with the California Association of County Treasurers and Tax Collectors and Clerks Association, which includes clerks of the assessment appeals boards.

### *Dissemination of Information*

Real estate and financial planning professionals need timely information on various property tax issues. To

this end, we have now started submitting articles to the quarterly newsletter of the Department of Real Estate which is read by over 539,000 real estate professionals. These real estate professionals are involved in the majority of real estate transactions and if they have more knowledge of property taxation issues, taxpayers are better served. We will continue to look for additional opportunities in the future with other professional groups.

### *Review of BOE-Prescribed Forms*

We participate in an annual review of BOE prescribed forms used by all counties. As part of this process, we ascertain if taxpayers are having trouble with the various forms and can then make recommendations on form improvements.

Forms completed by taxpayers are a critical source of information for assessors in making the proper valuation of property. It is important that the forms are user-friendly so that taxpayers can easily and accurately provide the information requested.

### *Review of Tax Defaulted Property Sales Process*

The process of selling tax defaulted properties is a matter of concern because it is a complicated process and properties should not be sold until all procedures are followed. Counties are very aware of this and are extremely careful that the process is completed correctly. Nevertheless, the TRA Office believes it is an area we should continue to examine. We will continue to work with tax collectors and the other state agencies involved to improve tax sale procedures so that taxpayers' rights are protected.

### *Development of Instructional Videos*

The TRA Office plans to complete a video on the assessment appeals process in the Spring of 2008. We are also looking into the possibility of following up with another video on a topic such as decline in value assessments or a more in-depth discussion of a portion of the appeal process. These videos will be made available to all counties and assessment appeals boards for distribution to taxpayers.

### *Review of Appeal Filing Fees Process*

Some counties charge a fee for filing an assessment appeal application and others do not. This process may or may not be a barrier for taxpayers, but by examining what the counties are doing, we can attempt to reduce any barriers that may exist.

### *Attendance at Assessment Appeal Hearings*

The TRA Office's property tax technical advisors attended several county assessment appeals hearings in both Northern and Southern California this year. By attending hearings and observing how they are conducted, we can better see that fair hearings are conducted. We will observe hearings in different counties this coming year to see that there is consistency in the assessment appeal process throughout the state.

### *Review of Change in Ownership Exclusion Procedures*

The tax law allows for several exclusions to change in ownership reassessments. These exclusions are becoming more complicated for both the taxpayers and assessors. In order to find the best way to make exclusion processing fair, consistent and simple, the TRA Office initiated an examination of various exclusion procedures used in the counties. The best practices will be encouraged.

### *Review of County Websites*

County websites contain a wealth of information for taxpayers. Some websites contain more information than others. By reviewing the websites throughout the state, the TRA Office will be in a position to make suggestions to the counties on website improvements. We will also be able to refer taxpayers to these sources more easily.

BUSINESS  
TAXES ISSUES

## BUSINESS TAXES ISSUES

### Case Resolution

The majority of the TRA Office's customers consists of individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the Board of Equalization (BOE). All of these tax and fee programs are collectively referred to as "business taxes." Legislators and Board Members also contact our office on behalf of their constituents who have not been able to resolve a sales or use tax or special tax problem through normal channels.

The Taxpayers' Rights Advocate and the TRA Office's business taxes technical advisors are uniquely positioned and qualified to fulfill the TRA Office's most crucial role of bringing resolution to taxpayer problems. The Advocate and the advisors have extensive background in and knowledge of BOE programs, policies, and procedures. This knowledge enables them to advise taxpayers of their rights and obligations, explain BOE policy, and seek out creative and appropriate solutions that are acceptable to taxpayers and BOE staff. The TRA Office's unique independence from Board program areas allows the Advocate and the advisors to focus on protection and assistance for taxpayers within the framework of the law with the cooperation of BOE management and staff.

Following is information regarding the business taxes cases we worked on this year and some examples that exemplify the unique services we are able to offer our customers.

### About the Business Taxes Case Statistics

During fiscal year 2006-07, our office recorded 737 new business taxes cases, a ten percent increase from last year.

#### *BOE Office of Origin*

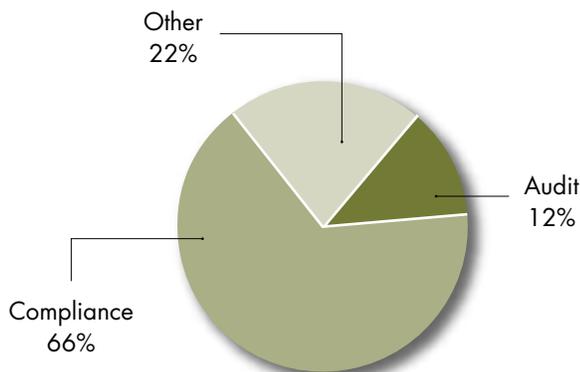
Appendix 3 provides a breakdown of contacts by district and headquarters offices, indicating the mix of compliance, audit, and other case types. A specific district or headquarters office was designated as the office of origin for a case if the taxpayer contacted us regarding an action taken by that specific office. "TRA Office" was designated as the office of origin in cases where taxpayers wanted general information and guidance regarding a BOE process or procedure or if the case was a result of testimony at a Taxpayers' Bill of Rights hearing.

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. For example, characteristics related to overall population, density of taxpayers within the district, the type and size of business operations, and the geographic proximity to BOE headquarters could all contribute to disparity between districts.

Appendix 4 provides detailed information by office, along with a summary of critical outcomes of the cases.

### *Taxpayer Inquiries Cover a Wide Range of Issues*

**Types of Cases.** Business Taxes cases are sorted broadly into “compliance”, “audit”, or “other” categories. Of the 737 cases received, 66 percent were compliance cases, 12 percent were audit cases, and 22 percent were categorized as “other”, such as consumer use tax exemptions, general information, and Franchise Tax Board matters.



### **Specific Issues Leading to TRA Office Contacts.**

Each case may contain a variety of specific issues that prompted the taxpayer to contact the TRA Office. The top three issues in each case were tracked and the 20 most common are displayed in Appendix 5.

Not surprisingly, a large portion of our cases include the need for information and guidance as one of the issues. Taxpayers often seek information on a particular procedure or process or to determine if an action taken by BOE staff was appropriate and in compliance with the law and BOE policy. We provide guidance by recommending specific courses of action. The remaining most common issues in descending order were: TRA Office intervention requested; questioning liability; levy or earnings withhold order; liens; penalty; refund;

payment plan; audit procedures; consumer complaint; policy or procedure; offers in compromise; revocation; ownership/dual/successor; tax collection; interest; petition; reimbursement of levy fees; appeals; and returns.

**Customer Service Concerns.** In addition to tracking specific issues, we closely monitor the number and type of customer service concerns that taxpayers bring to our attention. We view the manner in which taxpayers are treated as an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers’ Bill of Rights. Customer service concerns include:

- *Communication:* providing misinformation, refusing to allow the taxpayer to talk to a supervisor, failure to answer specific taxpayer questions, or not providing a communication or notice;
- *BOE Delay:* slow response to inquiry, or delay in issuing refunds or resolving the taxpayer’s case;
- *Staff Courtesy:* complaint about staff demeanor, manner of handling the taxpayer’s case, or comments made by staff; and
- *Education:* lack of information provided regarding tax law, BOE policy, or BOE procedures; or staff training issues.

Customer service continues to improve. Less than two percent of the total contacts in fiscal year 2006-07 expressed concerns related to customer service, down from four percent the previous year.

**Note:** The customer service statistics were captured based solely on the taxpayers’ statements or impressions of their situations; therefore, these statistics do not necessarily indicate verified problems but reflect the taxpayer’s perception. For example, if a taxpayer states that collection staff made a rude comment,

a “staff courtesy” complaint would be recorded. However, frequently the taxpayer’s contention did not match staff’s recollection of the situation or the incident was portrayed in a different light.

***How Taxpayers Were Referred to the Advocate Office***

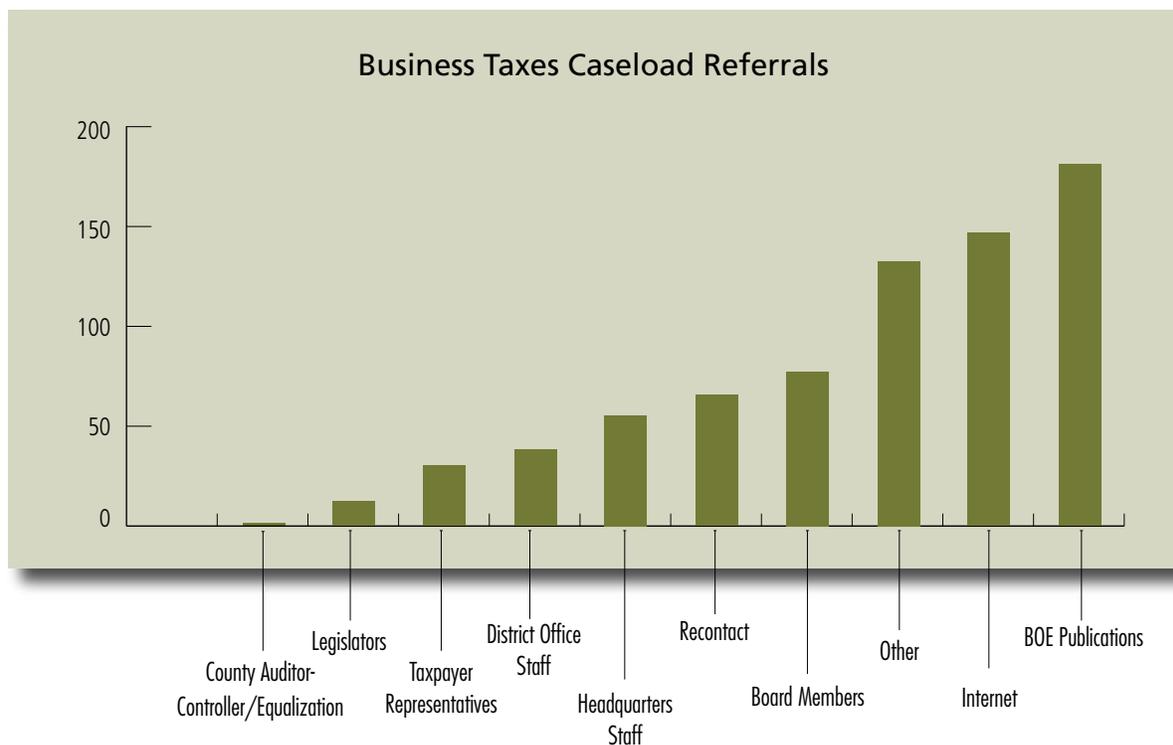
In an effort to improve public service, we attempt to identify the source of referrals. In a reversal from what we have seen in the previous two years, in which the Internet was the largest source of referral, this year BOE publications were cited by the largest percentage of taxpayers as the source of referral, reflecting 24 percent of the total referrals to our office. Other important sources of referral were the Internet (20 percent) and Board Members (10 percent).

**Examples of Business Taxes Cases**

The following cases illustrate how taxpayers’ issues are resolved by TRA Office staff and indicate the range of services provided by the Advocate and the business taxes technical advisors.

***Multiple Tax and Fee Liabilities Adjusted and Paid***

**Issue.** The TRA Office was contacted by a taxpayer who was disputing the imposition of a large penalty on an unpaid liability for the Underground Storage Tank (UST) Maintenance Fee. The taxpayer stated that he understood he owed an amount to the BOE, but due to his unique circumstances, he did not believe the penalty amount being charged was warranted.



**Resolution.** Our office researched the status of both the taxpayer's UST account and his sales and use tax account. We discovered a credit was posted to the sales and use tax account in error. In addition, there was an overpayment that had not been applied and there was a pending sales and use tax audit. We were able to resolve the problem to the taxpayer's and the staff's satisfaction by:

- Gaining agreement from the taxpayer to pay most of the UST liability by moving the unapplied credits in his sales and use tax account to his UST account;
- Obtaining the taxpayer's agreement to pay the penalty;
- Coordinating the movement of payments with staff in the Sales and Use Tax Department and the Property and Special Taxes Department;
- Monitoring the progress of the sales and use tax audit to determine its effect on the taxpayer's total liabilities; and
- Following up to make sure payments made by the taxpayer and credit transfers were processed expeditiously.

**Summary - Services Provided.** Because of the TRA Office's efforts in establishing and maintaining communication between the taxpayer, multiple tax and fee programs, and various staff at the BOE, the taxpayer was able to demonstrate his total tax and fee liability was lower than BOE records indicated. The BOE received payment in full of a large liability that had been outstanding for many years, and the taxpayer received resolution of his concerns.

### *Ex-Partner's Liabilities Correctly Identified and Payments Appropriately Applied*

**Issue.** An individual contacted the TRA Office because collection actions had been taken against him related to liabilities incurred by his ex-partners during periods after he had left the partnership. He stated that he notified the BOE in writing when he left the partnership via a withdrawal agreement signed by all partners; however, BOE staff had collected large involuntary payments from him through levies and a lien that eventually impacted escrow proceeds from the sale of his property.

**Resolution.** We confirmed that BOE had been timely notified of this individual's withdrawal from the partnership and gained BOE staff's concurrence that he was not responsible for the debts of the partnership incurred after the date of his withdrawal. We advised the individual to file a claim for refund to recover the amount collected from him via the BOE's collection actions.

However, there were other complications. We discovered that there were liabilities related to two audits: a non-final liability from a petitioned audit covering periods prior to the individual's withdrawal from the partnership, and a final liability from a later audit that covered periods both before and after his withdrawal. The involuntary payments collected from him had all been applied to the final liability. We realized that his claim for refund would not have been timely in respect to payments applied to the final liability because the three-year statute of limitations had already expired. However, payments applied to a non-final liability would still be eligible for refund.

The TRA Office worked with BOE staff to:

- Move the payments from the final liability to the non-final liability based on the individual's stated intention to have the payments applied to the non-final liability first, which allowed the possibility of a refund depending on the outcome of the petition of the audit findings;
- Acknowledge the validity of the claim for refund and withhold decision on the claim pending the resolution of the petition for redetermination of the audit; and
- Hold all collection actions against the partnership and the individual in abeyance on the final liability until the partnership's petition and claim for refund had been resolved through the appeals process.

**Summary - Services Provided.** Because of the TRA Office's intervention and cooperative working relationships with BOE staff, the circumstances of this complex case were fully reviewed, the individual retained his right to file a claim for refund of payments collected from him involuntarily, and a hold was placed on any further collection actions in regard to the final audit liability pending the outcome of the partnership's petition on the non-final audit liability and the individual's claim for refund.

## Issue Resolution

The two primary functions of the TRA Office are to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and laws to improve and/or ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, and issues identified by our office, suggestions are presented to the program staff for evaluation. We then actively work with staff to assist in the development and implementation of policy, procedure or law changes to address any identified areas of concern.

### Accomplishments – Changes Implemented, Concerns Resolved

With the cooperation of BOE staff, the following changes to business taxes policies and procedures were accomplished this past year. In some cases, TRA Office concerns were resolved through enhancements to staff and/or public education.

#### *State Application and Information for Offers in Compromise*

**Area of Concern.** Practitioners and taxpayers came to the Taxpayers' Advocates of three state agencies (Board of Equalization, Franchise Tax Board, and Employment Development Department) and indicated their interest in filing only one Offer in Compromise (OIC) application where a liability exists with two or more of these agencies. The OIC managers and the Advocates of the three state agencies worked cooperatively to streamline the OIC application process by developing a single form for taxpayers with multiple tax liabilities.

**Change Implemented.** The Multi-Agency OIC Application was approved by all participating agencies for use at any of the three agencies, and the form is now available to taxpayers and their representatives electronically through direct links on each agency's website. Taxpayers now have the ability to complete the form online and print the form. Taxpayers may also request the form by contacting the OIC units of any of the three state agencies. In addition, information regarding the Multi-Agency OIC Application was provided to tax professional organizations and placed on the California Tax Service Center website (*www.taxes.ca.gov*).

#### *Timely Resolution of Claims for Refund*

**Area of Concern.** At the Taxpayers' Bill of Rights hearing in September 2004, a tax practitioner presented concerns regarding the Board's processing of refunds, which the practitioner believes is a cumbersome and lengthy process. The main concern involved BOE policy and the audit time required to verify the claim and process any refund due.

**Concern Resolved.** Pursuant to the TRA Office's request, the Sales and Use Tax Department examined the refund process to determine areas where improvement may be needed. A six-month survey was conducted to identify the time required by the BOE's district offices to verify and process claims for refund. The results of the survey were analyzed to determine the reasons for delay in cases where claims took over 90 days to complete. It was found that in 47 percent of these cases the delay was due to the taxpayer or the taxpayer's representative requesting additional time to obtain records, requesting that the claim be included in a current or pending audit, or presenting a refund claim at the conclusion of the audit. In 45 percent of the cases, the delay was caused by staff's decision

to hold the claim in abeyance in order to include the claim in a current audit, thereby affording the taxpayer the advantage of receiving an offset of interest at the debit interest rate versus the lower credit interest rate. (It was noted the taxpayer is provided the option of having the claim for refund addressed separately from the audit.)

Due to the focus of attention on the claim for refund verification process, in March 2006 the Sales and Use Tax Department advised staff of tools available to better track and monitor claims for refund and asked districts to begin reviewing and tracking refund claims on a monthly basis. Based on our analysis of the results of the Sales and Use Tax Department's study of the refund process, we concluded that no additional policy or procedural changes were required.

#### *Levies on Joint Bank Accounts*

**Area of Concern.** We addressed a number of cases regarding BOE-issued bank levies that attached joint bank accounts containing funds that were found not to be community property. In each case a person, often the spouse or ex-spouse of the taxpayer, contacted the TRA Office and alleged the funds in the account were that person's separate property and for that reason the BOE should release the levy.

Section 6703 of the Revenue and Taxation Code authorizes the BOE to serve a Notice of Levy on a third party holding property belonging to a tax debtor. Funds held in a joint spousal bank account are presumed to be community property pursuant to Probate Code section 5305(a), and to reach community property interests, the BOE attaches a spousal affidavit to the Notice of Levy. However, there were no guidelines for staff to follow in those instances where the spouse or ex-spouse alleged the funds in the bank account were not community property.

**Concern Resolved.** The TRA Office worked with the BOE's Legal Department and the Sales and Use Tax Department to address this concern. As a result of a legal opinion issued by the Legal Department advising that these cases should be handled as third party claims, followed by discussions regarding the correct procedures to follow in these matters, the Sales and Use Tax Department provided guidelines to staff in November 2006. The guidelines referenced section 688.030 of the Code of Civil Procedures (CCP), which authorizes a third party to claim ownership of, or the right of possession to, the levied property. A third-party claim must be made in conformity with section 720.130 of the CCP, it must be in writing, and it must be submitted prior to the BOE receiving the levied funds. Since all third-party claims may involve complicated legal issues, staff was directed to immediately forward all third-party claims conforming with CCP section 720.130 to the Legal Department. Finally, it was noted that if a third-party claim is received after the BOE has deposited the funds, the only recourse available to the claimant is to file a claim for refund.

Staff has now been provided with the applicable law and approved policies that will enable them to accurately advise third parties about their rights in regard to levies on joint bank accounts and to take appropriate and timely action on third-party claims.

### *Receipt of Statement of Account While on Installment Payment Agreement*

**Area of Concern.** When a taxpayer's request to pay a liability by an installment payment arrangement is approved, the terms of the agreement should be

documented in a signed Installment Payment Agreement, form BOE-407. Alternately, staff may offer a Streamlined Installment Payment Agreement (SIPA), the terms of which should be detailed in a Streamlined Installment Payment Agreement Application, form BOE-407-S. When a taxpayer has an outstanding balance, he or she may periodically receive a Statement of Account (Statement). All taxpayers currently on installment payment agreements receive an annual Statement. A Statement is also automatically sent whenever an account receivable payment is posted. The Statement notes "This statement reflects all amounts due from you on this account" and "Additional charges are due if not paid by [date]."

We occasionally get calls or letters from taxpayers questioning receipt of a Statement when they are in compliance with an Installment Payment Agreement. Taxpayers sometimes incorrectly interpret the Statement as indicating they are required to pay the entire balance in full upon receipt of the Statement, notwithstanding their compliance with the Installment Payment Agreement.

**Change Implemented.** The TRA Office worked with staff to add explanations to both of the Installment Payment Agreements and the Statement clarifying for taxpayers that they should expect to periodically receive a Statement showing their outstanding balance notwithstanding their compliance with an Installment Payment Agreement and that the Statement should not be construed as an immediate demand for full payment if they are in full compliance with an approved Installment Payment Agreement.

### *Cigarette and Tobacco Products Licensing Act Inspections*

**Area of Concern.** The BOE's Investigations Division is responsible for inspecting the business premises of retailers, wholesalers, and distributors of cigarette and tobacco products. The purpose of the inspection is to ensure the retailer, wholesaler, or distributor is in compliance with the requirements of the California Cigarette and Tobacco Products Licensing Act of 2003, Division 8.6 of the Business and Professions Code.

At the March 2006 Taxpayers' Bill of Rights Hearing a presenter suggested that the cigarette license inspection program use customer service surveys so that BOE management could identify opportunities to improve inspector professionalism. The Board Members asked the Taxpayers' Rights Advocate to look into the feasibility of creating a customer service survey.

**Change Implemented.** In response to the Board Members' request, the TRA Office and the Investigations Division met and developed customer service feedback options for consideration by the Members.

The TRA Office and the Investigations Division agreed that our goals were to:

- Ensure that the taxpayer (the cigarette/tobacco products retailer) is fully informed regarding the purpose of the inspection and what to expect during an inspection;
- Ensure that the taxpayer is provided information about his or her rights, including the remedies available if products are seized, how to file a complaint, and how to contact the Taxpayers' Rights Advocate Office; and
- Obtain meaningful feedback from taxpayers on the effectiveness and professionalism of the investigators and the inspection process.

The TRA Office and the Investigations Division concluded that the above goals could best be met by developing a "Fact Sheet" for the inspector to hand to the retailer at the beginning of each compliance inspection. This option encourages direct contact with the Investigations Division and the TRA Office without requiring the added time and expense of mailing and processing survey forms. The Board Members approved our recommendation. Accordingly, the Investigations Division's inspectors now routinely provide retailers with new publication 152, *Cigarette and Tobacco Product Inspections*, that:

- Gives taxpayers a detailed explanation of the inspection process and the reason for the inspection;
- Explains what they can expect during an inspection and the remedies available in the event their cigarette and tobacco products are seized;
- Describes taxpayer rights and the inspection complaint process;
- Specifically identifies BOE staff, including the Taxpayers' Rights Advocate, who can assist in resolving their complaints; and
- Explains how to obtain more information about the inspection program, the Cigarette and Tobacco Licensing Act, and their rights as California taxpayers.

### *Responsible Person Dual Determinations Review and Notification of Rights*

**Area of Concern.** Revenue and Taxation Code section 6829 allows the imposition of personal liability upon corporate officers or other persons in control of financial functions of corporations or other types of business entities for the unpaid sales and use tax liability, providing specified conditions are met.

Accordingly, the BOE is allowed to issue a secondary billing (dual determination) against an individual in instances where section 6829 provisions are met in order to collect unpaid sales and use tax incurred by an entity such as a partnership, corporation, or limited liability company.

At the March 2006 Taxpayers' Bill of Rights Hearing, a tax practitioner expressed concerns regarding dual determinations (billings) issued by the Board under section 6829. This presenter asserted that staff's decisions to issue section 6829 billings were not justified in all instances. On a more fundamental level, the TRA Office has been concerned that review of section 6829 liability cases and information provided to individuals being billed as responsible persons is not comparable to review and notification protections in place for other types of determinations, such as those arising from audits.

The TRA Office wanted to ensure that the rights of those being billed under the provisions of section 6829 are protected by providing: (1) a neutral review of section 6829 liability cases performed by BOE staff not charged with collection responsibilities; and (2) full and complete notification to the person being held liable of the basis for holding him or her responsible and of the person's appeal rights.

**Change Implemented.** Action was taken to address our concern regarding a neutral review of section 6829 liability cases by the Sales and Use Tax Department implementing a new review process to ensure that taxpayers' rights are protected in the course of the assessment of responsible person liabilities. As of July 1, 2006, recommendations for section 6829 dual determinations are independently reviewed by

the Audit Determination and Refund Section, with specific guidelines in place to assist staff in evaluating the cases.

Our concerns regarding notification to individuals of their appeal rights were addressed as part of a broader effort to enhance notification to taxpayers of how they may appeal determinations (billings), which is described below.

### *Information Regarding Appeal Rights on Notice of Determination*

**Area of Concern.** The standard Notice of Determination (billing) of a sales and use tax liability contains a general statement providing instructions for appealing the determination, along with a large quantity of other information. However, in instances where the person being billed was not personally under audit, such as with responsible person or successor determinations, comprehensive information on appeal rights and procedures was not routinely provided. On a number of occasions, individuals who were billed as responsible persons or successors contacted the TRA Office, indicating they had not been informed of their right to appeal or to file a claim for refund.

**Change Implemented.** The TRA Office worked with staff to revise the format and wording of the Notice of Determination to enhance the information on appeal rights and procedures. Effective March 2007, the following new language was added in a prominent location on the Notice of Determination and the Jeopardy Notice of Determination: "Please visit our website at [www.boe.ca.gov](http://www.boe.ca.gov) to download publications 17 and 70 to help you better understand our appeals procedures and your rights."

### *Declaration of Timely Electronic Funds Transfer Payment*

**Area of Concern.** Taxpayers are subject to a 10 percent penalty if tax returns or payments are late. To be timely, mailed returns or payments must be postmarked on or before the due date shown on the return. If the due date falls on a Saturday, Sunday, or legal holiday, returns postmarked by the next business day are considered timely. If the taxpayer is registered to pay sales and use taxes by electronic funds transfer (EFT), the payment must settle into the BOE's bank account by the first banking day following the tax due date.

If a taxpayer not registered to pay by EFT mailed the return and/or payment on time but the BOE shows it as late, the taxpayer has the ability to file form BOE-135-A, *Declaration of Timely Mailing*, stating under penalty of perjury that the payment in question was mailed on time, was properly addressed, and included sufficient postage. If the BOE concludes, based on the Declaration and appropriate corroborating evidence, that the payment or return was mailed on time, it will correct its records to show that no late penalty or interest is due. However, a taxpayer paying by EFT had no equivalent method to claim that the EFT payment was made on time when the BOE showed the payment as being late. As a result, staff routinely advised taxpayers there was no mechanism for requesting relief of a penalty for a late EFT payment other than paying the penalty and filing a claim for refund. This inequity was brought to the TRA Office's attention by several taxpayers.

**Change Implemented.** The TRA Office discussed the matter with staff and a decision was made to make provisions for a taxpayer paying by EFT to protest a late payment penalty by filing a declaration stat-

ing that the payment was made on time. New form BOE-129-EFT, EFT Transmission Declaration, was made available in March 2007 and was described in an article in the BOE's June 2007 edition of the Tax Information Bulletin.

### *Underground Storage Tank Maintenance Fee—Reliance on Advice in Sales and Use Tax Audit*

**Area of Concern.** During the March 2007 Taxpayers' Bill of Rights Hearing, a consultant proposed a policy change that would allow relief from liability for the Underground Storage Tank (UST) Maintenance Fee based on the completion of a Sales and Use Tax audit report in which the auditor reviewed and verified records of fuel purchases. The consultant noted that the UST Law (Revenue and Taxation Code section 50112.5 and Regulation 4902) provides that a person may be relieved from the fee, penalty, and interest where liability resulted from failure to file a return and the failure was due to reasonable reliance on written advice from the BOE, including written advice by the BOE in a prior audit where the issue in question was examined. The consultant proposed that the BOE consider comments (or a lack of comments) regarding the UST fee in any audit it conducts on a business that requires a UST permit, as a basis for relief under Regulation 4902.

**Concern Resolved.** Pursuant to a request from the Board, the TRA Office worked with staff of the Property and Special Taxes Department's Fuel Taxes Division to prepare an analysis of the consultant's proposal. The analysis was presented to the Board on June 1, 2007. The Fuel Taxes Division, in concert with the Legal Department, recommended that Regulation 4902 not be interpreted to grant relief from the UST

fee and related interest and penalties pursuant to an audit of another tax or fee program, when the audit report is silent regarding the UST fee, and that no legislative change be proposed to Revenue and Taxation Code section 50112.5. In addition, the Fuel Taxes Division noted that, in order to alleviate this concern, they planned to expand their ongoing efforts to educate impacted tax and fee payers on the UST program, in part by distributing Publication 88, *Underground Storage Tank Fee*, during sales and use tax audits.

The TRA Office concurred with the Fuel Taxes Division's recommendation, but also took the initiative to examine the Board's policy and procedures related to the exchange of information between the Sales and Use Tax Department and the Property and Special Taxes Department in regard to the UST fee program. In a June 8, 2007 report to the Board, the TRA Office explained current methods used to educate impacted businesses who sell petroleum fuel products about the requirements for registration under the UST fee program:

- Providing information about the UST fee when the business registers for a seller's permit;
- Mailing a quarterly UST fee program questionnaire on a quarterly basis; and
- Providing a monthly report to the Fuel Taxes Division of businesses that have USTs on their property, based on information that sales and use tax auditors are required to include on their audit reports, thereby assisting the Fuel Taxes Division in the verification and proper registration of USTs.

Based on the concerns expressed by the consultant at the Taxpayers' Bill of Rights hearing and the interest of the Board Members in addressing these concerns, the TRA Office continued to explore this and related

matters with both the Sales and Use Tax Department and the Property and Special Taxes Department. One result of this continuing discussion was the pending revision of the Sales and Use Tax Report of Field Audit, Field Billing Order, Report of Examination of Records, and Report Being Waived for Audit forms to add required fields for auditors to comment on whether or not a taxpayer is registered for other relevant special taxes and fees programs, such as the Electronic Waste Recycling Fee and the California Tire Fee.

### **Work in Process – Issues Identified**

As a result of taxpayer contacts and review of trends, policies, and procedures within the Board, we have recommended consideration of the following issues and are working with staff to develop solutions.

#### *Lag Time in Posting Payments and Returns*

**Issue.** At the March 2007 Taxpayers' Bill of Rights Hearing, a consultant mentioned a concern regarding what appears to be an excessive amount of time that is sometimes required before a payment or a return is posted to the BOE's system. He noted this causes difficulties when collectors erroneously contact taxpayers regarding late payments or missing returns. The Board Members asked the TRA Office to look into the causes for the lag time in posting payments or returns, and to report on recommended solutions.

**Work in Process.** The TRA Office has completed some preliminary investigations to learn about the processes used for the receipt, processing, and posting of returns and payments, and will prepare a report to the Board Members with our findings and any recommendations when our study is completed. We anticipate completing the study by March 2008.

*Proposal to Amend Sales and Use Tax Law Section 6829 – Responsible Person, Statute of Limitations*

**Issue.** Section 6829 of the Revenue and Taxation Code (Sales and Use Tax Law) provides that upon termination, dissolution, or abandonment of a business entity (corporation, partnership, limited liability partnership, or limited liability company), any officer, member, manager, partner, or other person who is under a duty to act for the entity in complying with any sales and use tax requirements shall be personally liable for any unpaid sales taxes collected or use taxes and interest and penalties if that person willfully fails to pay or to cause to be paid any taxes due from that entity. A person liable under section 6829 becomes liable as of the date the entity terminates, etc.

The TRA Office received a number of inquiries from individuals who questioned why they were being billed pursuant to section 6829 for liabilities of business entities that closed up to eight years earlier. They asked about the normal statute of limitations of three years and they explained that the records and personnel needed to disprove their responsibility were no longer available.

Careful review of section 6829 and related legal opinions provided the explanation for why the statute of limitations in these cases extended beyond three years after the termination, etc. of the business entity. Section 6829 specifies that a determination (billing) may be issued in accordance with the general laws applicable to the collection of sales and use tax. That means that, in the absence of fraud, the limitations period for issuing a notice of determination under section 6829 is three years if the responsible person filed his or her own return for the period during which the entity terminated and eight years if the responsible

person did not file such a return. That is, since section 6829 liability is the liability of the responsible person, it is the responsible person's filing of a sales and use tax return (or not) that is relevant, not the filing of returns by the entity. Since the responsible person generally does not file a return in his or her own name related to the liability of the business entity, the applicable limitations period is typically eight years.

**Work in Process.** The TRA Office believes having an eight-year limitations period for most cases of liability under section 6829 is not intended, but rather is the result of using the general Sales and Use Tax Law limitations period rather than one specifically designed for section 6829. Therefore, we worked with the Legislative Division to prepare a proposal to amend section 6829 to incorporate a limitations period that is based on the date the BOE becomes aware that the triggering event for such liability has occurred, i.e., the termination, dissolution, or abandonment of the business entity. Our proposed amendment to section 6829 would require the BOE to issue its determinations within three years of the date the BOE obtains actual knowledge that the entity has terminated, dissolved, or been abandoned, or within eight years from the date the entity terminated, dissolved, or was abandoned, whichever period expires earlier, regardless of whether returns were filed by the responsible person.

In July 2007, the Board Members voted to sponsor this proposal for the 2008 Legislative Session. The TRA Office will work with the Legislative Division in its efforts regarding the proposed legislation in 2008. If the Legislature adopts the change to section 6829 consistent with our proposal, the TRA Office will work closely with staff to develop policies for implementing the law change.

*Proposal to Amend Sales and Use Tax Law Section 7093.6, Offers in Compromise*

**Issue.** Section 7093.6 of the Sales and Use Tax Law allows the BOE to compromise a final tax liability if certain conditions are met. If legal requirements are met, compromises are accepted when the Offer in Compromise Section of the BOE finds that the amount offered represents the most BOE can expect to receive over a reasonable period of time—typically five to seven years—based on current and anticipated income and expenses.

One of the legal requirements to compromise a final liability is that an offer can only be considered with respect to liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or a controlling interest association with a similar type of business. However, there are situations in which a taxpayer mistakenly believed that the transactions were exempt or excluded from tax, therefore did not collect sales tax reimbursement, and now may have to sell or discontinue his or her business because of an inability to pay the liability in full.

**Work in Process.** The Offer in Compromise (OIC) Section recognized that the Internal Revenue Service and the Franchise Tax Board have the ability to compromise liabilities of ongoing businesses, and reportedly the Franchise Tax Board frequently makes these types of compromises. The TRA Office agreed with the OIC Section’s plan to propose a law change that would allow the Board to also accept compromises from ongoing businesses under specified circumstances, and worked closely with the OIC Section on drafting the proposal.

In July 2007, the Board Members voted to sponsor this proposal for the 2008 Legislative Session. This proposal would allow final tax liabilities to be compromised if the additional requirements of section 7093.6 are met, even though the taxpayer may still be actively engaged in business. However, the proposal only applies to “qualified” final tax liabilities, which:

- Arise from transactions in which tax reimbursement was not collected from the purchasers;
- Relate to successor’s liability; or
- Are determined against consumers who are not required to hold a seller’s permit.

The TRA Office is available to work with the OIC Section and the Legislative Division in their efforts regarding the proposed legislation in 2008. If the Legislature adopts the amendments to section 7093.6 consistent with the proposal, the TRA Office will provide assistance to the OIC Section as it develops policies for implementing the new law.

# APPENDICES

## Appendix 1

### The Harris-Katz California Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

**7080.** This article shall be known and may be cited as "The Harris-Katz California Taxpayers' Bill of Rights."

**7081.** The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will improve both voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability.

**7082.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

**7083.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

**7084.** (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Taxpayer or industry groups identified in the annual report described in Section 7085.
- (3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

- (1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.
- (2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's

permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

**7085.** (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether or not professional tax preparation assistance was utilized by the taxpayer.

(F) Whether sales and use tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

**7086.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

**7087.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest revenue quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

**7088.** (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

**7089.** No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

**7090.** Procedures of the board, relating to protest hearings before board hearing officers, shall include all of the following:

(a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.

(b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her attorney, accountant, or other designated agent.

**7091.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

**7092.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

**7093.5.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this

section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the

board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement

shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

**7093.6** (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

- (1) The board determines that any person did any of the following acts regarding the making of the offer:
  - (A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.
  - (B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.
- (2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.
- (j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does

either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

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

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

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

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

**7094.1.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

**7095.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

**7096.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

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

(2) 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.

(b) 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.

**7097.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Govern-

ment Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

**7098.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a

notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

**7099.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
- (2) Reasonable litigation costs, as defined for purposes of Section 7156.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

**7099.1.** (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4

of Division 8 of the Evidence Code, shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the State Board of Equalization.

(3) For purposes of this section:

(A) "Federally authorized tax practitioner" means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) "Tax advice" means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, "federal tax advice" means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) "Tax shelter" means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation

in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

## Appendix 2

### The Morgan Property Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

**5900.** This part shall be known and may be cited as "The Morgan Property Taxpayers' Bill of Rights."

**5901.** The Legislature finds and declares as follows:

(a) Taxes are a sensitive point of contact between citizens and their government, and disputes and disagreements often arise as a result of misunderstandings or miscommunications.

(b) The dissemination of information to taxpayers regarding property taxes and the promotion of enhanced understanding regarding the property tax system will improve the relationship between taxpayers and the government.

(c) The proper assessment and collection of property taxes is essential to local government and the health and welfare of the citizens of this state.

(d) It is the intent of the Legislature to promote the proper assessment and collection of property taxes throughout this state by advancing, to the extent feasible, uniform practices of property tax appraisal and assessment.

**5902.** This part shall be administered by the board.

**5903.** "Advocate" as used in this part means the "Property Taxpayers' Advocate" designated pursuant to Section 5904.

**5904.** (a) The board shall designate a "Property Taxpayers' Advocate." The advocate shall be responsible for reviewing the adequacy of procedures for both of the following:

(1) The distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers.

(2) The prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

(b) The advocate shall be designated by, and report directly to, the executive officer of the board. The advocate shall at least annually report to the executive officer on the adequacy of existing procedures, or the need for additional or revised procedures, to accomplish the objectives of this part.

(c) Nothing in this part shall be construed to require the board to reassign property tax program responsibilities within its existing organizational structure.

**5905.** In addition to any other duties imposed by this part, the advocate shall periodically review and report on the adequacy of existing procedures, or the need for additional or revised procedures, with respect to the following:

(a) The development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

(b) The development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language, all of the following matters:

(1) Taxation of real and personal property in California.

(2) Property tax exemptions.

(3) Supplemental assessments.

- (4) Escape assessments.
- (5) Assessment procedures.
- (6) Taxpayer obligations, responsibilities, and rights.
- (7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.
- (8) Property tax appeal procedures.

**5906.** (a) The advocate shall undertake, to the extent not duplicative of existing programs, periodic review of property tax statements and other property tax forms prescribed by the board to determine both of the following:

- (1) Whether the forms and their instructions promote or discourage taxpayer compliance.
  - (2) Whether the forms or questions therein are necessary and germane to the assessment function.
- (b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:
- (1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.
  - (2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.

(3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.

(4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

(c) Nothing in this section shall be construed to modify any other provision of law or the California Code of Regulations regarding requirements or limitations with respect to the correction of the assessment roll, the cancellation of taxes, the issuance of refunds, or the imposition of penalties or interest.

(d) The board shall annually conduct a public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers, to address the advocate's annual report pursuant to Section 5904, and to identify means to correct any problems identified in that report.

**5907.** No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

**5908.** Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs

of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

**5909.** (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer's failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

(1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.

(2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

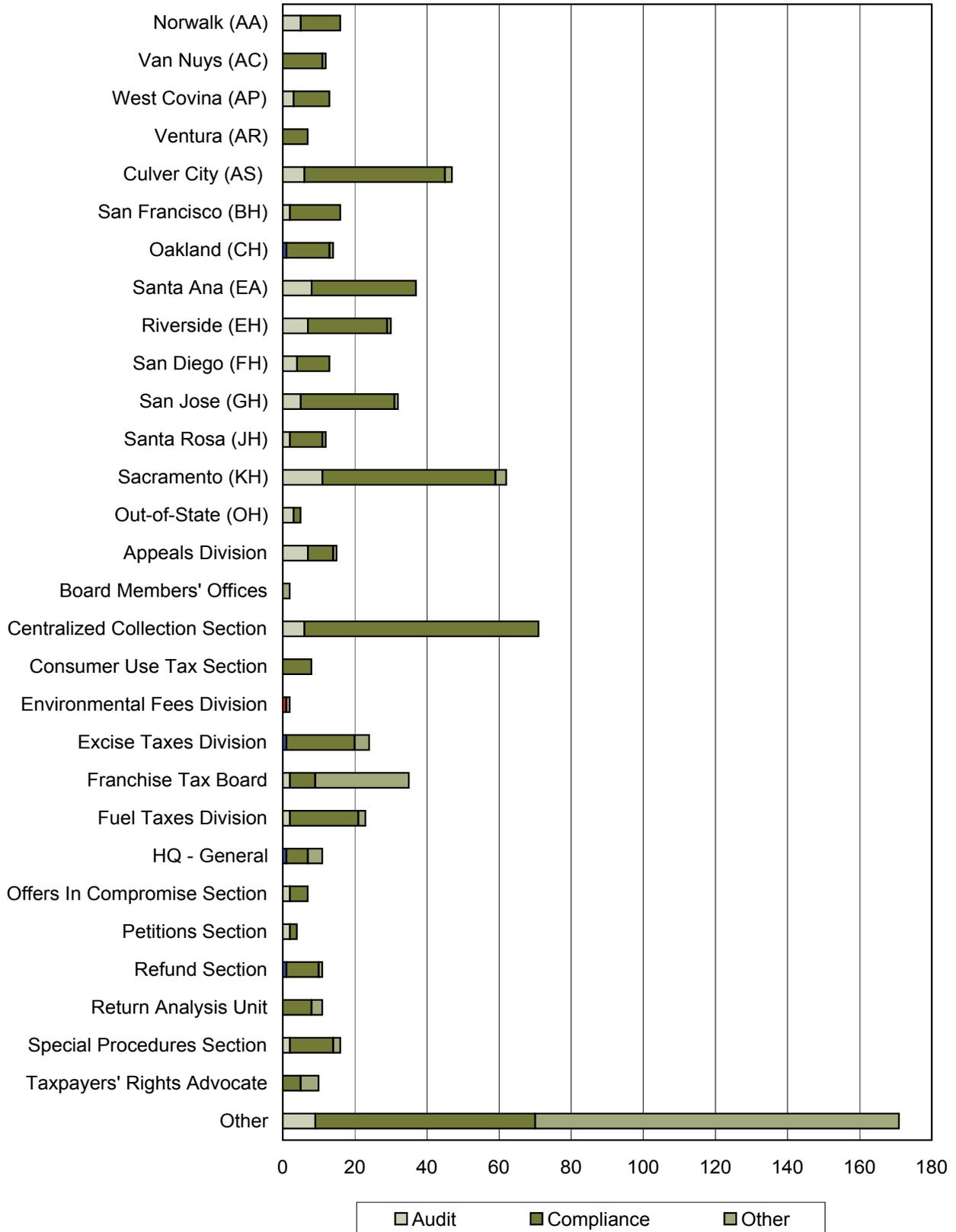
**5910.** The advocate shall, on or before January 1, 1994, make specific recommendations to the board with respect to standardizing interest rates applicable to escape assessments and refunds of property taxes, and statutes of limitations, so as to place property taxpayers on an equal basis with taxing authorities.

**5911.** It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

### Appendix 3 Taxpayer Contacts by Business Taxes Office



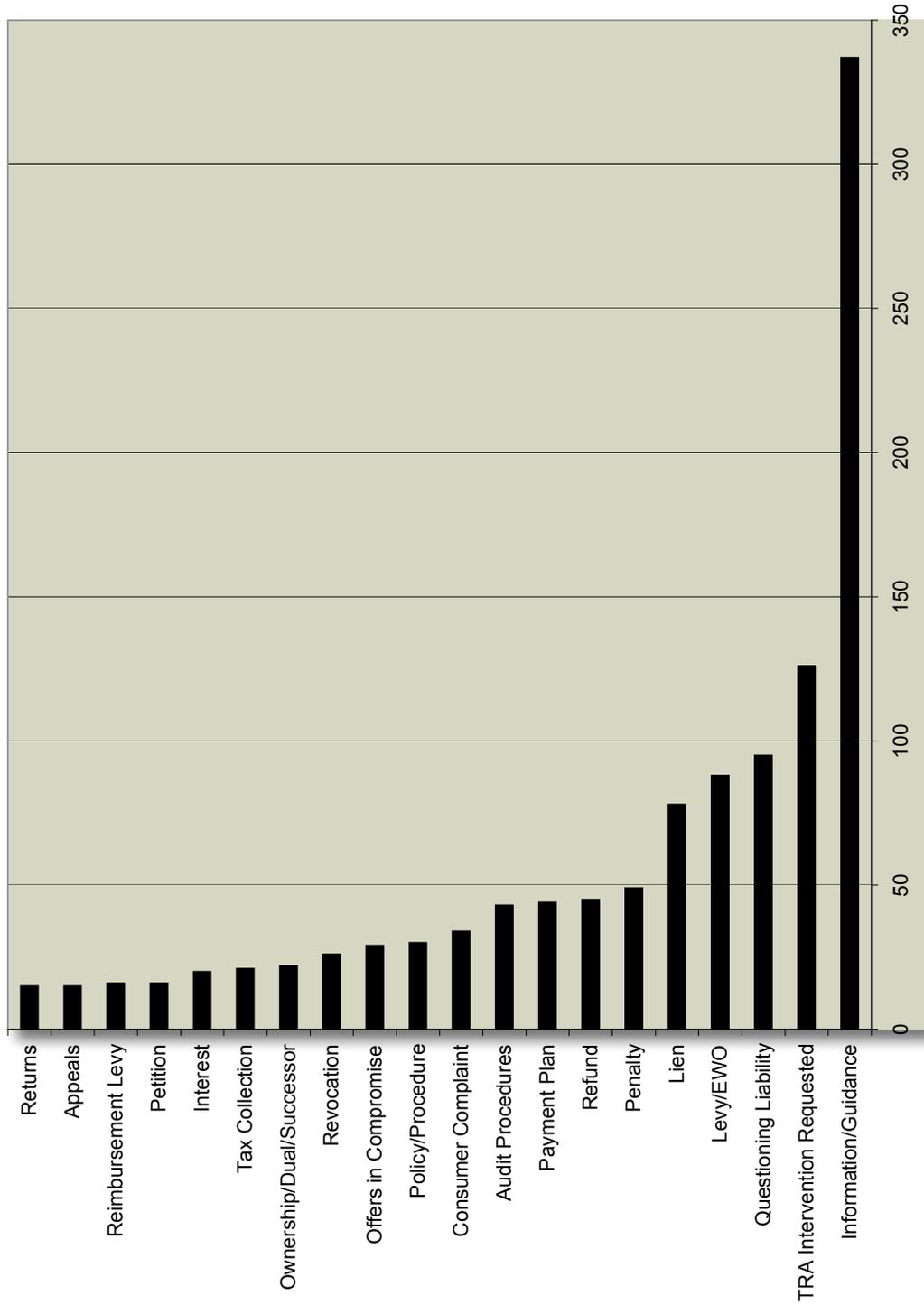
## Appendix 4

### Outcome of Business Taxes Cases

Office of Origin	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)	5	11	0	16	10	0	1	9	13	0	12	0	0
Van Nuys (AC)	0	11	1	12	0	0	1	4	10	0	5	7	0
West Covina (AP)	3	10	0	13	7	2	1	6	10	0	9	0	1
Ventura (AR)	0	7	0	7	2	0	0	2	5	1	2	2	2
Culver City (AS)	6	39	2	47	28	1	1	26	35	1	34	7	0
San Francisco (BH)	2	14	0	16	9	1	0	9	14	0	9	6	0
Oakland (CH)	1	12	1	14	11	0	0	10	11	0	10	2	0
Santa Ana (EA)	8	29	0	37	11	0	1	10	24	0	23	3	3
Riverside (EH)	7	22	1	30	7	0	2	5	24	0	19	5	4
San Diego (FH)	4	9	0	13	3	0	0	1	10	0	10	1	0
San Jose (GH)	5	26	1	32	16	1	4	12	27	1	21	8	0
Santa Rosa (JH)	2	9	1	12	4	1	0	6	9	0	9	2	0
Sacramento (KH)	11	48	3	62	19	0	7	16	47	0	39	13	1
Out-of-State (OH)	3	2	0	5	1	0	0	1	4	0	2	1	1
Appeals Division	7	7	1	15	5	0	0	6	9	1	0	10	0
Board Members' Offices	0	0	2	2	0	0	0	1	0	0	0	0	1
Centralized Collection Section	6	65	0	71	40	2	10	37	54	0	9	47	0
Consumer Use Tax Section	0	8	0	8	2	0	1	2	6	0	0	6	1
Environmental Fees Division	0	1	1	2	0	0	0	0	2	0	0	2	0
Excise Taxes Division	1	19	4	24	9	1	2	8	15	0	1	18	2
Franchise Tax Board	2	7	26	35	1	0	1	0	27	0	0	4	33
Fuel Taxes Division	2	19	2	23	10	0	0	11	14	0	3	15	0
HQ - General	1	6	4	11	4	0	2	4	6	0	2	6	1
Offers In Compromise Section	2	5	0	7	3	0	0	3	2	0	0	6	1
Petitions Section	2	2	0	4	3	0	0	2	2	0	0	2	0
Refund Section	1	9	1	11	5	0	0	5	7	0	1	6	2
Return Analysis Unit	0	8	3	11	6	0	1	6	9	0	3	5	0
Special Procedures Section	2	12	2	16	6	0	3	4	9	0	0	11	0
Taxpayers' Rights Advocate	0	5	5	10	1	0	0	1	5	0	0	2	0
Other	9	61	101	171	4	0	1	4	135	1	13	84	51
Total	92	483	162	737	227	9	39	211	545	5	236	281	104

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 5 Most Common Issues in Business Taxes Cases



Note: Each Business Taxes case discloses a variety of issues that caused the taxpayer to contact the Taxpayers' Rights Advocate Office. The top three issues in each case were tracked and the 20 most common issues are displayed here.

# NOTES

Our vision is: To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers and the government. Our mission is: To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection of taxes. Our vision is: To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers and the government. Our mission is: To positively affect the lives of taxpayers by protecting their rights, privacy, and property