

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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LETTER TO THE EXECUTIVE DIRECTOR

January 2009

Mr. Ramon J. Hirsig
Executive Director

Dear Mr. Hirsig:

I am pleased to present the Taxpayers' Rights Advocate's 2007-08 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

CONTENTS

Letter to the Executive Director

- 1 TAXPAYERS' RIGHTS ADVOCATE OFFICE**
 - 3 Vision
 - 3 Mission
 - 3 Goals
 - 4 Profile
 - 6 Public Outreach
 - 7 Contacts Received in 2007-08
 - 8 Major Projects in Process

- 11 PROPERTY TAX ISSUES**
 - 13 Case Resolution
 - 13 About the Property Tax Case Statistics–by County
 - 13 About the Property Tax Case Statistics–by Case Type
 - 14 Examples of Property Tax Cases
 - 15 Other Activities

- 17 BUSINESS TAXES ISSUES**
 - 19 Case Resolution
 - 19 About the Business Taxes Case Statistics
 - 21 Examples of Business Taxes Cases
 - 23 Issue Resolution
 - 23 Accomplishments–Changes Implemented, Concerns Resolved
 - 28 Work in Process–Issues Identified

- 33 APPENDICES**
 - 35 Appendix 1–The Harris-Katz California Taxpayers' Bill of Rights
 - 45 Appendix 2–The Morgan Property Taxpayers' Bill of Rights
 - 48 Appendix 3–Outcome of Business Taxes Cases
 - 49 Appendix 4–Most Common Issues in Business Taxes Cases

TAXPAYERS'
RIGHTS
ADVOCATE
OFFICE

TAXPAYERS' RIGHTS ADVOCATE OFFICE

Vision

To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers¹ 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.

¹The 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' Rights 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 special tax programs administered by the BOE, currently affecting approximately 251,000 taxpayers in 23 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* (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' Rights 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 Taxpayers' Rights Advocate (TRA) Office fulfills its legal responsibilities by taking the following actions:

Facilitates resolution of taxpayer complaints or problems

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal

channels, when they want information regarding procedures relating to a particular set of circumstances, or when there appear to be rights violations in either the audit or compliance areas. Taxpayers also call to convey their frustration or to seek assurance or confirmation that staff action is lawful and just. The TRA Office provides 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 BOE 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 information and guidance provided is easy to understand

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 to ensure they are easy to understand. TRA Office staff 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. Immediately after the hearings the TRA Office works with appropriate areas of the BOE or counties to address issues and concerns conveyed to the Board Members by presenters and provides follow-up reports to the Members when requested.

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. All California taxpayers benefit

from the TRA Office's ongoing relationships with the other California advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the advocates.

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

The major difference for the TRA Office between the Business Taxpayers' Bill of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints, as outlined below.

Business Taxes

The BOE 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 with program management, 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 coop-

eratively 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 taxpayers' 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 and the California Tax Service Center, 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/tra/tra.htm, can be accessed from the BOE's home page. The Advocate's web page provides a means for taxpayers to communicate with our office directly via email.
- 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 and Nonprofit Seminars throughout the state. At these Board Member-sponsored events, the TRA Office interacts with business owners and charitable organi-

zation representatives and provides written material about the TRA Office. In addition, the Advocate makes a presentation on the common responsibilities of the California taxpayer advocates, including the advocate offices of the Internal Revenue Service, Franchise Tax Board, and Employment Development Department.

- Non BOE-sponsored events: Direct contacts with the public are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the Professional Business Women's Conference, the IRS Nationwide Tax Forum, and the California Small Business Day in Sacramento. In addition, the BOE Advocate partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals. Recent examples include presentations to the Automotive Service Council, the Korean Grocers Association, and the California Society of CPAs.

Contacts Received in 2007-08

TRA Office cases totaled 969 in fiscal year 2007-08, a three percent decrease from the 999 cases last year. This year's composition of cases shifted slightly: Last year our caseload was comprised of 74 percent business taxes cases and 26 percent property tax cases; this year the mix was 72 percent business taxes cases and 28 percent property tax cases.

Continuing the pattern we have seen in the past three years, the Internet and BOE publications accounted for the largest sources of referrals for all TRA cases. In fiscal year 2007-08, taxpayers told us they learned about the TRA Office via the Internet in 22 percent

of the business taxes cases and in 29 percent of the property tax cases. BOE publications were the sources of referrals in 22 percent of both types of cases. Other important means by which taxpayers learned about the TRA Office included staff of BOE headquarters units (11 percent of business taxes cases) and county assessors (14 percent of property tax cases).

Our telephone call volume increased again this year. The average number of telephone calls per month (not including calls that resulted in new cases) increased nearly 22 percent, from 550 calls per month in fiscal year 2006-07 to 669 calls per month in fiscal year 2007-08. As more taxpayers learn about the TRA Office through our participation in public events, we anticipate the call volume will continue to grow.

Major Projects in Process

Expanding the 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.

The TRA Office created the Tax Appeals Assistance Program in fiscal year 2005-06 to allow 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 2008, a fifth law school, the University of San Diego School of Law in San Diego, joined the four 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, the Chapman University School of Law in Orange, and the Golden Gate University School of Law in San Francisco.

Since its inception, the Tax Appeals Assistance Program has grown from one school with five students to five schools and 30 students. As of June 30, 2008, the program has accepted 380 appeals, 118 of which were active as of the end of the year. Of the remaining cases, 160 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 five law schools and the program's clients. As a result, the TRA Office plans to expand the Tax Appeals Assistance Program to include business taxes cases. The TRA Office's request for a staffing augmentation to allow the program to begin accepting clients with business taxes appeals was approved in 2008. Therefore, 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 2008-09 to develop guidelines and parameters for adding business taxes appeals to the Tax Appeals Assistance Program.

Assisting with Implementation of the Tax Gap and Statewide Compliance and Outreach Programs

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. In 2008 the BOE received funding approval to augment staff in order to address this problem through the "Tax Gap Program." The Tax Gap Program seeks to promote voluntary compliance through education and outreach.

Funding was also approved in 2008 to allow the BOE to establish a new three-year limited-term Statewide Compliance and Outreach Program ("SCOP"). This program addresses the tax gap by identifying and registering entities that actively engage in business in California and sell tangible personal property without a seller's permit and educating business owners about their responsibilities and reporting requirements.

Consistent with the TRA Office's responsibilities to monitor BOE procedures and policies for compliance with taxpayers' rights and to promote understandable and simple tax laws, regulations, policies, procedures, and publications, TRA Office staff is working cooperatively with BOE staff as new policies and educational materials are developed to assist all taxpayers in understanding and complying with the tax laws. For example, the TRA Office is participating in a BOE work group to evaluate the feasibility of using contract collection agencies to assist with the collection of a portion of BOE's accounts receivables.

Training BOE Staff on Safeguarding Taxpayers' Rights

The safeguarding of taxpayers' rights is the responsibility of all BOE employees. However, at those times when there is miscommunication or the taxpayer cannot find a resolution through normal channels, the TRA Office can provide mediation or a fresh viewpoint. The TRA Office has noted that, although BOE staff routinely and conscientiously observes the rights of taxpayers during the assessment and collection of taxes and fees, not all staff have a good understanding of when it is appropriate to refer a taxpayer to our office. Therefore, we believe that the common interest we share with staff in ensuring a consistent treatment of taxpayers in line with the Taxpayers' Bills of Rights would be well served by agency-wide training sessions.

Accordingly, the TRA Office plans to work with BOE departments to arrange for TRA Office staff to deliver training over the course of the next few years that will cover:

- The role and responsibilities of the TRA Office;
- The contributions that each BOE employee can make in the course of his or her individual work assignments toward the protection of taxpayers' rights; and
- The processes by which the TRA Office, BOE staff, and management can work cooperatively as a team to resolve taxpayer concerns.

We hope to complete the training curriculum and materials in FY 2008-09 and begin scheduling the first classes for FY 2009-10.

PROPERTY
TAX ISSUES

PROPERTY TAX ISSUES

Case Resolution

Property owners throughout the state contact the Taxpayers' Rights Advocate (TRA) Office for assistance and information. Although our primary contact is with individual taxpayers, 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.

The variety of issues represented by the cases requires that technical advisors in the TRA Office have broad knowledge and experience in property assessment and taxation. Since the technical advisors are appraisers by profession with experience in a county assessor's office or at the Board of Equalization (BOE), they can quickly determine how an issue should be resolved.

About the Property Tax Case Statistics – By County

The TRA Office worked 272 property tax cases in fiscal year 2007-08 compared to 262 cases last year. 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.

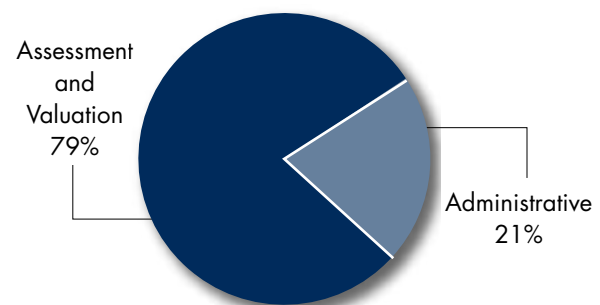
All counties had at least one contact with the TRA Office. Forty counties had five contacts or less. Eight counties generated 50 percent of the calls to our office. Those counties were, in alphabetical order, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco and Santa Clara. Although these eight counties represent about 65 percent of

California's population, they only generated half of the contacts with the TRA Office.

Ninety four percent of our cases, the overwhelming majority, are resolved in conjunction with local county assessors, tax collectors, and assessment appeals boards. The remaining cases are resolved through state agencies such as the BOE or Franchise Tax Board. Often multiple offices are involved in the resolution of taxpayers' cases.

About the Property Tax Case Statistics – By Case Type

In fiscal year 2007-08, 79 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 21 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.



We track specific issues in property tax cases. Although there are numerous issues with relatively few

occurrences, two specific change in ownership exclusion 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) alone accounted for 22% of the total cases in fiscal year 2007-08. Roughly one out of five property tax cases involved one of these two statutes that exclude these types of property transfers from the definition of change in ownership. This volume suggests that taxpayers still require more information about these exclusions than is currently available. Therefore we will continue to work with the counties to see that more of this specific information is readily available to taxpayers.

Examples of Property Tax Cases

Typically the TRA Office acts in an advisory role on property tax issues. However, occasionally we find it appropriate to intervene on behalf of the taxpayer to resolve the problem. The following cases illustrate our involvement in the resolution process.

Liens Placed on Property Due to Incorrect Assessment

A taxpayer had liens placed on his property by the county for unpaid taxes due to an assessment that was incorrect. The taxpayer, out of frustration and confusion, wrote to the Governor for help. That letter was forwarded to the BOE Legislative and Research Division and then to the TRA Office for resolution.

We first confirmed with the tax collector that there were liens filed on the taxpayer's property. Next we contacted the assessor's office to determine the reason for the assessment that resulted in the liens. After our discussion, the assessor determined the assess-

ments were in error and subsequently cancelled the assessments. We then contacted the tax collector and requested that the liens be removed. Shortly thereafter, lien releases were recorded by the tax collector.

Later, we were again contacted by the taxpayer because he was having financing problems because of the liens. Although the actual recorded lien release document was titled "Invalid Lien Released," the credit reporting agencies were showing the liens as "County Liens, Paid /Released." This was negatively interpreted by the lender that the lien was valid, paid, then released.

We wrote a letter to the credit reporting agencies requesting that they modify their language so this confusion could be avoided in the future. The letter was also given to the taxpayer so that he could show it to the lender in support of his contention that the lien was invalid and therefore released, rather than valid, paid, then released. His financing was approved shortly thereafter.

Property's Base Year Value Lost After Fire

A taxpayer contacted the county tax collector to explain that he was being assessed property tax on a new structure that was actually the replacement of a structure that was destroyed by fire. There were some language barriers and the taxpayer was told that the assessments were correct. The taxpayer shared this information with his accountant, who contacted the TRA Office to see if our office could assist in getting the assessment corrected.

The TRA Office contacted the county assessor's office and asked them to compare their records with the documents provided by the taxpayer's accountant. The assessor's office determined that the structure was a replacement of an existing structure that had

been destroyed by fire. They corrected the assessment by reinstating the prior base year value of the improvements. Since taxes had been paid on the new assessments for the past four years, refunds were made of the overpaid portion of the taxes.

With our knowledge of assessment practices, we were better able to communicate the taxpayer's needs and effected a resolution that was proper for both the taxpayer and county.

Property's Condition not Considered in Assessment

The assessor's office reassessed a 100-year old home that was inherited by a taxpayer. The reassessed value was much higher than what a private appraiser had determined at the time of the transfer. The taxpayer attempted to get the assessed value reduced but was unable to convince the assessor's office that the value determined by the private appraiser was accurate.

The taxpayer contacted the TRA Office and described the condition of the property when he became the owner. To support his contention he also provided us the private appraisal with photographs. With that in hand, we contacted the assessor to determine the extent that condition was considered in their reassessment. We were told that the home was considered to be in average condition as of the date of the inheritance. We explained what we were told about the property's condition and asked if they could re-examine the assessment. They agreed it would be appropriate to do so and we informed the taxpayer that the assessor was going to review the assessment. We also explained the taxpayer's appeal rights in case the assessor did not reduce the value to his satisfaction.

The assessor did reduce the value after physically inspecting the property but the taxpayer continued to receive delinquency notices. He contacted us again and we in turn called the assessor's office. We were assured that the value change was being processed and were told what the new assessment would be. Since it was still higher than the private appraisal, we asked why there was a difference. Thereupon they examined the value and made a further reduction to a figure closer to what was in the private appraisal. Shortly after, the old bills were cancelled and the new bills, showing the lower values, were issued.

Usually we advise taxpayers on ways to resolve issues on their own; however, due to severe health issues, this taxpayer was unable to carry on these discussions with the assessor without our direct involvement.

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.

Development of Instructional Video for Assessment Appeals

The major project for this last year was the development of an instructional video on assessment appeals. The purpose of this video is to assist taxpayers that are considering filing an assessment appeal. It covers the

process from beginning to end and is designed to give the taxpayer enough information to be able to present his or her best case before the local board of equalization or assessment appeals board. The video stresses the need for continuous contact with the assessor's office before and during the appeal process. This could enable many issues to be resolved without an actual hearing.

This is a joint project with BOE's County-Assessed Properties Division and included input from all of the counties. The information presented is applicable to appeals in any county. The script mirrors, to a large extent, the BOE's publication 30, *Residential Property Assessment Appeals*, and while intended primarily for appeals of residential properties, is generally applicable to any property type. Any taxpayer not familiar with assessment appeals will find valuable information in the video. The video is expected to be available on the BOE website in fiscal year 2008-09 and on county websites shortly thereafter.

Our office is in the unique position to bring all the key players together to develop material such as this for taxpayers. With the success of this type of project, we are more likely and able to tackle other needed educational efforts that will further the proper assessment of property.

In-Person Contact with County Officials

TRA Office staff attended California Assessors' Association (CAA) conferences this year 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.

Dissemination of Information

Real estate professionals need timely information on various property tax issues. We submitted articles to the quarterly newsletter of the Department of Real Estate which is distributed to 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 outreach opportunities in the future with other professional groups.

Review of BOE-Prescribed Forms

The TRA Office participates 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, if so, can then make recommendations on 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 County Websites

We continue to examine county websites for their breadth and depth of information that taxpayers need. Since laws and procedures are ever-changing, our review process is ongoing. By gaining knowledge of what information is available we are better able to direct taxpayers to the resource that will most efficiently satisfy their information needs.

BUSINESS
TAXES ISSUES

BUSINESS TAXES ISSUES

Case Resolution

The majority of the Taxpayers' Rights Advocate (TRA) Office's contacts 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 fulfill the TRA Office's most important role of bringing resolution to taxpayer problems. The Advocate and the advisors have a firm background in BOE programs, policies, and procedures. This background 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 independent status allows the Advocate and the advisors to focus on assisting 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 services we offer our customers.

About the Business Taxes Case Statistics

During fiscal year 2007-08, our office recorded 697 new business taxes cases, a 5 percent decrease from last year.

Outcome of Business Taxes Cases

Appendix 3 provides important information about the cases, categorized by office of origin. A specific BOE field or headquarters office or the Franchise Tax Board was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "TRA Office" was normally designated as the office of origin in cases where individuals 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. We tracked broad issue types (see below) and critical outcomes of the cases.

Customer Service Concerns. 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 that we track include:

- *Communication:* providing misinformation, refusing to pay attention to a taxpayers' concerns, 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 a refund 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.

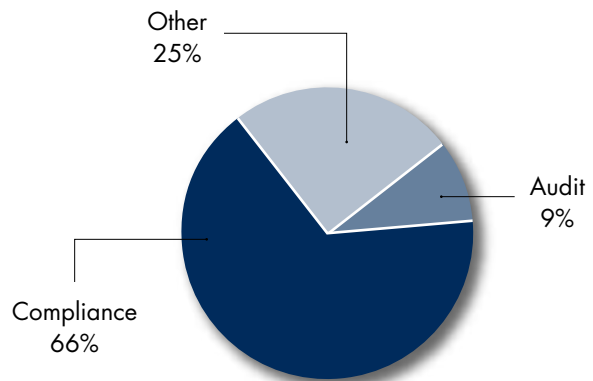
The number of customer service complaints increased this year but still remain relatively low (see Appendix 3). Five percent of the total contacts in fiscal year 2007-08 expressed concerns related to customer service, compared with four percent in fiscal year 2005-06 and two percent in 2006-07.

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.

Agreed with Staff Case Handling. Often the TRA Office, after investigating the taxpayer’s concerns or contentions, is able to confirm that staff’s handling of the situation was consistent with legal, regulatory and procedural mandates. However, based on the results of our investigation and communication with staff and the taxpayer, it is possible that staff handling of the case could change as additional information comes to light or the TRA Office recommends a different approach to produce a resolution that is satisfactory to both the BOE and the taxpayer. In those cases where we find that staff has not adhered to the law or approved policies or procedures, we record the case as “not agreed with staff handling.” In order to facilitate improved staff training, the Advocate routinely advises the appropriate department head and division manager of the details of these cases to provide management with the opportunity to address specific training needs.

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 697 cases received, 66 percent were compliance cases, 9 percent were audit cases, and 25 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 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 4.

Not surprisingly, many 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: Levy, Questioning Liability, TRA Office Intervention Requested, Refund, Policy/Procedure, Payment Plan, Consumer Complaint, Lien, and Audit Procedures.

How Taxpayers Were Referred to the Advocate Office

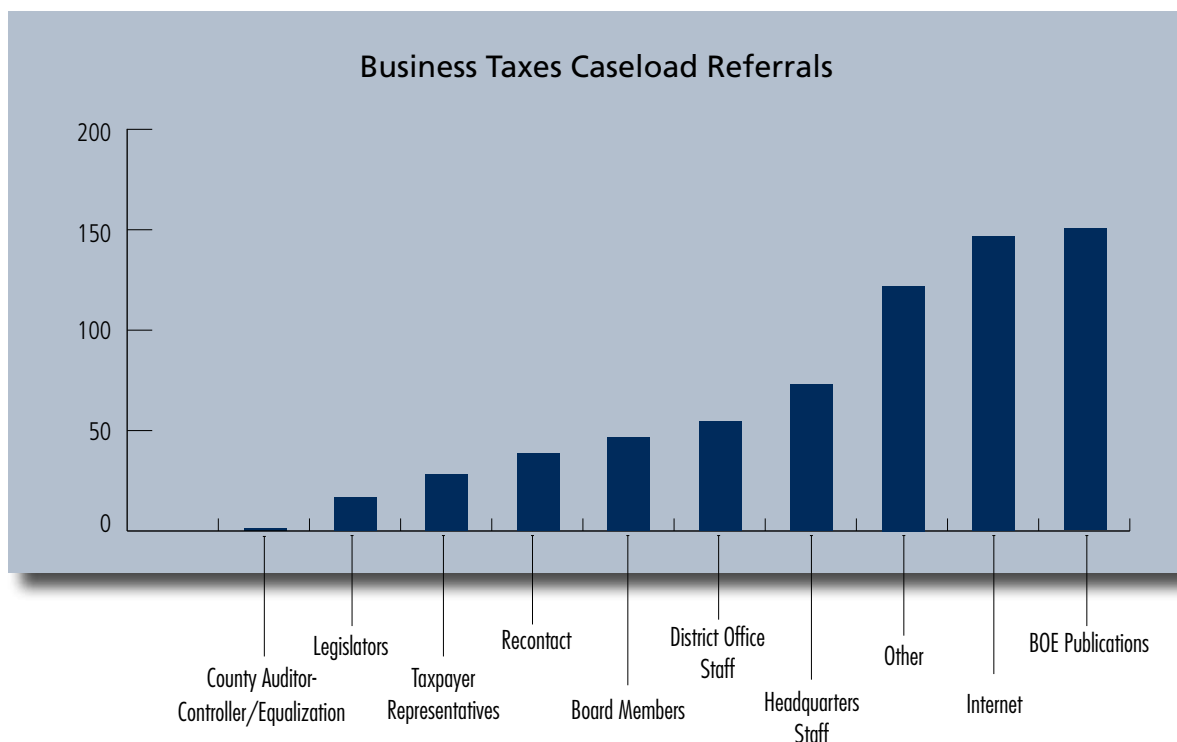
In an effort to improve public service, we attempt to identify the source of referrals. Repeating a familiar pattern, this year the Internet and BOE publications were the largest sources of referrals, each accounting for 22 percent of the business taxes cases. Other important sources of referral were BOE headquarters staff (11 percent), district office staff (8 percent) and Board Members (7 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.

Documentation Substantiates Vessel Not Purchased for Use in California

Issue. An individual contacted the TRA Office regarding a dispute about the application of tax to his vessel purchase. He had been billed for use tax and had filed a timely petition asserting the vessel was not purchased for use in California. This individual was very upset, claiming the staff person reviewing his documentation regarding place of delivery and subsequent use



ignored important evidence and did not listen to his explanation of the sequence of events supporting delivery outside California followed by in-state repairs. The Petitions Section completed its investigation and forwarded the appeal to the Appeals Division with a recommendation to deny the petition for redetermination. The case was awaiting an appeals conference when the TRA Office was contacted.

Resolution. As a general rule, the TRA Office does not investigate disputes in which the claimant has not exhausted his or her appeal rights. However, TRA Office staff determined there were communication challenges in this case that appeared to hinder the collection of documentation. We patiently asked questions about the transaction, questioned the individual about areas of doubt raised by the Petitions Section, and suggested additional kinds of documentation that could indicate the true place of delivery and assist staff in determining the circumstances of the vessel's time in California. We then provided our findings to the Petitions Section and requested reconsideration of their decision. After considering the additional information and documentation, the Petitions Section recommended granting the petition for redetermination.

Summary - Services Provided. Because of the TRA Office staff person's familiarity with issues surrounding vessel purchases and willingness to take the time to discuss the transaction and documentation with the petitioner in depth, the resolution of the petition was accomplished more quickly and efficiently.

Independent Review of Financial Information Confirms Staff Analysis

Issue. A taxpayer contacted the TRA Office concerning impending collection action by BOE staff that she stated would imperil her ability to conduct business. She wanted the collection action delayed until she

could obtain a loan to cover her outstanding liabilities. As per our normal procedures, we reviewed the status and history of the account, including efforts by staff to work with the taxpayer to effect collection of the unpaid liability. We learned that staff had attempted to accommodate the taxpayer by considering an installment payment agreement to pay an audit liability, but had difficulty obtaining all the financial documentation required. In addition, a history of failure to timely pay amounts reported on sales and use tax returns complicated the negotiations. Once the taxpayer provided all the requested financial documentation staff needed to calculate a reasonable monthly payment amount, the taxpayer complained to the TRA Office that staff misinterpreted the data and did not give her credit for all necessary expenses, and as a result asked for a larger payment than she could afford. In addition, the taxpayer asserted that late filing penalties were not warranted, since she had mailed her returns on time.

Resolution. The TRA Office worked with staff and the taxpayer to ensure that lines of communication remained open and confirmed to the taxpayer that staff's actions were consistent with the law and BOE policies. We advised the taxpayer to file declarations of timely mailing regarding her assertions that late filing penalties were not due. In response to her subsequent request, we then followed up with the Return Analysis Unit to ensure the declarations were received and processed. We also agreed to perform an independent review of the financial documentation. After completion of the review, we informed the taxpayer that we made note of a few small discrepancies but that our findings largely confirmed staff's analysis. We also told the taxpayer that staff indicated they were willing to accept additional documentation to justify a lower payment amount. The taxpayer was grateful for our

assistance and independent review, and began making the agreed-upon payments.

Summary - Services Provided. This case illustrates the important function of the TRA Office to independently review actions by staff to determine if approved policies and procedures are being adhered to. As was the case here, we often report to the taxpayer that staff's actions are proper and fair and that staff is not violating the taxpayer's rights. In addition, we are often in a position to act as mediator when communication between parties is in danger of failing. In this case, our careful review of the history of staff actions, our personal attention to following up on the declarations of timely mailing, and our independent review of the taxpayer's financial condition provided the taxpayer with assurance that she was treated fairly and that the amount of the payments requested was reasonable. This assurance made her continued compliance more likely.

Levied Funds Returned Pursuant to Revenue and Taxation Code Section 7094

Issue. The TRA Office was contacted by an individual who was deemed responsible for a corporation's debt as a responsible corporate officer. His bank account was levied, which the individual stated impacted his ability to pay medical bills. We learned that the individual's bank account was levied due to his failure to make a promised good faith payment and to enter into an installment payment agreement. However, that failure was apparently caused by the individual's hospitalization and extended recovery period. The levy had captured funds belonging to his spouse that we were told had been deposited into a joint account to pay hospital bills.

Resolution. Pursuant to Revenue and Taxation Code section 7094, the Taxpayers' Rights Advocate may, within 90 days from the receipt of funds pursuant to a levy, order the return of up to \$1,500, upon his or her finding that the levy threatens the health or welfare of the taxpayer, his or her spouse, and dependents or family. The Advocate determined that the circumstances of this case qualified for the provisions of section 7094 and immediately ordered the refund of \$1,500 of the amount captured in this levy.

Summary - Services Provided. The Taxpayers' Rights Advocate is authorized by law, under the appropriate circumstances, to implement Revenue and Taxation Code section 7094 to relieve a hardship caused by a Notice of Levy.

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, suggestions received from BOE staff, and issues identified by our office, recommendations 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 statute revisions and 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.

Sales and Use Tax Law Section 6829 Amended – Responsible Person, Statute of Limitations

Area of Concern. 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 and concerns from individuals who questioned why they were 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 specified 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 was 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 was the responsible person's filing of sales and use tax returns (or not) that was 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 was typically eight years.

Change Implemented. The TRA Office believed that the imposition of an eight-year limitations period for most cases of liability under section 6829 was not intended, but rather was the result of using the general Sales and Use Tax Law limitations period instead of 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 required the BOE to issue its determinations within three years of the date the BOE obtains actual knowledge that the entity terminated, dissolved, or was 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. The proposal also specified that if a notice of termination, dissolution, or abandonment of the business entity is filed with a state or local agency other than the BOE, the filing shall not constitute actual knowledge by the BOE.

In July 2007, the Board Members voted to sponsor this proposal for the 2008 Legislative Session, and in June 2008 the proposed addition of subdivision (f)

to section 6829 was signed into law, with an operative date of January 1, 2009, pursuant to Assembly Bill 1895. The TRA Office will lend its expertise in safeguarding taxpayers' rights to staff as they develop policies for implementing the law change.

Offers in Compromise Statutes Amended

Area of Concern. Various Revenue and Taxation Code sections allow the BOE to accept offers in compromise of business taxes. For example, 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 was that an offer can only be considered with respect to liabilities that were generated from a business that had been discontinued or transferred, and where the taxpayer making the offer no longer had a controlling interest or association with the transferred business or a controlling interest or association with a similar type of business. However, there were situations in which a taxpayer mistakenly believed that the transactions were exempt or excluded from tax, therefore did not collect sales tax reimbursement, and then may have had to sell or discontinue his or her business because of an inability to pay the liability in full. Not only did the business closure result in lost tax revenue to the state, but decreased the likelihood that the tax debt would be paid.

Change Implemented. 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 BOE 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, and in August 2008 amendments to a number of Revenue and Taxation Code sections were signed into law, with operative dates of January 1, 2009¹. Pursuant to Assembly Bill 2047, the BOE is now allowed, until January 1, 2013, to compromise certain final tax liabilities even though the taxpayer may still be actively engaged in business. However, this provision 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 new law provides:

- The BOE may not compromise a liability with a taxpayer who previously received a compromise on a similar transaction.
- The BOE may permit the accepted offer to be paid in installments.

¹Changes to offer in compromise provisions pertain to the Sales and Use Tax Law; Use Fuel Tax Law; Cigarette and Tobacco Products Law; Alcoholic Beverage Tax Law; Emergency Telephone Users Surcharge Act; Oil Spill Response, Prevention, and Administration Fees Law; Underground Storage Tank Maintenance Fee Law; Fee Collections Procedures Law; and Diesel Fuel Tax Law.

- The BOE may require a collateral agreement allowing the BOE to reestablish any portion of the compromised liability if the taxpayer has sufficient annual income during the succeeding five-year period.
- The taxpayer is required to timely file and pay all required returns for the succeeding five-year period.

The TRA Office has offered its assistance to the OIC Section as it develops policies for implementing the new law.

Issuance of Cigarette and Tobacco Products Licenses Expedited

Area of Concern. The California Cigarette and Tobacco Products Licensing Act of 2003 (AB 71) (the Licensing Act) set up a licensing mechanism for retailers, distributors, wholesalers, manufacturers, and importers. The Licensing Act requires that cigarette and tobacco retailers be licensed by the BOE for each retail location and pay a one-time license fee of \$100 for each sales location. The license is not assignable or transferable, and it must be renewed annually for no fee. A retailer may not obtain or renew a license if the retailer or the location has been revoked. Licenses will not be issued for any location where a license has been revoked in the last five years, unless a new owner obtained the business in an arms-length transaction. If a retailer has been suspended, the retailer may retain its license but may not sell cigarette and tobacco products during the suspension period.

At the February 26, 2008 Taxpayers' Bill of Rights hearings two representatives of a company that operates over one hundred gas station and convenience stores explained they have encountered significant delays in obtaining retailer's licenses to sell cigarettes and tobacco products for any new locations that

the company acquires. Even though the company is already licensed to sell these products at its other location(s), it takes six to eight weeks to license a new business location. In the meantime, the new store may lose revenue since it cannot sell these products until the BOE issues the location-specific cigarette and tobacco retailer license. The representatives suggested streamlining the process when a multi-location company is already licensed by issuing some type of interim license immediately to a new location.

Changes Implemented. The Excise Taxes Division (ETD) of the Property and Special Taxes Department was aware of the delays in issuing new cigarette and tobacco retailer licenses and was seeking solutions. The ETD recognized that an increased level of coordination was needed between the Sales and Use Tax Department, which issues seller's permits, and the ETD, which issues cigarette and tobacco retailer licenses. In addition, program changes to the BOE computer system were being considered to make the process more efficient. As a result of the presentation at the Taxpayers' Bill of Rights hearing, ETD efforts to streamline issuance of cigarette and tobacco retailer licenses were stepped up, and by August 2008 the following educational and process improvements were in place, thanks to interdepartmental cooperation and communication:

- In March 2008, ETD revised the *Application for Retailer's Cigarette and Tobacco Products License* (BOE-400-LR), to inform the applicant that the application cannot be processed if the applicant does not first obtain a seller's permit for the location.
- Starting in May 2008, ETD staff held two-hour training classes in each field office informing district staff about the Licensing Act and processing issues.

- Programming changes were completed in August 2008 that provide for creation of the retail license account at the same time as a new seller's permit account.
- Additional programming changes give field staff the ability to reprint an existing BOE-400-LR application.
- Field offices made a commitment to process BOE-400-LR applications daily.

For new sellers, the programming changes allow field office staff to immediately print a BOE-400-LR application, pre-filled with custom information for the retailer, and to accept the license fee and apply the payment directly to the account. For existing sellers who are adding a location, the ability to immediately reprint the existing BOE-400-LR expedites the issuance of a cigarette and tobacco retailer license for the new location. As a result of these changes, ETD's processing time for issuing a new location license for an existing multi-location licensee has dropped to three days and licenses for new accounts are issued about two weeks after the application is received by ETD.

Outreach to Cigarette and Tobacco Products Retailers Improved

Area of Concern. At the February 26, 2008 Taxpayers' Bill of Rights hearings, a representative of a large independent grocers' association forwarded concerns voiced by members of the association regarding the conduct of cigarette/tobacco products license inspections. He provided examples of interactions between BOE inspectors and cigarette/tobacco products retailers that appeared to indicate a lack of respect and fair treatment on the part of the inspectors. The presenter offered his association's assistance in building better relationships between the BOE and the community

and in enhancing taxpayer education regarding the purpose and goals of the inspections of cigarette/tobacco products retail locations. The Board Members requested that the Investigations Division increase direct outreach to retailers and establish working relationships with this association and others in order to share concerns and develop venues for training.

Concern Resolved. As of August 2008, the Investigations Division completed the following initiatives to address this concern:

- Presentations to grocers' associations. Two community presentations were conducted by local senior Investigations Division staff with assistance from the Excise Taxes Division. A July 2008 presentation was given in La Mesa to members of the Neighborhood Market Association. Also in July 2008, staff made a presentation to the Korean American Grocer Association in Garden Grove.
- New class. The first of approximately 15 Cigarette and Tobacco Product classes was scheduled for August 2008. The free statewide classes for cigarette and tobacco products retailers are designed to cover license requirements, help prepare retailers for the BOE's inspections, and answer questions about California's cigarette and tobacco tax laws.
- Development of community partnerships. Staff is working with personnel in the California Tobacco Control Program at the California Department of Public Health to identify potential community partners to assist with BOE's taxpayer education outreach efforts. As a result of this contact, BOE's outreach information is posted on the Tobacco Control Program's "partners" website.
- Small Business Fairs. The Investigations Division will continue its outreach efforts at all Board Member sponsored Small Business Fairs.

- Publication translations. As requested by the Neighborhood Market Association, an Arabic translation of a BOE publication explaining the cigarette and tobacco inspection program was prepared and provided at the July 2008 presentation. A Korean translation of this publication was provided to the Korean American Grocer Association at the presentation to this group. Publication 161, Criminal Citations Include a Civil Administrative Process, was recently translated into six languages—Arabic, Chinese, Korean, Punjabi, Spanish, and Vietnamese.

Separation of Duties Maintained in Regard to Sales and Use Tax Dual Determinations

Area of Concern. It was brought to the Advocate's attention in late 2007 that the responsibility for billing predecessor liabilities, successor liabilities, and questionable ownership cases was going to be transferred from the Special Procedures Section in the Legal Department to the Sales and Use Tax Department. The Advocate was concerned that this transfer of responsibilities would hinder the separation of duties and independent review currently provided by the Special Procedures Section.

Concern Resolved. The Advocate worked with the Legal Department and Sales and Use Tax Department management, who agreed that no changes would be made to the Special Procedures Section's responsibilities.

Work in Process—Issues Identified

As a result of taxpayer contacts and review of trends, policies, and procedures within the BOE, 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 Progress. The TRA Office completed its study of the processes used for the receipt, processing, and posting of returns and payments, and is preparing a report to the Board Members with findings and recommendations. The report will include comments on the anticipated effects of the BOE's stepped-up efforts to provide all taxpayers with the ability to file returns and pay taxes and fees electronically. We expect the reduction in the need for manual handling of returns and payments will allow the BOE to process both items with far fewer delays.

Guidance to Staff Needed in Regard to Accepting Returns Filed in Response to Compliance Assessments

Issue. If an active business with a seller's permit fails to file a return and does not respond to staff's inquiries concerning the non-filing, staff may estimate the amount due and issue a billing for the amount, a "compliance assessment" or "CAS." Often, the taxpayer files the missing return after the CAS becomes final. If the amounts on the post-CAS return differ from the estimated amounts on the CAS, the return is processed as a Pending Taxpayer Original return. Collection staff then review the post-CAS return to determine if the taxpayer reported correctly, and may

request supporting documentation for the amounts reported. If the information on the post-CAS return is accepted, the taxpayer's liability for the period is adjusted accordingly.

The Return Analysis Section alerted the TRA Office to a question from field staff who wondered whether there was a statute of limitations governing when a taxpayer would be allowed to submit a late return intended to replace a CAS. The Legal Department indicated this was a policy decision rather than a matter of law. The TRA Office's independent research disclosed no statute that sets the timeframe whereby a taxpayer must take action to enforce his or her rights to correct a billing when the BOE has assessed an estimated tax for failing to file a return.

In considering the question from field staff, we realized there does not appear to be written guidance for staff on how to proceed when a taxpayer sends a late return or other information to refute the amount billed through a CAS. For instance, we could find no written directions or guidelines to be used in verifying information provided on a post-CAS return.

Work in Process. The TRA Office suggested to staff that written policy and procedures be developed for collection staff to follow upon the receipt of a post-CAS return. The Sales and Use Tax Department indicated they were drafting an Operations Memo that will disseminate approved policies and procedures regarding compliance assessments, including guidelines for staff when post-CAS returns are received. The Operations Memo will include guidelines for use by special taxes programs as well as the sales and use tax program. The TRA Office will participate in the clearance of the new Operations Memo, in order to ensure the policies address taxpayer rights concerns and the procedures give clear and complete guidance to staff.

BOE-403-E, Individual Financial Statement, Should be Revised

Issue. A taxpayer who has an outstanding liability that he or she cannot pay in full may be eligible for an installment payment agreement. An installment payment agreement allows the taxpayer to pay the full amount of the debt in manageable amounts, which are based on the amount owed and the taxpayer's proven ability to pay. A taxpayer who requests an installment payment agreement is required to submit a BOE-403-E, *Individual Financial Statement*, to enable staff to determine the amount that can be paid and may also be asked to provide supporting documentation. BOE-403-E provides spaces for the taxpayer to fill in amounts for listed income items and expenses. The expense items listed include house/rent payment, food, transportation, court ordered payments, utilities, childcare, insurance (car, life, and home), and union dues.

Approval of an installment payment agreement is at the BOE's discretion, and staff may require the taxpayer periodically to provide the BOE with updated financial information so staff can review the terms of the agreement. The Compliance Policy and Procedures Manual provides staff with guidance on how to evaluate a taxpayer's financial statement and includes a list of expenses that are deemed to be necessary.

Often, taxpayers contact the TRA Office because they cannot come to an agreement with collection staff on the amount of payment they can afford to pay on an installment payment agreement. In some cases, the TRA Office technical advisor noted that the taxpayer did not provide information on all expenses the BOE deems necessary, such as apparel and health insurance. For instance, we had a case in which the taxpayer stated the collector was asking for a higher payment

than the taxpayer could afford. The technical advisor noted that, although the taxpayer had two small children, no expenses were listed for clothing. The taxpayer indicated she did not know these expenses were allowable because there was no listing for them on the BOE-403-E. For this reason, we believe it would be helpful for both the taxpayer and collection staff to have all categories of necessary expenses listed on the BOE-403-E.

Work in Process. The TRA Office brought this concern to staff's attention this year. Staff agreed that amendments to the BOE-403-E are needed, and plan to review the form with TRA's concerns in mind and compare the BOE individual financial statement with similar forms used by the Internal Revenue Service and Franchise Tax Board.

Guidance to Staff Needed for Policy and Procedures When a Taxpayer is Making Court Ordered Restitution Payments

Issue. The TRA Office was contacted by a taxpayer who claimed she was harassed by a BOE collector. The taxpayer had been criminally prosecuted, was incarcerated, and ordered to pay restitution to three state taxing agencies, including the BOE. The county probation department was charged with prorating the payments between the three agencies. The taxpayer stated that, after making payments for about five years, her probation officer approved a reduction in the payments to BOE when she claimed she was no longer able to make the larger payments. The taxpayer objected when the BOE collector requested that the taxpayer submit financial documentation to support the reduction of the restitution payment amount.

The TRA Office sought advice from the Legal Department, who replied that the BOE staff should not ask

the taxpayer to submit financial information to support the amount of the adjusted restitution payments. Further discussions between the TRA Office, the Legal Department and the Sales and Use Tax Department resulted in concurrence that the collector should have made inquiries of the probation department or the court to confirm the adjusted payment amount was authorized by the court.

This case brought to the TRA Office's attention the need for guidance to staff on how to proceed with collection cases while restitution payments are being made. We could locate no guidelines regarding BOE's authority or responsibility during this time.

Work in Process. We brought our concerns to staff's attention and, based on our discussions, have identified the following areas where written policy and procedures are needed for collection cases where taxpayers are making court-ordered restitution payments:

- It is unclear what mechanisms are in place to monitor the payment of restitution payments or how to proceed if restitution payments are not made.
- A process is needed to ensure that collection staff has access to the court disposition upon sentencing so that all details regarding restitution payments are known.
- Taxpayers should be routinely informed that, regardless of the amount of restitution ordered by the court, their liability to the BOE is not discharged until paid in full.
- If the taxpayer has an additional BOE liability that is separate from the debt addressed by the court, BOE collection staff needs guidance on how to proceed with collection of the additional liability in light of the ongoing restitution payments.

- Policy development is needed to address a situation in which collection staff becomes aware of a change in the taxpayer's financial situation while restitution payments are being made. Can or should the BOE petition the court for an adjustment to the payment amount or date certain to complete the payments?
- While payments are collected by an agency other than the BOE, the TRA Office would like assurance that the taxpayer's rights are observed.

We understand that the Investigations Division of the Legal Department normally receives information regarding the details of sentencing, including any restitution payment orders. In addition, the Investigations Division informed us they can assist collection staff when the taxpayer is not complying with the terms of the disposition and/or plea agreement. The TRA Office will work with the Legal Department, the Sales and Use Tax Department, and the Property and Special Taxes Department to develop policies and procedures to guide staff actions when taxpayers are ordered to make restitution to the BOE.

Processing of Hospital Claims for Refund Needs to Be Streamlined

Issue. Representatives of a firm whose clients are hospitals addressed the Board Members at the March 18, 2008, Taxpayers' Bill of Rights hearings. The representatives discussed specific issues their firm encounters in representing hospitals that seek refunds of sales tax reimbursement paid to vendors on purchases of medical items that are exempt from tax pursuant to Sales and Use Tax Regulation 1591, *Medicines and Medical Devices*. The firm expressed a number of concerns:

- The length of time between when their client hospital pays sales tax reimbursement to a vendor and

when the sales tax is actually refunded by the BOE is excessive, up to three years.

- Vendors receive inconsistent advice from BOE staff regarding the application of tax to specific medical products and claims are investigated by BOE staff who do not have specific expertise regarding medical products.
- Claims for refund by client hospitals for use tax paid to vendors are rejected by the vendors, reportedly because the vendors were advised by BOE staff that since the applicable tax is a use tax, the vendor is not required to address the claim for refund.
- As auditors review the claims for refund, methodologies used with statistical sampling may not be appropriate.

This firm made specific recommendations for BOE actions to alleviate the long delays associated with hospital claims for refund:

- Centralize processing of these claims to produce efficiencies and address inconsistent advice given to vendors and hospitals.
- Maintain a healthcare products database of exempt items.
- Streamline review processes so that hospitals and vendors obtain timely information regarding approval or disapproval of claimed exemptions on specific products.

Work in Process. As requested by the Board Members, on May 29, 2008 the Advocate presented a report of staff's findings in response to the concerns raised regarding hospital claims for refunds. The report, prepared by the Tax Policy Division of the Sales and Use Tax Department, identified a number of difficult issues related to hospital claims:

- Industry practice. Because hospitals generally do not provide exemption certificates at the time of the transaction or blanket certificates, liability for the tax is not shifted to them but remains with the vendor. Each hospital files a claim for refund with its vendors often long after the items are used. Vendors pass claims received from their hospital customers on to the BOE as they receive them, often resulting in the BOE receiving multiple claims from each vendor on an ongoing basis. When numerous claims are received on a continuous basis for sales by the same medical supply vendor, the district office generally handles a group of claims at one time, which may delay the processing of individual claims. In addition, since the vendors serve merely as a pass-through for the tax paid to them by the hospitals, considerable time is spent securing documentation from the vendors regarding use of items by the hospitals. Occasionally, a hospital attempts to file a claim for refund of sales tax paid to vendors directly with the BOE. This leads to delays when the BOE advises them the claim for refund of sales tax must come from the vendor.
- Responsibility for reviewing hospital claims. When the Audit Determination and Refund Section (ADRS) receives a claim for refund, ADRS reviews the claim unless the taxpayer has an audit in process, another claim from the same taxpayer was previously forwarded to the district office, or the claim amount is significant. ADRS reviews about one-third of the claims filed by hospitals and vendors. Claims for refund forwarded to a district office are assigned to a field auditor for investigation.
- Taxability of medical items. The taxability of many of the items sold depends on how the items are used by the hospital. In addition, the number of medical items is very large and the names of the items as well as their nature are constantly changing.
- Audit procedure. In a situation where the vendor collected sales tax reimbursement and filed a claim for refund on behalf of its customer hospitals, the auditor generally schedules the data on an actual basis because the use of statistical sampling would not adequately identify the customers to whom the refunds are due.

In response to these issues, staff is revising publication 45, *Tax Tips for Hospitals*, to add a new section regarding the proper method of filing claims for refund and encouraging hospitals to issue exemption certificates to their vendors when purchasing items the sale of which the hospital knows to be exempt from tax. In addition, staff is reviewing work flow processes and considering administrative changes that may assist in reducing the time required to process claims for refund. They are also looking at the feasibility of legislative and/or regulatory solutions to ease the burden of tax compliance within this industry. The TRA Office will provide input and encouragement to staff and interested parties as solutions to the concerns are sought.

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 Government 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.

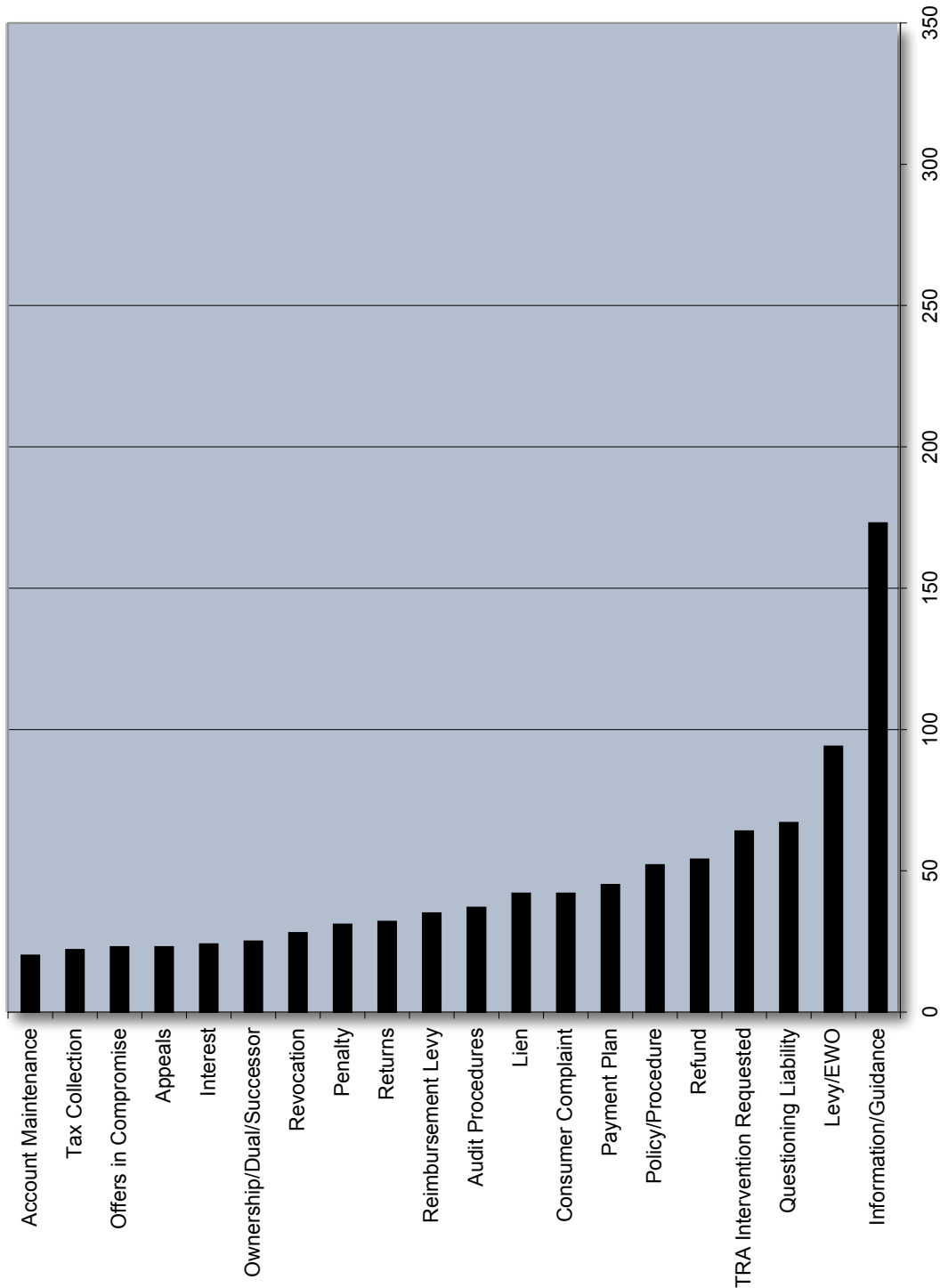
Appendix 3 Outcomes of Business Taxes Cases

Office of Origin	Cases by Issue Type			Total Cases	Customer Service Concerns	Agreed with Staff Case Handling		Case Handling Changed		Taxpayer Satisfied with Outcome	
	Audit	Compliance	Other			Yes	No	Yes	No	Yes	No
Norwalk (AA)	2	6	0	8	1	3	1	3	5	1	
Van Nuys (AC)	4	12	0	16	0	6	0	1	6	0	
West Covina (AP)	2	10	1	13	0	3	0	2	2	0	
Ventura (AR)	1	6	2	9	0	5	0	0	4	4	
Culver City (AS)	4	25	2	31	3	17	1	2	17	1	
San Francisco (BH)	1	11	0	12	0	3	0	1	1	0	
Oakland (CH)	1	6	1	8	0	5	0	0	5	0	
Santa Ana (EA)	5	29	1	35	3	17	0	5	15	1	
Riverside (EH)	3	19	1	23	1	14	0	5	11	3	
San Diego (FH)	2	16	1	19	1	5	0	0	6	0	
San Jose (GH)	5	26	0	31	2	15	0	3	15	3	
Santa Rosa (JH)	1	16	1	18	0	14	0	1	13	3	
Sacramento (KH)	6	35	2	43	4	16	3	13	13	6	
Out-of-State (OH)	2	2	0	4	2	2	0	1	1	0	
Appeals Division	7	7	0	14	0	3	0	0	3	1	
Board Members' Offices	0	0	1	1	0	0	0	0	0	0	
Centralized Collection Section	4	93	1	98	4	49	1	14	41	9	
Consumer Use Tax Section	0	10	0	10	2	2	1	3	1	0	
Environmental Fees Division	0	3	1	4	0	0	0	0	0	1	
Excise Taxes Division	2	16	2	20	5	9	1	5	7	0	
Franchise Tax Board	0	12	20	32	0	1	0	0	1	0	
Fuel Taxes Division	0	11	0	11	0	4	0	2	3	0	
HQ - General	3	6	0	9	1	1	1	2	2	0	
Offers In Compromise Section	1	9	0	10	0	3	0	1	3	1	
Petitions Section	4	5	0	9	3	6	0	0	6	0	
Refund Section	2	14	1	17	1	7	1	1	8	0	
Return Analysis Unit	0	13	1	14	1	5	1	6	6	1	
Special Procedures Section	0	13	1	14	0	5	0	3	4	0	
Taxpayers' Rights Advocate	4	2	36	42	0	0	0	0	0	0	
Other	0	27	95	122	0	3	0	0	4	1	
Total	66	460	171	697	34	223	11	74	201	36	

Note: A number of outcomes are tracked for business taxes cases. Not all outcomes are applicable to all cases.

Appendix 4

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