STATE OF CALIFORNIA

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January 16, 2009

VIA INTERNET

Dear Interested Party:

The Sales and Use Tax Department is proposing to revise Compliance Policy and Procedures Manual (CPPM) Chapter 7, *Collections*. As a result of these revisions, CPPM chapter 1, *General*, Chapter 2, *Registration*, and Chapter 3, *Account Maintenance*, were also revised. The text of the revisions to Chapter 7, provided in the following pages, includes the proposed changes summarized below. Contact information is provided on page 2 of this letter.

CPPM Section	Summary of Revisions
Chapter 7	Updated chapter to reflect new policies and procedures for collections. Some sections were renumbered to improve the sequencing of material within the chapter.
Chapter 1	Updated section 105.032, table of District and Branch Offices and Geographic Designators. Rewrote text of section 105.035 for clarity, and renumbered incorrect section numbers. Updated section 135.070 with new CPPM reference numbers. Rewrote text of section 105.073 for clarity.
Chapter 2	Revised text of sections 205.050 and 205.060 to improve clarity.
Chapter 3	Updated text in sections 315.030, 315.040, 315.060, 315.080, and 315.090 and corrected section reference numbers.

If you have any comments or suggestions related to the proposed changes described above, you may contact the Sales and Use Tax Department on or before March 13, 2009. Comments or suggestions regarding this material should be directed to the Compliance Manual Coordinator at CPPM.RevisionSuggestions@boe.ca.gov, or you may submit your comments or suggestions to:

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TEMPORARY TRANSFER OF COMPLIANCE ASSIGNMENTS 704.000

GENERAL 704.010

Form BOE-142, *District Request for Investigation*, is used when a field investigation is desired and the location of the taxpayer falls outside the jurisdiction of the district responsible for the account. Since district offices can change the responsible collector for their own assignments in ACMS, this form is only used for inter-district requests for field investigation. The office requesting the field investigation is the "requesting" district and the office that will conduct the investigation is the "receiving" district. Form BOE-142 is only available through ACMS.

Changing the responsible collector in ACMS does not replace the use of Form BOE-142 to request a field investigation for an assignment. In addition, requesting a field investigation by phone or email does not replace the use of Form BOE-142.

PROCEDURES FOR USING FORM BOE-142 704.020

If an account is not currently active in ACMS, the supervisor or collector must establish one using the "Manual Case Set-up" button in ACMS before making a request for investigation. In all cases, the collector must also create an ACMS note to explain why a Form BOE-142 was sent because the ACMS history line does not contain a reason for the request.

Once the account exists in ACMS, the requesting district should do the following when temporarily transferring an assignment for the purpose of having the receiving office conduct a field investigation:

1. Open the account in ACMS.
2. Click on the "Send Letter" button.
3. Click on Form BOE-142, "Request for District Investigation".
4. When the template appears, complete the form.
5. Click on the "Send," button and the form will print.
6. Mail the form to the receiving district or branch office that will conduct the investigation. Any additional information such as hardcopy notes, copies of correspondence, billings, or other documents that would assist the receiving office to complete the investigation should also be sent with Form BOE-142. If, after transferring the account, the requesting office receives information that may be helpful to the receiving office, the information should be forwarded promptly.
7. Mail only the original Form BOE-142 to the receiving office. It is not necessary to send multiple copies.

CONTROL OF ASSIGNMENT BY REQUESTING DISTRICT 704.030

Appropriate with the urgency, complexity or difficulty of the investigation, the requesting office should periodically follow up on the status of the BOE-142 request. The requesting office remains responsible for completing the assignment although the receiving office is responsible for working assignments transferred via Form BOE-142.

CLEARANCE OF ASSIGNMENT BY REQUESTING DISTRICT 704.040

When a requesting office clears a referred case after sending a Form BOE-142 to a receiving office, it is imperative to notify the receiving office that the case is resolved and request the return of the BOE-142 assignment. Failure to notify the receiving office of account activity could result in continued collection action against a taxpayer that has paid down the amount due, arranged to make payments, or paid the liability in full. Although ACMS notes regarding account activity are required for documentation purposes, the requesting office must also notify the receiving district by phone or e-mail of the activity.

If a partial payment is received, a copy of the Payment Application Document (in IRIS, PAY BA or DIF DA) or Form BOE-424, *Advice of Payment*, serves to notify the receiving office that a payment was received.

RESPONSIBILITY OF RECEIVING OFFICE 704.050

Form BOE-142 investigations are tracked using IRIS Assignment Control (ASC) to assign and monitor the request. In ASC, use "INVINQY" (Investigate Inquiry), as the Business Reason.

Progress reports **will** be sent to the requesting office within 30 days from the date the request is first received, and every 30 days thereafter. Although the receiving office must enter investigation notes in ACMS, Form BOE–142 is to be used as a progress report to advise the requesting office of the status of the assignment. Form BOE-142 provides a reply section that must be completed when a progress report or completed assignment is returned to the requesting office. Photocopies of the original assignment may be used for this purpose, or another Form BOE-142 can be printed from the account's history line in ACMS using the "View Letter" function.

Note: Because the online BOE-142 is password protected, print a copy of the letter and manually enter the information. Then create an ACMS note as well.

COLLECTIONS – IN THE FIELD 705.000

GENERAL 705.001

While operating in the field, a tax representative or specialist (collector) will often collect money from tax and fee-payers. A field receipt must be issued to the taxpayer to memorialize these transactions. The money collected, receipts, and other supporting documents must be submitted to the cashier along with Form BOE-609, *Tax Representative's Daily Report*, upon return to the office for inclusion in the deposit and transmittal process.

FIELD RECEIPT - FORM BOE-602 705.005

There are 25 field receipts (Form BOE-602) in each receipt book. There are three copies to each receipt, the original and two copies. The original (white) is the taxpayer's copy. The canary copy is retained by the Receipts Custodian, after review by the cashier's supervisor. The person writing the receipt will secure the goldenrod copy for 90 days.
Every person assigned a receipt book is personally responsible for the book and all its receipts until they are transferred to the cashier or the book and any remaining receipts are surrendered to the Receipts Custodian. Each receipt must be used in numerical sequence.

Collectors must use Form BOE-602 when collecting money from a taxpayer in either the field or office. While collectors normally do not accept remittances or issue receipts when in the office, exceptions to this rule occasionally occur. For example, if the district office cashier is attending a staff meeting and a collector is needed as a backup cashier, or during rush periods.

Whenever a payment is taken and Form BOE-602 is issued, Form BOE-609, *Tax Representative's Daily Report*, serves as the document transferring the payment to the cashier from the person who collected it. If a collector issues a receipt(s) in the office, Form BOE-609, must be prepared listing all the receipts issued (including any voided receipts). For monies collected in the field, all payments, receipt copies and supporting documents must be submitted to the cashier along with Form BOE-609, upon return to the office. Collectors may attach the goldenrod copy to their Form BOE-609.

PREPARING FORM BOE- 602 705.010

Receipts are prepared in triplicate with the original (white) copy delivered to the taxpayer. The Board of Equalization retains the canary and goldenrod copies. Use a ballpoint pen when writing a receipt to ensure that all the receipt copies are legible. The person accepting the payment and preparing the receipt must sign the receipt.

Collectors are to use extra care and be certain each Form BOE-602 is prepared properly. The following sections set forth certain types of errors which may be corrected and how such corrections are to be accomplished.

Payments for more than one account number can be written on one receipt when payment for multiple liabilities is included in the same remittance. **When a taxpayer pays with multiple remittances, a separate Form BOE-602 must be issued for each remittance type (i.e., check, cash, money order, cashiers check) received**. For example, if a taxpayer pays with two money orders, two receipts must be written.

Form BOE-602 only allows for the entry of four payment applications. If a taxpayer has a remittance that covers more than four payment applications, write "A/R" once in the PERIOD box for that account. In addition, if one remittance is being applied to more than four accounts, enter the payor's TIN for the person making the payment in the ACCOUNT/TIN/TAT NUMBER box, if available.

Below are instructions for completing each line of Form BOE-602:

1. LOCATION – The name of the city or community where the receipt is written.
2. "Check" boxes for remittance types – Cash, Check, Cashier's Checks, and Money Orders. The "Other" check box would include Postal Money Orders.
3. ABA NUMBER – Do not complete this line.
4. CHECK NUMBER – Enter the check number on this line.
5. CHECKING ACCOUNT NUMBER – Do not complete this line.
6. NAME – This line should contain the name of the taxpayer. If payment is made by a third party (e.g., a payment received in the field from a levy), enter the name of the person making the payment. If payment is made on behalf of the taxpayer, such as from an employee or delivered by messenger, the name printed on the check should be entered. If cash payment is made, the name of the taxpayer should be entered.
7. REMIT ID – Do not complete this line. The cashier will enter the Remittance ID obtained from IRIS onto this line.
8. ACCOUNT/TIN/TAT NUMBER – **This line must be completed**. Multiple account numbers, TIN or TAT numbers may be entered provided all payments are from the same remittance. When a TIN number is used, circle the **TIN** at the top of the column.
9. FO/DIF/NOTICE + NUMBER – FO, DIF, or Notice ID numbers **will not be used.**
10. PERIOD – **This line must be completed.** Enter the period code and/or appropriate application type (i.e., A/R, PP1 or PP2, S/D, AUD, R/F, W/F). For prepayments, reinstatement fees, and audits, enter PP1 or PP2, R/F, or AUD respectively to the right side of the period code. For security deposits, enter the account number with S/D in the PERIOD box.
11. AMOUNT – Amounts need to be entered with dollars and cents written out (e.g., $595.00). **Do not** use a dash to indicate zero cents.

ERRORS NOT REQUIRING A REPLACEMENT RECEIPT **705.030**

The following errors may be corrected without issuing a replacement receipt:

1. An error in the date that does not affect penalty and/or interest. Correcting the receipt date requires a supervisor's signature beside the correction.
2. A misspelled name.
3. An incorrect period code.
4. An incorrect account number.

Using correction fluid or tape on a field receipt is not allowed. These types of errors are corrected by lining out the incorrect entry, while still leaving it legible, and making a correcting entry.

If the error is found after delivery of the receipt to the taxpayer, the error may be corrected on the BOE's receipt copies. When a correction of this type is made, it is not necessary to recover or correct the taxpayer's receipt copy.

VOIDING FIELD RECEIPTS **705.035**

Field receipts will be voided when any of the following errors are discovered before delivery of the receipt to the taxpayer:

1. An error in the amount (i.e., the dollar amount entered on the face of the field receipt).
2. An error in the date that affects the incidence of penalty and/or interest.
3. Extensive errors that make the validity of the field receipt questionable.

A voided field receipt will be clearly marked by:

1. Stamping or writing the word "VOID" or "CANCELED" on all copies of the receipt.
2. Showing the reason for voiding the receipt.
3. Signing in ink across the face of all copies.

Every voided field receipt must be approved with the signature of a supervisor on the voided receipt and reference made to the replacement field receipt number, or to the Remittance ID from the MICR receipt, if applicable.

If a receipt must be voided, and all three copies are available, the issuing employee should take all three copies of the field receipt to their supervisor for signature. The white and canary copies should be returned to the cashier and the goldenrod copy should be retained by the issuing employee.

If the taxpayer has the original field receipt to be voided, the canary copy will be forwarded to the Receipts Custodian, after review of the cashier's supervisor. The goldenrod copy will be held by the issuing employee and a letter will be sent to the taxpayer along with the MICR receipt. The Remittance ID number, on the MICR receipt, must be written on the voided field receipt.

ERROR IN AMOUNT SHOWN ON FORM BOE-602 705.030

When the amount of cash collected is more than shown on Form BOE-602, *Field Receipt*, the error will be brought to the attention of the supervisor. A supplemental receipt will be prepared for the difference and a copy mailed to the taxpayer with a letter of explanation. If the original remittance is a check, the field receipt must be voided and a new field receipt issued for the correct amount or an accurate MICR receipt replacement with a letter of explanation. If a MICR replacement receipt is issued, the Remittance ID from the MICR receipt will be written on the voided receipt. It is no longer necessary to retrieve the erroneous field receipt from the taxpayer.

The supervisor will send a letter to the taxpayer explaining the original field receipt was receipted for the incorrect amount or date. The letter shall contain the following information:

1. The original Form BOE-602 receipt number and remittance ID number if available
2. Date of Original Receipt
3. Original Amount
4. Revised Amount
5. Brief Explanation for revision
6. Request for the taxpayer to contact the supervisor with any questions about the revised receipt.

If the taxpayer claims that the cash amount shown on the receipt is correct, no letter will be sent, but the matter must be brought to the attention of the supervisor and the District Administrator.

ERROR IN DATE SHOWN ON FORM BOE-602 705.035

If an erroneous date affecting penalty and interest is not discovered until after delivery of the taxpayer's copy, it will promptly be brought to the attention of the supervisor. The taxpayer will be informed in writing of the error and the Board's copies of the field receipt will be corrected and approved with the signature of the supervisor placed near the correction.

SECURITY OF ISSUED RECEIPT BOOKS 705.040

When receipt books are issued to staff by the Receipts Custodian, the recipient is responsible for security of the receipt book. An employee issued a receipt book must keep the book locked in their work area, or a compartment in the safe to which only they have access. Receipt books must never be left on top of desks or counters, or placed into desks that do not lock. It is incumbent upon employees to use the same level of care to protect the receipt books outside the workplace as within. If a receipt book or an individual receipt is missing, the supervisor is to be notified immediately.

LOST OR STOLEN RECEIPT BOOKS 705.045

If a receipt book is lost or stolen, the collector must notify his or her supervisor immediately. The supervisor will follow established procedures relating to lost or stolen receipt books.

MONTHLY RECEIPT REPORT **705.050**

On the morning of the first working day of each month, all persons issued receipt books will complete a Form BOE-18, *Unused Receipts*. Form BOE-18 should be completed immediately and turned in to their supervisor together with receipt books for the supervisor's verification of unused receipts and signature. The original of the Form BOE-18 is given to the Receipts Custodian for additional verification and retention.

ENDORSEMENT OF CHECKS **705.055**

When a check, money order, cashier's check, or other non-cash instrument (hereinafter "check") is collected in the field, the collector will immediately endorse the check by writing on the back "For deposit only to State Board of Equalization" along with the receipt number within the top half-inch of the endorsement area.

If the maker does not complete the "payee" line on the front of the check, the collector will enter "Board of Equalization" in that space immediately upon acceptance of the check. The BOE account number will also be written on the face of the check.

CASH COLLECTIONS - OVERNIGHT RETENTION OF FUNDS **705.060**

When cash is accepted by a collector, all bills in denominations of $20.00 or greater must be tested with a counterfeit detector pen in the presence of the taxpayer. The bills must be segregated in individual envelopes together with the Board copies of the BOE-602, *Field Receipt*.

The overnight retention for cash collected is not to exceed $500. Due to the overnight retention limit, all funds should be kept segregated (by receipt number) until exchanged for a cashier's check or money order. When total cash received exceeds $500 and is to be held overnight, separate cashier's check(s) or money order(s) must be obtained for each cash remittance.

Cash collection will be transferred to the cashier on the day of receipt whenever practical. It is not considered practical for the collector to make a special trip to the office or go out of his/her way to convert the cash to a money order, etc., unless the total cash collected exceeds $500. Each exchanged remittance must have a separate cashier's check or money order. The action taken should be in accordance with the availability of the following alternatives for disposition or protection of funds:

1. Transfer the money collected to the cashier in the district or branch office.
2. Purchase a separate cashier's check or money order, payable to the Board of Equalization, for each payment collected. (The cost of the cashier's check or money order will not be deducted from either the cashier's check or money order but will be paid from the collector's own funds. The collector will claim reimbursement on his or her travel expense claim.)

In any instance not covered by the above items, the collector will take whatever action is necessary to protect the cash collected. Under all circumstances, the collector will exercise good judgment and use every precaution to prevent loss or theft.

TAX REPRESENTATIVE'S DAILY REPORT – FORM BOE - 609 **705.065**

Collectors are required to write receipts for all field collections and record the receipt numbers and their totals on Form BOE-609, *Tax Representative's Daily Report*.

If a cashier is not available and it becomes necessary for a collector to issue a Form BOE-602, *Field Receipt* in the office, Form BOE-609 must be prepared listing all the receipts issued (including any voided receipts). Form BOE-609 will be used as the transfer document between the collector and the cashier.

Collectors should turn in remittances, completed receipts, supporting documents, and Form BOE-609 to the cashier either the same day or by 9:00 a.m. for field receipts covering the previous day's field work.

The following guidelines must be followed when completing Form BOE-609:

1. Receipts are to be written on the Form BOE-609 in consecutive numerical order. The receipt number, including voided receipts and the amount of the receipt must be listed in sequence to show the taxpayer to whom it was written.
2. Any receipts that were written for **cash** should have the amounts circled on the Form BOE- 609. **When cash is converted to certified funds, the receipt numbers representing those amounts must be shown under "Remarks."** Each exchanged remittance must have a separate cashier's check or money order when the total cash to be held overnight exceeds $500.00.
3. The collector must pay any charges for the cashier's check or money order and indicate the expense incurred on Form BOE-609. These charges may not be deducted from the taxpayer's remittance.
4. At the time the collector submits the funds and related documents to the cashier, the total collected is to be shown in the space provided on Form BOE-609. When the receipts are received, the cashier must count the funds, date, and initial Form BOE-609 **in the presence of the collector**, make three copies and return one copy and the original to the collector.
5. All entries for receipt numbers, amounts, cashier's initials, and date must be written in ink.

The collector will provide a copy of Form BOE-609 to their supervisor. The collector retains the original BOE-609 for a minimum of 90 days when funds have been transferred to the cashier.

ACCOUNTS RECEIVABLE, SPECIAL MAILING 706.000

GENERAL 706.010

Semiannually, the Board of Equalization mails a Statement of Account to Consumer Use Tax accounts, most Special Taxes and Fee program accounts, and all Sales and Use Tax accounts (active and closed-out) that owe a “final” liability. The United States Postal Service will return incorrectly addressed statements to the Board of Equalization headquarters who, in turn, will forward them to the responsible district office, Centralized Collection Section (CCS) or Special Taxes division to investigate for a current valid address.

DISTRICT RESPONSIBILTY AND PROCEDURES 706.020

The district offices, CCS, and the Special Taxes divisions are responsible for making online changes to clients/accounts when valid addresses are located. When making an online address change, comments should be made on the client TIN (CTS CM) or TAR AM (account).

Upon finding a current valid address, line out the old address on the envelope, write in the new address and re-issue the statement of account to the taxpayer at the new address. If the account is active and an investigation does not disclose a better address, a field call should be performed to determine if the business has closed or has moved and the case notes updated with the results of the investigation.

CPPM 635.010 allows a closed out account to be reinstated within 18 months after the closeout is processed (sublocations may be reinstated up to 6 months after the close out date). An account cannot be reinstated until the taxpayer files all delinquent tax returns, pays the tax, penalty, and interest owing along with the appropriate reinstatement fee, and posts an appropriate security deposit if deemed necessary.

In general, an account closed for more than 18 months (or 6 months for sublocations) may not be reinstated. The taxpayer must file and pay all delinquent tax returns, pay all amounts due, and meet any other requirements necessary to complete the close out. The taxpayer must then complete an application for a new seller's permit or special taxes account. The start date of the new permit will be backdated to the closeout date of the previous permit. In addition, the office in control of the account may require the taxpayer to post a security deposit under the new permit.

~~ACCOUNTS RECEIVABLE, SPECIAL MAILING 781.000~~

~~GENERAL 781.010~~

~~Semiannually, the Board makes a special Statement of Account mailing to selected sales and use tax accounts having final accounts receivable balances. The mailings include closed-out and Consumer Use Tax accounts.~~

~~DISTRICT RESPONSIBILITY AND PROCEDURE 781.020~~

~~The majority of the billings are delivered as addressed; however, a portion is returned to headquarters by the postal authorities. The returned billings will be sent to the respective districts for a better address.~~

~~If a better address is available, the old address should be lined out, the new address added, and the registration record corrected.~~

~~If a new address is not available or practical (skips, recently paid in full, etc.), the reason should be noted on the billing.~~

~~The above two groups should be kept separate and forwarded to Headquarters Special Procedures Section in batches mailed no more frequently than weekly. All billings should be returned within 30 days of receipt in the district.~~

~~Headquarters Special Procedures Section should be notified whenever the district becomes aware of an accounts receivable address change. Continuous attention to these accounts will keep the undeliverable mail to a minimum.~~

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~~INSTALLMENT PAYMENT PROPOSAL GUIDELINES 707.000~~

~~SHORT TERM PAYMENT PROPOSAL GUIDELINES 707.010~~

~~Short term payment proposals may be considered for active account liabilities where the individual, corporation, limited liability company (LLC) or limited partnership, over the previous three years or since the start date of the business, has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required (with the exception of the current liability). In reviewing past history, an individual's record under related accounts as an individual, partner or corporate officer should be considered. If a taxpayer's payment history is unsatisfactory, an exception may be granted at the discretion of the district. The primary consideration in accepting a short term payment plan is whether the plan is in the best interests of the state. Staff shall have full discretion in deciding to accept or deny a short term payment proposal, based on the taxpayers past payment history, the merits of the proposal or the viability of the business. Staff must document justification in ACMS Notes.~~

~~Short term payment plans should generally not exceed twelve months in length. Payment should generally be made on a weekly basis. Exceptions to the twelve month maximum must be approved by a supervisor and noted on ACMS notes with justification. Current tax returns and prepayments must be filed and paid timely as a condition of the payment plan.~~

~~If a short-term payment proposal exceeds two months on an active account, the taxpayer should be required to make weekly or monthly payments against the anticipated return for the upcoming period. This method will ensure that the taxpayer does not incur further debt with the Board and does not accrue further penalties for failure to file or pay a return timely.~~

~~A complete financial statement (Form BOE–403–E, *Statement of Financial Condition*), including bank statements (both personal and business), income tax returns, accounts receivable listings (including names, addresses, phones numbers and amounts owed), income and expense (or profit and loss) statements, balance sheets, and cash flow statements may be required. An individual may be required to submit information as listed on Form BOE–58, *Installment Payment Proposal — Need Info*. A corporation may be required to submit information as listed on a Form BOE–60, *Installment Payment Proposal — Need Corporate Info*. Additional information and verification may be required as deemed necessary by the district. Weekly or monthly payments should not be forestalled while financial information is compiled by the tax debtor.~~

~~The tax debtor should be required to utilize any available lines of credit, including credit card cash advances or a bank loan, to pay the liability in part or in full.~~

~~Upon acceptance of a short term payment proposal, a Form BOE–407, *Installment Payment Proposal*, should be completed and provided to the tax debtor for a signature, or a Form BOE–905, *Confirmed Payment Schedule*, should be provided to the tax debtor. If a lien has not already been filed for the period/s in question, a conscious decision must be made by staff to either withhold the filing of a lien or advise the tax debtor of the possibility of a lien filing. Staff must document the decision and basis in ACMS Notes. ACMS DocGen will prompt the user to include either a lien warning blurb or a lien withhold blurb on the Form BOE–407. The tax debtor should be verbally advised during the installment payment proposal negotiation when a lien may~~

~~be filed despite the installment payment agreement. Even if a tax debtor is likely to complete the payment plan before returning the Form BOE-407, staff should send the BOE-407 to document the payment proposal.~~

~~STANDARD EXPENSE LEVELS FOR LONG TERM PAYMENT PLANS 707.020~~

~~The following standard expense level guidelines should exclusively be applied to closed accounts and to open accounts that only have an audit liability. Long term payment plans are generally for a period of twelve months or longer. Active, self-declared liability payment proposals are defined as short term payment proposals, and are covered above in section 707.010.~~

~~Before accepting any proposal, the financial condition of the tax debtor will be thoroughly investigated. A complete financial statement in an acceptable form will be obtained (Form BOE-403-E, *Statement of Financial Condition*, is available for use). An individual may be required to submit information as listed on a Form BOE-58, *Installment Payment Proposal — Need Info*. A corporation may be required to submit information as listed on a Form BOE-60, *Installment Payment Proposal — Need Corporate Info*. If a tax debtor has cash equal to the tax liability, immediate payment should be demanded. Otherwise, unencumbered assets, interests in estates and trusts, and lines of credit from which money may be borrowed to make payment should be considered. In addition, a tax debtor's ability to obtain an unsecured loan should be considered. If there are assets with value and a tax debtor is unwilling to raise money from them, enforcement action should be taken. If there appears to be no borrowing ability, the tax debtor should be asked to defer payment of certain other debts if that would make possible paying the liability in full or in larger installments than otherwise possible. We should not request a payment deferral that will cause the tax debtor to lose assets and thereby jeopardize our ability to collect the liability.~~

~~The terms of any proposal should provide for payments commensurate with the ability to pay (equal to monthly disposable income). Installment payments should be paid on at least a monthly basis unless there are extenuating circumstances present, that make it advantageous to accept payments on a less frequent basis.~~

~~INSTALLMENT PAYMENT AGREEMENTS — TERMINATION 707.021~~

~~If a tax debtor defaults on the terms of a documented installment payment agreement, a Form BOE-407-T, Installment Payment Agreement – Notice of Termination must be sent to the taxpayer immediately. Revenue and Taxation Code Section 6832(b) requires that this notice must be given to the tax debtor if staff intends to terminate the installment payment agreement and continue with collection action. Default of the installment payment agreement is grounds for termination, and may include missed or late installment payments, delinquent or partial remittance tax returns, or failure to disclose assets or income on a financial statement. Other reasons for termination could include a failure to increase payment levels as requested based on new assets or income, or a failure to comply with a review of financial status. An additional audit liability may be a reason to review the financial status of a tax debtor.~~

~~Upon mailing of the notice of termination, staff must wait 15 calendar days to allow the tax debtor to file a written request for an administrative review before initiating collection action. Once the 15 days has elapsed, collection action is not required to be halted while an administrative review is scheduled or commencing. However, if the tax debtor provides a reasonable explanation why an administrative hearing can not be set within the 15 day period, staff should administratively extend the grace period before commencing with collection action unless there is a compelling urgency for~~

~~such action to protect the State's interests.~~

~~INSTALLMENT PAYMENT AGREEMENT — ADMINISTRATIVE REVIEW OF TERMINATION 707.022~~

~~If a tax debtor requests an administrative review, one shall be provided at the tax debtor's earliest convenience at the district or branch office of the tax debtor's choice. Every effort shall be made to accommodate the tax debtor and allow a review prior to the lapse of the 15-day grace period as mentioned in section 707.021 above.~~

~~The administrative review shall be informal, and the review officer shall be a Tax Compliance Supervisor at the district or branch office. When possible, the review officer shall not be the immediate supervisor of the employee who handled the account or issued the Installment Payment Agreement – Notice of Termination. The review officer shall give the tax debtor sufficient advance notice of the time scheduled for the administrative review, either verbally or in writing, and document the contact in ACMS notes. Form BOE–407–AR, Administrative Hearing/Review Notice is available on ACMS DocGen for this purpose. The tax debtor shall be advised that the review will be limited to the issue of the default of the installment payment agreement, and that relevant documentation shall be collected for presentation at the review. The review officer shall issue a written decision within 5 calendar days after the administrative review.~~

~~ALLOWABLE EXPENSES — LONG TERM PAYMENT PLANS, DEFINITIONS 707.030~~

~~1. *Allowable expenses*: There are two types of allowable expenses — necessary and conditional.~~

~~A. *Necessary expenses* must meet the necessary expense test. The necessary expense test is a general rule, that states that the expense must provide for a tax debtor's and his or her family's health, welfare or production of income. In some situations, the Board representative will need to make a judgment call to determine if the expense qualifies as necessary. The expenses must be reasonable in amount. The total necessary expenses establish the minimum a tax debtor and family need to live. There are three types of necessary expenses:~~

~~1. Statewide *standards*. These establish standards for reasonable amounts for six necessary expenses. Standards for food, housekeeping supplies, apparel and services, and personal care products and services have been originally developed by the Internal Revenue Service based on the Federal Bureau of Labor Statistics, Consumer Expenditure Survey 1994–95, and adjusted for inflation to the year 1996. The standards have been stratified by income level. As income levels increase, the percentage of income provided for these expenses decreases. The standard level for miscellaneous expenses was developed by the Board.~~

~~2. Local standards. These establish standards for three necessary expenses, housing, utilities and transportation, based on local economic factors.~~

~~3. Other. Other expenses may be allowed if they meet the necessary expense test. They must also be reasonable in amount. Since there are no statewide or locally established standards for determining reasonable amounts, the Board employee responsible for the case must determine whether the expense is necessary and the amount is reasonable. A common example is child/dependent care.~~

B. Conditional expenses. These expenses do not meet the necessary expense test. However, they are allowable if the tax liability, including projected interest and penalty accruals, can be paid in full within three years.

2. Three year rule. This rule establishes a time limit. For substantiated conditional and excessive necessary expenses to be allowed, the tax liability, including projected interest and penalty accruals, must be fully paid within three years.

3. One year rule. This rule establishes a time limit. It provides the tax debtor up to one year to modify or eliminate excessive necessary or not allowable conditional expenses if the tax liability, including projected interest and penalty accruals, cannot be fully paid within three years. This period can be adjusted from one to twelve months based on the nature of the expense.

4. Ninety day rule. Payments on unsecured debts will not be allowed if omitting them would permit the tax debtor to pay in full within 90 days. Minimum payments may be allowed on credit cards to preserve a tax debtor's credit rating.

5. Reasonable amount. For certain specified expenses, the reasonable amounts are provided by the Statewide Standards and the Local Standards. If the expense falls under Other Necessary or Conditional Expenses, the Board employee responsible for the case will determine what amount is reasonable from any information available (e.g., comparable costs for child/dependent care for the region). If the tax liability, including projected interest and penalty accruals, can be fully paid within three years, the Board will allow a tax debtor's claimed expenses if the expenses fall within the statewide standard limits, or if the tax debtor substantiates each expense.

6. Disposable income. This is the amount of income that remains after allowable expenses are deducted from gross income, including deductions required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited to, Federal and State taxes, FICA contributions, Medicare contributions, and wage garnishment payments. Disposable income is the amount available to apply to the tax liability.

GUIDELINES FOR ACCEPTANCE OF LONG TERM PAYMENT PLANS 707.040

The following procedures are provided as general guidelines. As always, Board representatives should use professional judgment and tact in dealing with tax debtors on payment proposals.

Necessary expenses, if reasonable in amount, should generally be allowed. If the necessary expense is in excess of the established standards, it may be allowed if the tax liability, including projected interest and penalty accruals, can be paid within three years (Three year rule). If the liability can not be paid within three years, the tax debtor should be given up to one year to adjust for the non-allowable amount. After this adjustment period, the tax debtor should be required to increase the installment payment by the difference (One year rule). A list of typical necessary expenses can be found in Section 707.060. Necessary expense charts are to be used as maximum guidelines. If the actual expense, as shown via documentation, is less than the maximum limit, the actual amount should be used.

Conditional expenses are allowable if a tax liability can be fully paid within three years through an installment agreement. If the liability can not be paid within three years,

~~the one year rule should be applied, and the tax debtor should be told to make the necessary adjustment. A list of typical conditional expenses can be found in Section 707.070. Conditional expense charts are to be used as maximum guidelines. If the actual expense, as shown via documentation, is less than the maximum limit, the actual amount should be used.~~

~~Allowable expense guidelines should only be applied to closed accounts and for open accounts, that only have an audit liability. In the case of an audit liability, the tax debtor should be questioned on whether the accounting practices of the business have been corrected to prevent future audit liabilities of a similar nature. This is particularly true of payment proposals on audits with fraud or negligence penalties.~~

~~All proposals for payments exceeding 90 days must be reviewed by a supervisor and approved by the district administrator or his/her designee. Upon acceptance of a long term payment proposal, if a lien has not already been filed for the period/s in question, a considered decision must be made by staff to either withhold the filing of a lien or advise the tax debtor of the possibility of a lien filing. ACMS DocGen will prompt the user to include either a lien warning blurb or a lien withhold blurb when preparing Form BOE-407, Installment Payment Agreement. Form BOE-407 is then sent to the taxpayer to be signed and returned.~~

~~BOE-407 payment plans must be reviewed each twelve month period (minimum) and recorded in ACMS Notes. Prior to this review, the collector must conduct an asset check to verify the tax debtor's current income, a request for a current income tax return and a review of the original BOE-403 to determine if any expenses have terminated (for example, a vehicle loan may have been paid off or a dependent may have completed schooling within the last year).~~

~~Accounts in the Promise To Pay State (XX05) for 365 days will automatically be routed to the Promise Review State (XX65). Accounts in the Promise Review State will be placed on the collector's worklist. Collectors are expected to perform a review of the payment plan as outlined above, and if appropriate route the account back into the Promise To Pay State. Please note that when ACMS routes accounts into the Promise Review State, the promise will remain in effect and any promise reminder notices that are scheduled to be sent out will continue. If it is determined that the existing promise is still in the best interest of the State, then manually route the account back into the Promise To Pay State. If, however, the promise needs to be cancelled, collectors should route the accounts to his or her supervisor and ask the supervisor to cancel the promise.~~

~~Accounts that remain on the new Promise Review State for more than 15 days will be automatically routed to the worklist of the assigned collector's supervisor.~~

~~ANALYSIS, SUBSTANTIATION, AND VERIFICATION OF INCOME AND EXPENSES — LONG TERM PAYMENT PLANS 707.050~~

~~A tax debtor may generally be allowed to claim expenses up to the statewide standard and local standard limits without substantiation. If standard limits are not allowed, the reasons must be documented in ACMS. Two standards that require substantiation are the vehicle ownership costs and housing expenses. Tax debtors are required to substantiate vehicle ownership costs since they may not be currently paying for a loan or lease of a car. Tax debtors must show documentation for housing since costs vary greatly and since a residence may be fully paid for. If a tax debtor claims an amount higher than the statewide or local standard for a single expense, then every expense under the statewide or local standards must be substantiated~~

~~before consideration will be given. In any case where the maximum limit exceeds the actual amount, the actual amount should be used.~~

~~A tax debtor should also be required to substantiate expenses, that are categorized as other necessary and conditional expenses. For substantiation, proof could include items like pay stubs, income tax returns, bank statements, credit card vouchers, rent/lease receipts, payment coupons, court orders and contracts. Canceled checks should not generally be accepted as proof of an expense.~~

~~Certain items that are traditionally listed as necessary expenses should not be allowed if they do not meet the necessary expense test. Examples include additional vehicles (more than one), premium cable television programming, long distance telephone charges and charitable contributions. These items should not be allowed unless it can be shown that the expenses are necessary for the tax debtor's and his or her family's health, welfare or production of income, and that they are reasonable in amount.~~

~~Compare income to expenses. If expenses exceed income, the tax debtor should be required to provide an explanation. If the stated income is less than a recent income tax return, request an explanation and documentation.~~

~~When review of tax debtor's assets has given no obvious solution for liquidating the liability, the income and expenses should be analyzed to determine the amount of disposable income available to apply to the tax liability. Expense analysis is necessary only if collection is not possible from available assets.~~

~~Tax debtors who own homes should provide documentation showing the monthly payment amount, purchase price, date of purchase, the principle amount due, and proof that property insurance and taxes are not being paid via an impound account with the lender. This last item is required to assure that taxes and insurance are not claimed twice, once under the mortgage payment and once in monthly out-of-pocket expenses. The same statewide standard levels should be applied to tax debtors who rent a residence.~~

~~In discussing expenses with tax debtors, it should be emphasized how much is expected from them rather than how they are expected to spend their money. For example, if tax debtors have excessive necessary or not-allowable conditional expenses, they should not be told that they cannot own a boat or a summer cabin. Instead, tax debtors should be advised that they are expected to pay an amount equal to that which is claimed as an excessive necessary expense or a not-allowable conditional expense. Tax debtors should be responsible for determining what modifications or eliminations must be made in their budgets in order to pay the tax liability. This is especially true for issues such as excessive day care expenses.~~

~~If a tax debtor has incurred an expense that is excessive or does not pass the necessary expense test after a tax liability becomes final, the three year rule and the one year rule may not apply. For instance, if a luxury automobile was purchased after a tax liability billing was issued, the tax debtor may be required to pay the Board an amount equal to the disposable income and the portion of the automobile expense, that exceeds the standard limits.~~

~~In cases where a tax debtor is asked to make adjustments based on the one year rule, special considerations may become necessary. For example, when deciding whether a tax debtor should be required to pay the Board an amount equal to excessive housing expenses, other factors should be considered such as the increased cost of transportation to work and school, the tax consequences of a lost interest deduction, lease termination fees and the cost of moving to a new residence.~~

When analyzing expenses for a tax debtor, who has a business, make sure that business expenses are not also included under personal expenses.

If a tax debtor defaults on a payment arrangement, then the tax debtor must generally catch up on the missed payment/s to re-enter the payment proposal. Exceptions must be documented in ACMS Notes. A written warning should be provided to the tax debtor after the first default indicating that future defaults will not be subject to the same exception.

If a comprehensive review of a tax debtor's financial statement shows that there is currently no disposable income, the account can be placed in the ACMS Wait 180 State for a period of 180 days with supervisory approval. This is advisable if the tax debtor or the tax debtor's spouse is looking for a new job, or if an expense such as a car loan is due to be paid in the near future. A separate follow up can be set for an earlier date if necessary.

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS 707.060

STATEWIDE STANDARDS:

Maximum Monthly Standards for Food, Clothing and Other Items

Summary (Chart 1)

Maximum Monthly Standards for Food, Clothing and Other Items

Detailed Breakdown (Chart 2)
Detailed Breakdown (Chart 2)
Detailed Breakdown (Chart 2)
Detailed Breakdown (Chart 2)
Detailed Breakdown (Chart 2)

LOCAL STANDARDS:

Maximum Monthly Housing and Utilities

Allowable Living Expenses for California (Chart 3)*

* Verification of Housing Expenses should be obtained in all cases. Standards for owned dwellings include mortgage payments, home equity loans, property taxes and insurance, expenses for property management/security, expenses for maintenance and repairs. Standards for rented dwellings include rent, parking fees, maintenance, renters insurance and other expenses.

Utilities include natural gas, electricity, fuel oil, wood, kerosene, coal, bottled gas, water, garbage and trash collection, sewerage maintenance, basic phone service and other public services. Basic cable television should be included in miscellaneous expenses.

Figures are based upon Federal Internal Revenue Services January 1, 2004 allowable living expenses for similar payment plans.

Maximum Allowable Monthly Transportation Expenses (Chart 4)

* Tax debtor must show documentation for a lease or loan on a vehicle to claim ownership costs.

Transportation costs include gasoline, oil, maintenance and repairs, vehicle insurance, registration and license fees, parking fees, towing charges, tolls and automobile service clubs. Transportation costs also can be used to cover public transportation such as fares for mass transit, buses, trains, airlines, taxis, private school buses and boats, provided they pass the necessary expense test

OTHER NECESSARY EXPENSES:

Accounting and legal fees for representation before the Board. Fees are necessary only

~~if they are for representation before the Board or they meet the necessary expense test (health and welfare or production of income). Other accounting expenses and legal fees are not necessary expenses but are conditional expenses and are allowable if the tax liability can be paid in full, including projected interest and penalty accruals, within three years.~~

~~Charitable Contributions. These expenses include donations to tax exempt organizations such as: civic organizations, religious organizations (tithing and educational), and medical services or associations. To be necessary, charitable contributions have to provide for the health and welfare of the tax debtor and his or her family or be a condition of employment. Any contributions that do not meet the necessary expense test will be considered as conditional, and may be allowed only if the tax debtor can show a pattern of similar contributions in the past.~~

~~Child Care. Baby sitting, day care, nursery and preschool. Expenses are necessary if they meet the necessary expense test (health, welfare or production of income). Care should be taken to ensure that only a reasonable amount is allowed. Costs of childcare can vary greatly. We should not allow expensive childcare if more reasonable alternatives exist. If a portion of a child care expense is disallowed, the tax debtor should be not be told to move their child to a cheaper facility. Instead, tax debtors should be advised that they are expected to pay an amount equal to that which is determined to be excessive. Tax debtors should be responsible for determining what modifications or eliminations must be made in their budgets in order to pay the tax liability.~~

~~Court-Ordered Payments. Alimony, child support (including orders made by a state administrative agency) and other court ordered payments. If the expense is already being deducted directly from a tax debtor's pay, do not allow it to be included as an additional expense.~~

~~Dependent Care. For the elderly, invalid or handicapped. This expense is necessary if there is no recourse except for a tax debtor to pay the expense.~~

~~Education. Education is a necessary expense if required for a physically or mentally challenged child and no public education providing similar services is available. It is also a necessary expense if required as a condition of employment, such as a teacher whose employment is conditioned upon completion of a graduate program.~~

~~Health Care. Health insurance, medical services, prescription drugs and medical supplies (including eyeglasses and contact lenses). A guide dog for someone who is visually handicapped would also fall into this category.~~

~~Involuntary Deductions. Deductions from income include FICA, Medicare and mandatory union dues.~~

~~Life Insurance. To be a necessary expense, insurance is limited to term policies that are already in effect at the time of the billing. Life insurance used as an investment is not a necessary expense. Consider if the payoff of the policy is high compared to the lifestyle of the beneficiaries. Even for term policies, expensive premiums must be justified. On whole life policies, the tax debtor should be required to obtain a loan against the value, withdraw the cash value (if it can be done without penalty) or suspend payments while the payment plan is in progress (if allowable by the insurance company). If payments can not be suspended, the expense will be considered as conditional.~~

~~Secured or Legally Perfected Debts. If the debts meet the necessary expense test (health, welfare or production of income), payments will be allowed for these debts. To~~

~~be allowed, a tax debtor must substantiate that the payments are being made regularly.~~

~~Taxes. Current federal (including FICA and Medicare), state and local tax payments. Back federal, state and local tax payments are necessary expenses. A tax debtor who is currently making payments on back taxes to other agencies should be required to work out a prorated payment to those taxing agencies based on the total liability amounts.~~

~~Unsecured Debts. Minimum payments will be allowed if the tax liability, including projected interest and penalty accruals, will be paid within three years. Otherwise, payments will have to come from the total amount allowed under statewide and local standards. Payments on unsecured debts will not be allowed if omitting them would permit the tax debtor to pay in full within 90 days, with the exception of credit card minimum payments (90 day rule).~~

~~Miscellaneous Expenses. This expense category has been established to avoid confrontation over minor expenses, that the tax debtor claims, are necessary, but which the Board does not recognize as necessary. Examples include cable television bills for remote areas with poor reception, extracurricular activities for children or monthly Christmas savings account deposits.~~

~~CONDITIONAL EXPENSES, LONG TERM PAYMENT PLANS 707.070~~

~~Accounting and Legal Fees. Fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health, welfare or production of income). Other accounting and legal fees are conditional expenses and are allowable if the tax liability can be paid in full, including projected interest and penalty accruals, within three years.~~

~~Education. Expenses for private elementary and secondary, or public and private college education are conditional expenses and are allowable if the liability, including projected interest and penalty accruals, can be fully paid within three years.~~

~~Housing. Housing other than the principal residence is not a necessary expense. Other housing is a conditional expense allowable only if the tax liability, including projected interest and penalty accruals, can be paid within three years. Examples of such housing would include vacation property, owned, rented, leased or time shared. If equity exists in the property, the tax debtor must make an attempt to borrow against the property.~~

~~The Board will generally allow a subordination of a lien to refinance a home to allow for increased payments or a lump sum payment from the refinance.~~

~~Other costs associated with housing are usually conditional. For example, pool service and gardening are optional and could be done by the tax debtor. Other types of home maintenance, such as roofing and plumbing repairs, may qualify as necessary expenses.~~

~~Retirement — voluntary payments. Payments will be allowed if the liability, including projected interest and penalty accruals, will be paid in full within three years and if the tax debtor's voluntary contribution existed prior to the tax liability.~~

~~Transportation. Although transportation charges, that are within the statewide standard limits, are not generally questioned, transportation not needed for family health, welfare or the production of income is not a necessary expense. If the tax debtor is claiming expenses for more than one vehicle, the additional vehicle must pass the necessary expense test. A review of the vehicle usage to determine~~

~~conditional expenses may be required if the tax debtor is claiming in excess of the standard expenses in the transportation expense or in other standard expense levels. In keeping with the necessary expense test, any expenses associated with boats, motorcycles and recreational vehicles will not be allowed unless they are necessary for the production of income.~~

~~Secured or Legally Perfected Debts. Debts, that do not pass the necessary expense test, will be considered as conditional expenses, provided that the tax debtor can show that the payments are being made regularly.~~

MISCELLANEOUS 707.000

REWARD PROGRAM 707.010

RTC section 7060 provides for a reward program for information resulting in the identification of underreported or unreported sales and use taxes. If a person indicates that for a reward (monetary compensation) he or she has information that would enable the Board of Equalization to recover sales or use tax revenues, the person should be advised that, to date, the Legislature has not appropriated funds for the reward program. Although no reward money is currently available, an appeal to the person's sense of fair play (equal treatment/payment of taxes for all) and responsibility as a good citizen may result in the person divulging the information.

STANDARD RULES FOR APPLYING A PAYMENT 707.020

The standard rules for applying a remittance or payment follow the sequence:

1. As directed by the taxpayer at the time of voluntary payment.
2. Collection costs (billed, unbilled) if the payment is a warrant payment. In the case of a warrant, advance fees are identified as a difference from inception. Advance fees and collection costs are not billed until we receive the warrant fee invoice and writ of execution.
3. Self-assessed tax liabilities, which have been established but are not yet due.
4. Tax liabilities on non-final determinations for which a dual determination has not been issued, excluding petitioned liabilities.
5. Tax liabilities on non-final determinations for which a dual determination has been issued, excluding petitioned liabilities.
6. Most current delinquent tax liability (by billing date) for which a dual determination or successor billing has not been issued.
7. Delinquent tax liability for which a dual determination has been issued.
8. Delinquent tax liability for which a successor billing has been issued.
9. Most current delinquent interest liability (by billing date) for which the taxpayer is primary.
10. Delinquent interest liability for which a dual determination has been issued.
11. Delinquent interest liability, for which a successor billing has been issued.
12. Most current delinquent penalty liability (by billing date) for which the taxpayer is primary.
13. Most current penalty liability, for which a dual determination has been issued.
14. Most current penalty liability, for which a successor billing has been issued.
15. Non-final petitioned liabilities.
16. As directed by the district office or CCS.
17. Collection cost (billed, unbilled), if the payment is not a warrant payment.

The Special Procedures Section (SPS) may, in accordance with Board of Equalization policy and Civil Code § 1479, change the payment application order of numbers 2 through 17.

Security payments are applied first to established liabilities designated as "pending security" and then any excess is applied in accordance with the standard rules for application of payments.

Payments from warrants can only be applied to periods covered by the warrant. Therefore, to maintain the integrity of the warrant, liabilities covered by a warrant should stay intact as long as possible.

APPLICATION OF PAYMENTS – PRIMARY AND SECONDARY ACCOUNTS. 707.030

All differences originate in a "primary" account. A "secondary" account is based on the difference from the primary account. There can be multiple secondary accounts linked to a primary account. For example:

1. A primary account is a corporate account and the secondary account is a dual determination on the corporate officer. If dual determinations are issued to multiple corporate officers, then each one of the billed officers' accounts constitutes a secondary account.
2. A predecessor account is the primary account. A billing for successor's liability is a secondary account.
3. A partnership account is the primary account. Secondary accounts can be established for, and a billing notice sent to, any partners, even those not named on the original application.

When a payment is received for a difference where primary and secondary accounts exist, the payment should be applied to the account that made the payment. For example, if a payment is made by a successor (secondary account), the money should be applied to the difference existing under the successor's account, not to the difference on the predecessor's (primary) account. Improper application of the money could result in the taxpayer not receiving proper credit.

REFUNDS OF EXCESS OR ERRONEOUS AMOUNTS RECEIVED 707.040

The Board of Equalization may receive funds from an enforced collection action that are in excess of the liability due because the funds are remitted in error or otherwise not due. Such instances include, but are not limited to:

1. Funds from an escrow for an account where the liability was paid, but a release of lien had not been recorded.
2. Amounts billed, such as a successor's or predecessor's liability, innocent partner or spouse, which are determined to not be due.
3. Funds not subject to, or exempt from, levy, such as amounts over the maximum allowed by law for a wage garnishment.

In such cases, the taxpayer may file a written claim for refund. When a taxpayer files a claim for refund with the district office for funds that have been paid to the Board of Equalization, the taxpayer's written refund request must be sent to the Audit Determination and Refund Section in Headquarters. The request must be accompanied by the District Principal Compliance Supervisor's recommendation to either approve or deny the refund claim.

PAYMENT APPLICATION DOCUMENTS 707.050

There may be an occasional need to create a document when applying a payment in a manner that does not follow the standard payment application rules. The following four options may be used to specify how a payment is to be applied to a taxpayer's liability in such a situation:

1. Using PAY BD Printouts

This procedure can be used to apply payments to all the billed differences existing on an account and for payment(s) that are to be applied to a previously created Fixtures and Equipment assessment with a difference already on the system.

Placing a "T" next to a selected difference in DIF DA will highlight the liability and the "Differences Selected for Payment" field will display the total number of differences selected. Pressing F17 will return the user to the PAY BD screen and display all the differences that were selected at the DIF DA screen.

a. Type DIF DA and the account number to obtain the list of liabilities owed on the account.
b. Type "T" next to the liability where a payment will be applied and press "Enter."
c. Press F17 to "Take" (this will return you to the PAY BD screen).
d. Confirm the effective date of payment.
e. Input the remittance amount and the payment amount(s) and press "Enter."
f. Print and submit the document to the cashier.

2. Using DIF DA Printouts

The DIF DA screen is used when a payment is to be applied to a specific difference that has not yet been created. For example, where payment is received from a person who is paying against a customs program liability in advance of being billed.

a. In IRIS, type DIF DA and account number, and press "Enter."
b. Print the screen.
c. Write the remittance amount, effective date, and either the FO ID number, if available, or the words "Apply to A/R" on the printout if no difference exists (this will be an unapplied payment). If a difference does exist, a FO must be created to avoid application of payment to existing differences.
d. Submit the document to the cashier.

3. Using Notices

Payment(s) may also be applied to a specified difference using the billing notice itself.

a. In IRIS, print the Notice.
b. Write the effective date and the amount of payment in the appropriate boxes.
c. Submit the Notice to the cashier.

4. Advice of Miscellaneous Receipts

Form BOE-904, *Advice of Miscellaneous Receipts*, is used to account for payment of collection costs and advance fees. When these types of payments are received, prepare Form BOE–904 and include the Difference ID, if available, for collection costs at the top of the document. If the remittance amount is greater than the collection costs balance, include an additional transmittal document specifying the difference(s) to which the remainder of the payment is to be applied.

~~MISCELLANEOUS 799.000~~

~~REWARD PROGRAM 799.005~~

~~Under the Tax Penalty Amnesty Legislation of 1984 (AB 3230, Chapter 1490, effective 9/14/84), the Board was granted authority to establish a reward program for information leading to the collection of unreported or underreported sales and use taxes. In 1984, the Board considered and deferred the matter of establishing a reward program. In 1987, the Board again considered this matter and the staff was directed to develop a package that would enable them to implement the program. The resultant package consisted of a proposed reward regulation, an application for the reward, and procedures for implementing the program. After reviewing this package, the Board again decided to defer establishing this program because of the lack of sufficient funds. The Board again discussed this issue in 1991 with no action taken to implement the program.~~

~~Assembly Bill 3665 (Chapter 671, Statutes of 1992) amended Section 7060 of the Revenue and Taxation Code, providing, in part, that rewards paid pursuant to this section shall be paid from amounts appropriated by the Legislature for that purpose. No funds have been appropriated to date.~~

~~If an individual indicates he or she has information that would enable the Board to recover sales tax revenues, they should be advised that while the statutes do provide for a reward program, it has not been funded by the Legislature. However, attempts to obtain the information should be made by appealing to that person's duty as a good citizen and equal treatment/payment of taxes for all.~~

~~Payment Application Documents 799.015~~

~~The following procedures are to be used when providing payment application information to the district office cashier:~~

~~A. USING PAY BD PRINTOUTS~~

1. ~~Type DIF DA and account number and press enter.~~
2. ~~Type "T" next to each difference where a payment will be applied and press Enter.~~
3. ~~Press F17 to Take.~~
4. ~~Confirm the effective date of payment.~~
5. ~~Input the remittance amount and payment amount(s).~~
6. ~~Press Enter.~~
7. ~~Print screen and submit to cashier.~~

~~This procedure can be utilized for as many differences as exist on an account. To accomplish this, the user places a "T" next to each difference and then presses enter. The selected differences will be highlighted and the "Differences Selected for Payment" field will display the total number of differences selected. Pressing F17 will take the user to the PAY BD screen and display all differences that were selected at the DIF DA screen.~~

~~This procedure should also be used when a Fixtures and Equipment Assessment has already been created and the difference exists on the system. A BOE–1043 should NOT be prepared and sent to HQ Cashiers.~~

~~B. USING DIF DA PRINTOUTS~~

1. ~~Print DIF DA screen.~~
2. ~~Write the Notice ID, Difference ID or FO ID on the lower half of the screen print.~~
3. ~~Give to the cashier.~~

~~C. USING NOTICES~~

1. ~~Write the effective date, and amount of payment in the appropriate boxes.~~

2. ~~Give the Notice to the cashier.~~

~~PAYMENT FROM SECURITY~~

~~If the payment is from security, print in large bold letters across any of the above Payment Application Documents "PAID FROM SECURITY".~~

~~PAYMENT INTENDED FOR SPECIFIC DIFFERENCE NOT YET CREATED~~

1. ~~Type DIF DA and account number and press Enter.~~
2. ~~Print screen.~~
3. ~~Write the remittance amount, effective date, and either the FO ID, if available, or the words "Apply to A/R" on the printout if no difference exists (this will be unapplied). If a difference does exist, a FO must be created to avoid application of payment to existing differences.~~

~~Payments applied at the FO level will have an automatic hold to avoid application to any existing differences. Payment will then be matched when the difference is created.~~

~~REINSTATEMENT AFTER REVOCATION~~

~~Prepare BOE–400–REIN and include the revocation period code (MMYY) at the top of the document, and give to the cashier.~~

~~ADVICE OF MISCELLANEOUS RECEIPTS~~

~~Prepare GA–904 and include Difference ID, if available, for collection costs at the top of the document. If the remittance amount is greater than the collection costs balance, include an additional transmittal document specifying the difference(s) to apply the remainder of the payment(s).~~

~~FORM BOE–424, ADVICE OF PAYMENT~~

~~Form BOE–424, Advice of Payment should be used only when the IRIS system is off-line for an extended period. If a Notice ID, or Difference ID is known, it should be written at the top of the form. If no ID is known, write "NO DOCUMENT" on the top of the form. Payments will be applied at the account level. If the ID becomes known before the end of the cash day, the BOE–424 should be replaced with the proper transmittal document shown above.~~

~~STANDARD RULE FOR APPLICATION OF PAYMENT 799.030~~

~~The standard rule for application of payment is in the following sequence:~~

1. ~~As directed by the taxpayer at the time of voluntary payment.~~
2. ~~The reimbursement of advance fees and collection costs - after being billed. In the case of warrants, advance fees will be on AR from inception, but won't be eligible to receive payments other than a warrant payment, until billed. The advance fees and collections costs won't be billed until we get the warrant back (and funds) from the sheriff.~~
3. ~~Self-assessed tax liabilities which have been established but are not yet due.~~
4. ~~Tax liabilities on non-final determinations which have not been dualed, excluding petitioned liabilities.~~
5. ~~Tax liabilities on non-final determinations which have been dualed, excluding petitioned liabilities.~~
6. ~~Most current delinquent tax liability (by billing date), which has not been dualed or successored.~~
7. ~~Delinquent tax liability, which has been dualed.~~
8. ~~Delinquent tax liability, which has been successored.~~
9. ~~Most current delinquent interest liability (by billing date) for which the taxpayer is primary.~~
10. ~~Delinquent interest liability, which has been dualed.~~
11. ~~Delinquent interest liability, which has been successored.~~

12. ~~Most current delinquent penalty liability (by billing date), for which the taxpayer is primary.~~
13. ~~Most current penalty liability, which has been dualed.~~
14. ~~Most current penalty liability, which has been successored.~~
15. ~~Non-final petitioned liabilities.~~
16. ~~As directed by the district.~~
17. ~~Headquarters Special Procedures Section may, in accordance with Board policy and Civil Code §1479, change the application as provided in numbers 2 through 15 above.~~

~~Security payments will be applied first to establish liabilities designated as "pending security". Any excess will be applied in accordance with the standard rule for application of payments.~~

~~APPLICATION OF PAYMENTS – PRIMARY AND SECONDARY ACCOUNTS. 799.035~~

~~A Primary account is where the Difference originates. The Secondary account(s) is based on the Difference from the Primary account. For example:~~

- ~~A Primary account is the corporate account and the Secondary account is the dual determination on the corporate officer. If more than one corporate officer is billed, then more than one Secondary account would exist.~~
- ~~A predecessor account is the Primary account. Any billed successor(s) would be the Secondary account(s).~~
- ~~A partnership account is the Primary account. Any partner(s) not named on the original application could be billed on Secondary account(s).~~

~~When a payment is received for a Difference where Primary and Secondary accounts exist, the payment should be applied to the taxpayer's account that made the payment. For example, if a payment is made by a successor (secondary account), the money should be applied to the successor's Difference, not to the Difference on the predecessor's (primary) account. Improper application of the money could result in the taxpayer not receiving proper credit.~~

~~REFUNDS OF EXCESS OR ERRONEOUS AMOUNTS RECEIVED 799.040~~

~~The Board may receive funds from an enforced collection action that are in excess of the liability due because the funds are determined to be remitted in error or otherwise not due. Such instances include, but are not limited to:~~

~~· Funds from an escrow for an account where the liability was paid but a release of lien had not been recorded.~~

~~· Amounts billed, such as a successor's or predecessor's liability, innocent partner or spouse, which are determined not to be due.~~

~~· Funds not subject to or exempt from levy, such as a vacation trust fund or amounts over the maximum allowed by law for a wage garnishment.~~

~~When a taxpayer files a claim for refund with the district office for funds that have been paid to the Board, both a recommendation from the Principal Compliance Supervisor for approval or denial and the taxpayer's written refund request must be sent to the Refund Section in Headquarters for processing.~~

DELINQUENCIES 708.000

GENERAL 708.010

The Board of Equalization relies upon the voluntary cooperation of tax and fee payers to file and pay taxes and fees when due. Most tax and fee payers file their tax return timely and pay in full. Those who do not are "delinquent." Explaining the proper tax and fee filing procedures to a new applicant during the registration process, updating accounts timely when new information is received, and promptly investigating returned mail helps to eliminate a majority of delinquencies. However, returns are sometimes filed after the due date and payments are occasionally late. When this occurs, establishing a delinquency allows staff to begin taking appropriate collection action(s).

A delinquency occurs when:

1. A tax or fee return is not filed.
2. Taxes or fees are not paid.
3. The tax or fee payer fails to comply with the law or Board of Equalization requirements.

There are two types of delinquencies, "periodic" and "cause." A periodic delinquency results when a taxpayer does not file a tax or fee return. A cause delinquency occurs when staff determines that a taxpayer has not paid the Board of Equalization, or has otherwise failed to comply with the law or Board of Equalization requirements. Periodic delinquencies are established automatically in IRIS, while cause delinquencies are initiated by staff.

THE DELINQUENCY PROCESS 708.020

Periodic Delinquencies

Failure to file a tax return, even a tax return representing a partial period, constitutes a "periodic" delinquency. In sales and use tax programs, the failure to file a prepayment form appears in the delinquency subsystem in IRIS but does not generate a *Notice of Delinquency*. (Exceptions to this are found in some special taxes programs).

Through the use of an automated process called the "delinquency control cycle", IRIS identifies taxpayers who have not filed tax or fee returns and controls the preparation of delinquency notices and various reports pertaining to these accounts. The sales tax delinquency control cycle consists of:

1. Establishing a delinquency record approximately four weeks after the due date of the tax return.
2. Issuing a delinquency notice approximately six weeks from the due date of the tax return.
3. Mailing the taxpayer a *Notice to Appear – Revocation Proceeding* approximately 60 days after issuing the delinquency notice.
4. Mailing the taxpayer a *Notice of Revocation* approximately 90 days after issuing the *Notice to Appear – Revocation Proceeding*, and, if the account is revoked.
5. Retaining the record until the delinquency is cleared and the permit or license is reinstated or closed out.

Cause Delinquencies

When a taxpayer has failed to comply with a Board requirement for other than a periodic filing, a delinquency for "cause" may be established. Unlike a periodic delinquency, staff must manually create a delinquency for cause. A delinquency for cause may be established for any of the following reasons:

1. Failure to pay a balance due.
2. Failure to file a required schedule.
3. Failure to post a security deposit.
4. Failure to post additional security.
5. Failure to post a replacement security deposit.
6. Failure to comply (this usually involves the taxpayer not producing requested documentation).
7. Failure to comply with the requirements of the Prepayment of Sales Tax on Purchases of Gasoline (SG) program.
8. Failure to affix stamps to packages with altered labels.
9. Failure to affix stamps to packages labeled "export-only".
10. Failure to affix stamps to packages with non-compliant labels.
11. Failure to affix stamps to packages violating trademark.
12. Failure to affix stamps to packages imported after January 1, 2000.
13. Failure to comply with AB-71 (Cigarette and Tobacco Products Tax Act of 2003) requirements.

When a delinquency for cause is established, the taxpayer does not receive a delinquency notice. Instead, a *Notice to Appear – Revocation Proceeding* is mailed to the taxpayer during the next citation addressing cycle.

ACMS imports delinquency information from IRIS nightly. The delinquencies are identified to specific categories labeled Category 1 accounts, Category 3 accounts, Category 99 accounts (SG accounts, SC accounts, SU accounts, and special taxes accounts), Temporary accounts, and Closed Out accounts. Tax Technicians may be assigned to work these delinquent accounts. If efforts by the Tax Technicians to resolve the situation are unsuccessful, the account may be transferred to a Business Taxes Representative.

Category 1 Accounts

Delinquent full-time regular seller (SR) accounts are designated as Category 1 delinquencies (Del Cat 1). This category includes accounts identified with codes SR, SRS, SRX, SRY and SRZ.

Category 3 Accounts

A delinquent part-time account, prefix "SR" that also has an Account Characteristic Code 002, is designated as a Category 3 account (Del Cat 3). Category 3 accounts are not subject to revocation and IRIS automatically places a system withhold on these accounts to prevent the account from entering into a revocation cycle.

When a part-time seller does not file a tax return, IRIS automatically sends a *Notice of Possible Cancellation of Seller's Permit* to inform the taxpayer of the following:

1. The delinquent period(s).
2. That staff may estimate the amount of tax due for the delinquent period(s).
3. That the account may be closed out.

The following guidelines provide suggested actions for working Del Cat 3 accounts. As with all collection accounts, complete documentation of the collection action(s) taken is essential.

1. Review ACMS history for any previous delinquencies or actions on the account.
2. Review the REV FZ screen in IRIS to:
   a. Determine if the taxpayer has filed a duplicate tax return for another period.
      I. Same period filings occur when a taxpayer uses the same return form that was filed for a prior period. For example, the system may show 2 filings for 2nd Quarter 2006 and a delinquency for the 3rd Quarter 2006, if the taxpayer reused the 2nd quarter tax return. In all instances where it appears that a duplicate tax return was filed, the taxpayer must verify the duplicate filing.
      II. Once verified, a Form BOE-523, *Tax Return and/or Account Adjustment Notice*, is prepared to transfer the return to the appropriate period.
   b. Determine if a partial return was filed using REV RN. Partial returns occur when a taxpayer files a tax return designated as only part of the FO period. For example, the taxpayer timely submits a tax return form and indicates that it represents a return period for April through May only, instead of the full 2nd Quarter. The account is now delinquent for the partial period of June. To resolve this problem and remove the delinquency for the partial period, the taxpayer should provide an amended tax return reporting the total gross receipts for the entire quarter and pay any additional money owed.
3. Review the PAY BU screen. This screen will show any unapplied credits on the account. The monies in PAY BU may be for the delinquent return period. This occurs when:
   a. A taxpayer has sent in the tax due for the return period but failed to send along the return, or
   b. The taxpayer has sent in both the return and the payment, but the return has not shown up on IRIS.

   In both instances, the taxpayer must provide either the original return or a copy of the one previously filed but not showing in IRIS. Once the tax return is processed by HQ, the payment will match the return and clear the delinquency.

4. Review COM BA for any comments. The taxpayer may have recently contacted the Board of Equalization with changes to their business or mailing address and did not receive the returns or hearing notices. The contact may have been noted in the IRIS comments screen.
5. Review the TAR AI or TAR AM screens for business locations. The F10 "information" key provides information on the type of business and estimated monthly taxable sales.
6. If the account still has a delinquency after reviewing the screens above, contact the taxpayer by phone (business, personal) and/or by mail.
7. When the taxpayer is contacted, ask questions such as:
   a. Has the tax return been filed? When was it filed?
   b. Was any tax due?
   c. Did you keep a copy of the return? If no monies were due, the taxpayer can fax over a copy to be re-submitted.
   d. Do you have a copy of a cancelled check? (A trace can be done on-line for the payment).
   e. Did the business open? If not, what is the anticipated start date?
   f. Has the business closed? As of what date? Was it sold, to whom, and for how much? Was an escrow involved?
   g. If the business is active, have sales been made and in what amount?
   h. Do you need assistance in filing the return?
   i. If the return has not been filed, when will it be filed? Explain to the taxpayer that failure to file the delinquent return after the promised date may initiate further action by the Board of Equalization For example, closing the account or billing the taxpayer for the estimated amount of tax due. (*In ACMS, the promised filing date should be noted in the "Take Promise" field.*)
   j. If you are unable to communicate with the taxpayer due to a language barrier, every effort should be made to provide the taxpayer with a certified bilingual, or multilingual, employee who can gather accurate information and explain to the taxpayer the consequences for failing to file.
8. If the taxpayer cannot be contacted, the taxpayer's references (noted under each TIN number) might have forwarding information.
9. Check phone books, including on-line phone listings, for any additional phone numbers for the taxpayer.
10. Use an Internet search engine to see if taxpayer has a website.
11. If mail has been returned by the post office, investigate for a current address by checking FTB and DMV records.
12. Check the TAR AI screen for an email address or website through which the taxpayer may be contacted.
13. If the taxpayer is selling out of a swap meet location, contact the swap meet operator to see if the taxpayer is actively selling there. If so, inform the swap meet operator that the taxpayer must contact the Board of Equalization or the permit will be closed and the taxpayer can no longer sell at the specified location. Do not inform the swap meet of the delinquencies.

The remaining three delinquency categories are also not subject to automatic revocation and a process similar to the one above can be used when working these types of accounts.

Category 99 Accounts

Accounts not designated with the "SR" prefix, i.e., SG accounts, SC accounts, SU accounts, and special taxes accounts are designated as category 99 accounts in IRIS, however in ACMS they are denoted as Del Cat 9, not 99. These accounts do not receive the *Notice to Appear – Revocation Proceeding*, instead they are sent a *Final Notice*.

Temporary Accounts

Delinquent Temporary Seller's Permits also enter into ACMS and are subject to collection action.

Closed Accounts

Closed accounts that are delinquent for failing to file a return enter into ACMS. CPPM 645.045 details the procedures for working delinquent closed out accounts.

~~STREAMLINED INSTALLMENT PAYMENT AGREEMENTS 708.000~~

~~GENERAL 708.010~~

~~The Board of Equalization, in an effort to effectively manage the collection workload and minimize the negative impact upon tax debtors, will offer tax debtors meeting stated criteria a Streamlined Installment Payment Agreement (SIPA) to pay their liability over an extended term without a review of financial information or documentation. An active account with self-declared return liabilities or failure to file determinations will be required to pay the liability in equal monthly payments within one year. A closed-out account or an active account with only an audit determination will be required to pay the liability in equal monthly payments within three years, including interest accrual.~~

~~ACCEPTANCE OF STREAMLINED INSTALLMENT PAYMENT AGREEMENTS 708.020~~

~~An account should be considered for a SIPA if the following criteria are met:~~

- ~~Account balance between $500 and $5000.~~
- ~~An active account will not be considered if it has any return delinquencies. All past- due returns must be filed for an account to be considered for a Streamlined Installment Payment Agreement.~~
- ~~Account is not currently the subject of enforced collection action.~~
- ~~Account is not in bankruptcy or legal status.~~
- ~~Taxpayer has not repeatedly broken promises to pay or file a return.~~
- ~~Taxpayer is willing to make equal monthly payments that will pay the liability in full within three years for a closed-out liability or an active, audit-only liability; or within one year for an active, self-declared liability, including interest accrual. Requests for accelerated payments or large, lump-sum payments at the end of the term should be handled as regular Installment Payment Agreements and be supported by financial documentation.~~

~~PROCESSING OF STREAMLINED INSTALLMENT PAYMENT AGREEMENTS 708.030~~

~~All accounts that meet the acceptable criteria listed above should be solicited for a SIPA. A Form BOE-407-S, Streamlined Installment Payment Agreement, is available on ACMS DocGen for this purpose. Provide a Form BOE-407-S, Streamlined Installment Payment Agreement, to the tax debtor. Request that the tax debtor sign the agreement and return it within 15 days. If a form is not signed and returned within 15 days, a follow-up phone call should be made. If the agreement is still not signed or returned within 30 days, the SIPA should still be considered as accepted, and appropriate notes should be entered on ACMS.~~
~~Do not require the taxpayer to submit a Form BOE-403, Statement of Financial Condition, or financial documentation. Allow terms up to 36 months without restrictions or designated yearly reviews. The minimum monthly payment amount should be $25. Estimate interest accrual in the calculation of the term. The tax debtor may be advised that a term of less than three years may be selected to reduce the amount of interest that will accrue.~~

~~If the taxpayer qualifies for the relief of finality penalty, as authorized by Operations Memo No.~~

~~888, the taxpayer should be notified by including the available blurb on Form BOE– 407–S. Withhold the filing of a lien, unless one has been previously filed for the billed period(s).~~

~~An automatic debit program may be developed to allow for the automatic debit of Installment Payment Agreement payments from a tax debtor's bank account. The automatic debit program will be utilized on these accounts once the process is developed. Each tax debtor should be verbally advised that they may be asked to participate in the automatic debit program at a later date. Form BOE–407–S also advises the tax debtor of the pending automatic debit program.~~

~~Taxpayers who default on a SIPA must be sent a Form BOE-407-T, Installment Payment Agreement – Termination Notice as required in Revenue and Taxation Code Section 6832(b) before staff commences with collection action. See CPPM Section 707.021 for Installment Payment Agreement termination procedures.~~

~~TAXES COLLECTED BY OTHER AGENCIES 709.000~~

~~VEHICLE, VESSEL OR MOBILEHOME USE TAX COLLECTIONS 709.020~~

~~The Board is responsible for administration of the Sales and Use Tax Law and is responsible for the collection of these taxes. The only exception is in the collection of the use tax on vehicles, vessels or mobilehomes required to be registered or are subject to identification by the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD) and were sold by other than a licensed motor vehicle dealer, manufacturer, dismantler or, in the case of vehicles/mobilehomes, subject to identification by a licensed manufacturer, dealer, or dismantler, or a person required to hold a seller's permit or a person regularly engaged in the sale of vessels. The use tax will be collected by DMV or HCD at the time the vehicles, vessels or mobilehomes are registered.~~

~~The Board will continue to be responsible for the collection of the use tax on other vessels and vehicles (as defined in the Vehicle Code) and mobilehomes (as defined in the Health & Safety Code) not registered or subject to identification with DMV or HCD.~~

~~For further information, refer to Pamphlet 23, Occasional Sales of Vehicles, Vessels, and Aircraft.~~

~~DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT 709.030~~

~~MOBILE HOME REGISTRATION INFORMATION~~

~~Ownership and registration information for mobilehomes not registered with DMV may be obtained from HCD. Ownership information is filed by license, serial or decal number, but may also be available by name and address of the owner.~~

~~A formal title search may be requested by completing Form No. HCD-491.1. The form is available from HCD and the fee will be waived. Once the title report is obtained, you will be notified of any changes filed with HCD for the following 120 days.~~

~~MOBILEHOME DEALER REPORT OF SALE BOOKS 709.040~~

~~Effective July 1, 1981, the Department of Housing and Community Development (HCD) took over the registration and titling of mobilehomes. Mobilehome dealers are now required to release their Report of Sale books to HCD when they close out their business. The Board of Equalization and HCD have established an agreement that allows for mutual notification when a dealer terminates his or her business.~~

~~When HCD finds that a mobilehome dealer is out of business or has not renewed his or her dealer's license, the Board office having jurisdiction over the dealer's place of business will be notified by telephone. If the Board wishes to audit the business and requires the Report of Sale books, they will be delivered to the Board (see new Report of Sale book sample attached). When the Board has no further need for the books, they will be returned to:~~

- ~~Department of Housing and Community Development~~
- ~~Division of Codes and Standards~~
- ~~Occupational Licensing Section~~
- ~~PO Box 31~~
- ~~Sacramento CA 95801~~

~~If the Board does not require the Report of Sale books, they will be subsequently destroyed by HCD.~~

~~When HCD is reviewing dealer Report of Sale books and finds evidence of~~

~~noncompliance, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board office.~~

~~When this Board finds that a mobilehome dealer has closed out or sold his or her business, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323–9803 or ATSS 8–473–9803. If Report of Sale books are required, they can be requested at this time.~~

~~The Board will also provide the close out date and location of books and records if known. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board or destroy them, depending upon the Board's requirements.~~

~~To determine a dealer's financial stability and ensure subsequent public protection, the Board will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts:~~

1. ~~A mobilehome dealer has an outstanding liability that requires a field assignment.~~
2. ~~A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:~~
   a. ~~Based on the audit, it does not appear the business is properly financed to clear the probable liability.~~
   b. ~~There is factual information produced through our audit that the business is in financial trouble.~~
   c. ~~The district administrator approves the telephone call.~~

~~A notation that HCD has been contacted should be entered on the compliance or audit assignment.~~

LOCATING MISSING TAX DEBTORS AND/OR ASSETS 720.000

GENERAL 720.010

RTC section 7092 and similar provisions for other tax and fee programs prohibit the Board of Equalization from conducting an investigation of any person for any purpose other than tax administration. Any person violating this prohibition will be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment. For the purposes of this section, "investigation" includes any oral or written inquiry directed to any person, organization, or governmental agency.

The personal information of the Board of Equalization's clients and taxpayers is protected from unauthorized inspection and disclosure by policy and state and federal laws. To do a satisfactory job in collecting delinquent taxes and fees, staff must be able to identify and locate taxpayers and/or their assets. This activity requires the review and evaluation of confidential personal information. All requests for this type of information must be made only for valid Board-related business use.

All Board of Equalization employees are responsible for protecting the confidentiality of the information to which they have access. Therefore, staff will not request, access, examine, use, disclose or modify information for any non-business related reason such as out of curiosity or for personal gain. This includes browsing any information that is not a part of your assigned workload, e.g., information about the collector's own personal information, family members (including spouse or children), friends, neighbors, business associates, co-workers, celebrities or any other individual(s) or entities not related to the collector's work assignments.

Confidential information is not to be removed from the work site without proper authorization. Confidential information (most tax and fee payer information) must be secured in approved locations while in the office, such as locking file cabinets, etc. If confidential information is required when in the field, care must be taken not to allow non-authorized parties access to the information. Once the confidential information has served its business-related purpose, the information must be destroyed in an appropriate and confidential manner. (BEAM section 7406.1, *Destruction of Confidential Records.*)

EXAMINATION OF ACCOUNT RECORDS AND SYSTEM INFORMATION 720.020

Discussing a tax liability with a taxpayer without knowing the basis for the liability or being familiar with the taxpayer's filing history creates an unfavorable impression with the taxpayer. This can have a direct influence on the success of the collection interview. Before making contact with the taxpayer, the collector should review the taxpayer's current liability and account history in ACMS, IRIS, and the district file (if a file exists). As a preliminary step in organizing a collection case, it is often helpful to take notes during the review that summarize previous relevant account activity and then transcribe those findings into ACMS under "Case Summary" in order to have available all of the details pertinent to the case. This will help the collector to request all the needed information at one time when requesting asset or skip-tracing information.

Performing a case review before contacting the taxpayer will allow the collector to:

1. Understand the basis for the liability (Board-assessed vs. self-assessed).
2. Determine whether the taxpayer has filed and paid all tax returns and prepayments or posted a security deposit, if one was required.
3. Formulate a plan to overcome any excuses or objections.
4. Anticipate taxpayer questions.
5. Prepare answers to those questions.

The review might also disclose information on assets, sources of income, financial status, and other general information that might otherwise be overlooked. Examining account records, audit working papers, and system information will often reveal names of references, relatives, banks, other creditors, debtors, former residence addresses, or other information that will help to locate a missing taxpayer or assets belonging to a taxpayer. In addition, checking the Client Taxpayer System in IRIS for other tax or fee permits held by the taxpayer is recommended.

It is essential to have a complete written record of a taxpayer's case history. All discussions with the taxpayer about the current collection case, any promises made by the taxpayer, and subsequent actions taken by the collector must be documented. Proper documentation will assist in resolving taxpayer disputes or misunderstandings regarding any actions taken by the collector and is essential if the collector is served with a subpoena to testify in court.

Prior to contact with the taxpayer always:

1. Have a thorough understanding of what is necessary to clear the assignment.
2. Review the actions necessary to clear delinquency, revocation, or collection problems.
3. Note and do not repeat previously unproductive actions, unless there is reason to believe that the action may be successful if carried out, e.g., sending a levy to secure funds in a bank account.
4. Use closely-spaced follow-up contacts with the taxpayer and limited acceptance of promises if the taxpayer has a history of broken promises or missed deadlines.
5. Summarize all relevant file and on-line computer information and input summaries into the case notes.
6. Take actions to complete the entire collection case, not only the particular assignment. Collectors are responsible for obtaining all delinquent periods for the account, as well as collecting all final billed account receivable balances and the applicable reinstatement fee(s).
7. Review the account to determine whether the taxpayer has posted an adequate security deposit or if there is a need to send the taxpayer a letter requesting an additional security deposit amount.

If the taxpayer cannot be located after examining the account records and system information, the information of other agencies, organizations, and commercial enterprises that gather and maintain information on large segments of the population is available to staff.

INTERNET COLLECTION TOOLS 720.022

The Internet is a very useful tool that can be helpful in locating:

1. Business website addresses.
2. Physical address(es) for the business or the business owners.
3. Phone numbers.
4. Neighbors.
5. Business ownership.
6. Business licensing information.
7. Property information.
8. Suppliers.
9. Assets.
10. Financial Information.
11. Other information about the taxpayer, the taxpayer's business, its competition, etc.

Many collection tools are available using the Internet. The following list highlights some commonly accessed collection tool websites; however, this list is not intended to be comprehensive. Hyperlinks to these websites, and others, are available under eBOE "Collection Tools Over the Internet" at http://eboe/eboe3/acms/collect.cfm.

Search Engines and Directories

1. Google	Enter subject, or click on the tabs to be directed to various topics, i.e., Business, Maps, etc.
2. Yahoo	Enter subject, or click on "People Search," "Yellow Pages," etc.
3. Ask (formerly Ask Jeeves)	Type in a question or subject matter, i.e., California cabinet manufacturer.
4. Dogpile	A metasearch site that gathers the web's most popular search engines together in one place to deliver more comprehensive and relevant results.
5. Internet Archive Wayback Machine	Allows the user to visit archived versions of Web sites.

Government Resources

1. FAA (Federal Aviation Admin.)	This is an internal database that is updated monthly with information from the FAA regarding changes in aircraft ownership or status. This database allows for searches by name (including company name), dealer, make/model, serial number, and N number (the aircraft's tail number).
2. Coast Guard	This is also an internal database that provides a history of documented vessel data and is updated monthly with information received from the U. S. Coast Guard. A new record is added each time there is a change to the vessel's ownership.
3. CalGold	Provides businesses with information on permits and other California requirements.
4. CA Agency Index	Provides an extensive listing of California State agencies.
5. Secretary of State	Secretary of State – click on the *CA Business Portal* tab, then on *California Business Search*, to locate corporations, limited partnerships, LLCs, and LLPs.
6. Small Business	Search for businesses that have been certified by the Department of General Services. If the business is certified, then they have a preference for State contracts.
7. U.S. Death Index	Verify deceased through the U.S. Social Security Death Index.
8. OSHA	This page enables the user to search for Occupational Safety and Health Association enforcement inspections by the name of the establishment.
9. Department of Motor Vehicles (DMV)	Check the current license status of businesses such as Vehicle Dealers and Auto Brokers licensed by the DMV. To access the search, click on the Occupational License Status link found under the Other Services drop-down menu on the main page.
10. Credit Union Locator	Locate a credit union, by name, city or state.
11. Financial Institution Locator	Locate FDIC-insured institutions by name, city, county or state.

12. Department of Financial Institutions	Search for state financial institutions, including issuers of payment instruments and finance companies.
13. Nationwide Government Websites	Obtain access to Secretary of State websites for other states. In addition, this link provides a countrywide source for official state, county, and city government websites.

Legal Search Sites

1. City/County Codes	This site has local municipal codes nationwide.
2. California Law	California Law consists of 29 codes.
3. United States Code	U.S. Code.
4. LexisNexis	LexisNexis offers official California case law free of charge. Agree to the terms and click the red "View Opinion" option to get to the free database.

Phone Directories/People Finders

1. InfoSpace	Reverse look-up, find a business, find an e-mail address.
2. Anywho	Find phone numbers, addresses, maps, and directions for businesses and people throughout the United States.
3. Zip2	Find out what is located near a particular business location.
4. SSN Allocations	Find out which state issued a Social Security Number.
5. Zabasearch	Enter a name and state and a list of similar names, with birth year, possible address and phone number appear. You can click on one of the listed names to be able to search various websites, or click on the address for a satellite photo of the home, locate a zip code, or obtain a map.
6. Mail Boxes Etc.	Search by city and locate all the Mail Boxes Etc. businesses in the area. Quickly find out if the address is just a maildrop location.
7. 411.com	Reverse look-up, find a business, a person, neighbors, an e-mail address, or business profile.
8. White Pages.com	Reverse look-up, find a business, a person, neighbors, an e-mail address, or business profile.
9. Yellow Pages.com	Reverse look-up, find a business or a person,

10. Superpages.com	Reverse look-up, find a business, a person, neighbors, an e-mail address, or business profile.
11. Rootsweb.com	Can be utilized to confirm decedent's date of death, date of birth, legal name, SSN and place of death.

Maps/Vehicle Pricing/Misc.

1. MapQuest	A good online source for mapping and trip directions.
2. Kelly Blue Book	Gives values of new and used vehicles.
3. Language Translations	Translates languages.
4. Zillow	Gives real estate values and basic home sale history (year of last sale and the purchase price).

SECRETARY OF STATE INFORMATION 720.025

The following information may be obtained from the Secretary of State's Office at http://www.ss.ca.gov:

1. All articles of incorporation filed in the state relating to businesses, associations, insurance companies and churches. Relevant information in the Articles of Incorporation include:

   a. Corporate number.
   b. Date of incorporation.
   c. Status of the corporation.
   d. Date of last complete statement by the officers.
   e. Type of stock.
   f. Corporate name and address.
   g. Corporate name change (if applicable).
   h. President and agent name and address.
   i. Merger date and name of surviving corporation (if applicable).

2. All name changes of persons certificated by County Clerks.
3. All conveyances of title made to the state.
4. Record of foreign corporations qualified to conduct business in the state.
5. Record of Notaries Public licensed to do business in the state.
6. Record of annual (April 1) filing of domestic corporation's list of officer's names and addresses (non-profit domestic corporations need to file only every five years or when there is a change in officers).
7. Agent for service of legal process in California (name and address).
8. Attorney for Corporation (name and address).

Requests for hard copies of a Statement of Officers or Articles of Incorporation are sent to the Centralized Collection Section (CCS), on Form BOE-877, *Request for Corporate/Limited Partnership Information*, which is then forwarded to the Secretary of State's Office.

FINANCING INFORMATION – UNIFORM COMMERCIAL CODE 720.027

The Uniform Commercial Code (UCC) allows creditors to perfect liens on specified personal property in all California counties by filing, at a single location, a Financing Statement describing the property. Transactions involving UCC filings may be conducted online at the Secretary of State's website. A district office that levies on personal property and receives an allegation of priority from a third party pursuant to the UCC can verify the alleged information through the Secretary of State's office.

The UCC includes provisions to assist lenders or secured parties in dealing with borrowers who move their chattels and inventories across county and state lines. The UCC deals with chattel mortgages, consignments, conditional sales, trust receipts, inventory liens and assignments of accounts receivable and provides for centralized filing of financing security information with the Secretary of State's office. For example, when a bank finances a business, the bank will file a Financing Statement with the Secretary of State's office instead of filing a chattel mortgage in the County Recorder's office.

The lender or secured party files the *Financing Statement* on Form UCC-1 and generally keeps the security agreement in its possession. The term "security agreement" replaces the terms "chattel mortgage, trust receipt, consignment, assignment, pledges," etc. Form UCC-1 is a brief statement or abstract containing the descriptive essentials of the security agreement. When there is a continuation, release, assignment, termination, or other change to the Financing Statement, a Form UCC-3, *Financing Statement Change*, is filed.

As a general rule, Financing Statements will be filed in the Secretary of State's office in Sacramento. The following transactions are exceptions:

1. Collateral such as timber, farm products, farm crops, or contracts relating to farming, are filed in the County Recorder's Office.
2. Conditional sales contracts on consumer's goods do not need filing.
3. The DMV records changes to the legal title for motor vehicles and equipment used on the highway.
4. Under certain conditions, the legal title to a mobilehome is filed with the Department of Housing and Community Development.

Requesting Information or Copies

When compliance personnel need to determine whether a taxpayer has loans or encumbrances on personal property and the information on the Secretary of State's website does not provide sufficient information, a BOE-426-U, *Request for Information or Copies*, may be completed and sent to the CCS to request the information from the Secretary of State's office.

CCS will forward the information response or copies of statements to the requesting office as soon as they are received from the filing officer at the Secretary of State's office. If no record is available, the request form will be so noted and a copy will be returned to the requester. Requests for certified copies (formerly called "Gold Seal" copies) to be used as evidence, or for hand-carried requests, are also made directly to the CCS using Form BOE-426-U.

ACCESSING INFORMATION FROM EXTERNAL AGENCY DATABASES 720.030

The Board of Equalization has agreements with the Department of Motor Vehicles (DMV), Franchise Tax Board (FTB), Employment Development Department (EDD), and credit reporting agencies that allow authorized staff (Resource Persons) to access the information databases maintained by those agencies. The External Access Tracking (EAT) program allows these Resource Persons to electronically request information from the databases of the above agencies and track those requests. For information security purposes, the specifics of the EAT program are confidential. Therefore, the following information is only an overview of the program.

The district offices, CCS and specified headquarters units designate a person (or persons) from their own staff who is authorized to access the external agencies' databases via the EAT program. Only these designated Resource Persons may access the external agency databases. They are normally given rights to access a specific agency database. Staff in the district offices, CCS, and certain headquarter's units may access external agency information through the EAT program only by requesting the information through the appropriate Resource Person(s) in their office, section or unit.

Resource Person Guidelines

With the implementation of the EAT program, Resource Persons no longer need to record their activity on paper requestor logs.

1. Resource Persons are authorized to obtain information only from a specified agency. For example, if you have the authorization to access FTB information, the Resource Person must not attempt to access other government agency databases.

2. Resource Persons are responsible to ensure that requests for confidential information are for valid Board of Equalization business use only, to the best of their knowledge.

3. Resource Persons may not access other agencies' information for their own assignments. Resource Persons must route the request(s) for information to the office's other resource person (except in pre-defined situations, i.e., Consumer Use Tax Section (CUTS). With regard to requests for credit reports, if there is only one credit Resource Person in the unit/office, that credit report Resource Person may request credit report information for use in working his or her assigned cases.

4. Resource Persons may print a copy of the original request for their records; however, when there is no longer a "business need" to maintain the printout, it must be destroyed using the destruction methods for confidential information. See BEAM section 7406.1, *Destruction of Confidential Records*. The date the material was destroyed must be documented in EAT by the Resource Person.

Resource Person Guidelines

5. Unless there is an extenuating circumstance, such as litigation of a case, all requested documents **must be** returned to the Resource Person for destruction within 10 days. Under normal circumstances, documents not returned to the Resource Person by the requestor within 10 days will be flagged for supervisory follow-up.

6. The EAT program must be updated with the destruction date of all printouts. This includes situations where database information is printed in one month but is not destroyed until the following month (or later). The Internal Security and Audit Division (ISAD) conducts periodic reviews to ensure that printouts of information are confidentially destroyed and the destruction is properly documented by the Resource Person(s).

Requestor Guidelines

The requestor may request a database search for external agency information when a valid BOE-related business use exists. Requestors must submit all requests for external agency information from DMV, FTB, EDD, and credit reporting agencies via the EAT program.

1. Using the EAT program, the Requestor enters the request for information in the "Enter an Access Request" area and then clicks on *Submit*. The applicable Resource Person will receive an e-mail notification that a request has been submitted. The "Enter Online Accesses Made" link must only be used by those in pre-defined situations (e.g. CUTS) who are authorized to access information on their own cases.

2. The requestor of the search must request information **only** from the authorized resource person(s) within the requestor's office/section/area of responsibility. Also, because FTB/DMV/EDD/credit report resource persons often are not the same individuals, requestors may need to send separate requests to more than one resource person. For example, a request for DMV information from an FTB resource person will not be carried out and must be returned to the requestor for proper routing.

3. The requestor must complete a separate request for each "person" (individual, corporation or partnership; each individual partner of a partnership).

4. The EAT program provides a list of request "purpose" options. If the purpose of the request is not found in the options provided, the requestor must select "other" and enter an explanation of the purpose for the request.

5. Documents **must be** returned to the resource person for destruction within 10 days, unless there is an extenuating circumstance. Documents not returned within 10 days will be red flagged for supervisory follow-up.

6. Due to the requirement for destruction of printouts of confidential information, it is imperative that requestors review the printouts as soon as possible after receipt. Delays in reviewing the information and returning it to the Resource Person may compromise the ability to document the proper destruction of printouts.

7. Pursuant to information exchange agreements with both the IRS and FTB, information contained in IRS or FTB printouts or tax returns may not be transcribed into collection notes. Federal tax data never loses its identity. For example, if a collector receives federal data from the IRS, transcribes the data from the hardcopy provided by IRS, and destroys the original, the IRS still considers the transcribed notes to be federal tax data. Documents may be confidentially retained until there is no longer a business need to retain them.

Supervisor Review Guidelines

The information available from these external agencies is an important collection tool and should be fully utilized by staff in handling their cases/assignments. However, to ensure that the information is only being requested for valid business purposes, supervisors and managers will conduct random periodic reviews of the requests made through the EAT program.

DEPARTMENT OF CORRECTIONS AND REHABILITATION INFORMATION 720.033

Staff can contact the California Department of Corrections and Rehabilitation to obtain information about whether a taxpayer is incarcerated and the facility of incarceration. Information is also available regarding whether the taxpayer is on parole in California, and where he or she can be contacted.

This information is obtained by calling the office of the Assistant Information Officer at (916) 445-6713. Information on only three offenders is allowed per telephone request. If information on more than three offenders is desired, send a fax request to (916) 322-0500.

When requesting information, be prepared to provide the taxpayer's full name and date of birth. Please note that it takes seven days to obtain information about newly incarcerated persons or prisoners who have been transferred between state correctional facilities.

OTHER AGENCY SECURITY DEPOSIT INFORMATION 720.035

Other agencies, including agencies, boards, etc., regulated by the Department of Consumer Affairs require a licensee to post a security deposit. The security may be, and usually is, posted in the form of a surety bond. Other acceptable forms of security are cash, savings and loan passbooks, or Bank Time Certificates of Deposit. The exact requirements as to the amount of the required security deposit vary between agencies, boards, etc., and may be determined by referencing the appropriate section(s) of the Business and Professions Code. Usually, a security deposit is retained for a period of time after the termination of a business, pending demands of the agency or the public that was served. For example, Contractors State Licensing Board and the Department of Motor Vehicles does not release its bonds for three years.

The agencies listed below require an applicant to post a security deposit:

1. Department of Motor Vehicles
2. Athletic Commission.
3. Cemetery Board.
4. Collection and Investigation Services.
5. Contractors State License Board.
6. Structural Pest Control.

If a security deposit is a surety bond, the agency or board can furnish the name of the company that issued the bond and the bond number. Sometimes taxpayers have deposits held by surety companies that can be levied upon. Be aware that in most cases we cannot make demand on surety for a bond in another agency's name (for information about making a demand on surety, see CPPM 735.030). However, companies that issue surety bonds usually require an applicant to provide a detailed financial statement along with his or her signature on the bond. If we file a lien against a taxpayer, the information of the debt is a matter of public record that can be revealed to the company. In turn, the company can be asked to provide the Board of Equalization with the information from the financial statement.

For security deposits other than a surety bond, a request for offset may be made. Government Code sections 12419.4 and 12419.5 provide that the state has a lien on any funds owed by a state agency to a person who owes an amount to another state agency. In order to enforce the lien, it is only necessary that the agency to whom the money is owed notify the other agency in writing of the amount due and request that the payment to the debtor be "offset."

To request an offset for a security deposit held by another agency, send Form BOE-200-A, Special Procedures Action Request to SPS via ACMS when asserting a lien under the above sections of the Government Code. At a minimum, the Form BOE-200-A should contain the following information:

1. The name, address and account number of the person owing the liability,
2. The type of security deposit for which the offset is being requested (other than a surety bond),
3. The amount of offset requested to satisfy the liability, and
4. The name and address of the agency holding the security deposit.

DEPARTMENT OF HEALTH SERVICES

OFFSET REQUESTS 720.036

The Department of Health Services (DHS), which administers the Medi-Cal program, annually distributes over $4 billion in payments to California healthcare providers. The Medi-Cal program includes physicians, dentists, chiropractors, optometrists, pharmacies, hospitals, ambulance services and retailers of hearing aids, prosthetic devices, wheel chairs, etc.

Healthcare provider participation in the Medi-Cal program can be confirmed through the DHS Provider Enrollment Section, (916) 323-1945. The provider must be identified by Social Security Number and/or federal identification number, and most recent address.

Use Form BOE-200-A in ACMS to send requests to offset funds being disbursed by DHS to SPS, which will request offset under the provisions of Government Code section 12419.5.

TITLE REPORTS – DISTRICT OFFICE OR HEADQUARTERS UNITS 720.037

Most title companies will provide title information without charge upon request. When a taxpayer, or another source, provides real property information that cannot be verified through the county assessor or recorder's records because of variations in ownership listings, these unofficial reports may eliminate the need to order a title report.

However, if ordering a title report is necessary, the district office making the request from the title company will also send two copies of the order, one copy to SPS and one copy to the Financial Management Division.

STATE CONTROLLER'S OFFICE 720.038

Property, such as dormant bank accounts, are often escheated to the State and held in trust by the State Controller's Office. Property escheated under the Unclaimed Property Law may only be claimed by the person who had legal right to the property prior to its escheat, his or her heirs, or his or her legal representative. Code of Civil Procedure (CCP) section 1540(e). Title to such property remains vested in the State until such claimant appears and claims it (CCP section 1300(c)).

Property escheated to the State is not subject to levy or garnishment by creditors of the original owner. In no case should staff serve a levy to any State agency in an attempt to reach these types of funds or for any other purpose. When funds are held for the taxpayer by another agency, the proper procedure is to notify the appropriate agency and request that funds being held by that agency on behalf of the taxpayer be offset to the Board of Equalization. However, the offset process cannot be used for escheated unclaimed funds or other trust funds.

POST OFFICE INFORMATION 720.039

Forwarding addresses may be secured by mailing the taxpayer a letter directed to the last known address with a statement "Address Service Requested" entered below the Board of Equalization's return address in lettering large enough to be readily visible.

Form BOE-53, *Postal Service Letter*, may also be used in obtaining addresses from the post office. If Form BOE-53 is incorrectly prepared or is sent to the wrong post office, the postmaster will return the request, specifying the deficiency in the space marked "Other". Do not submit requests in duplicate.

Instructions for submitting requests for address information:

1. Address the request to the postmaster at the post office of last known address.
2. List the taxpayer's account number and the date the request is submitted.
3. On the lines provided, list the taxpayer's name and the last known address, including zip code.
4. Form BOE-53 should be signed by an authorized person.
5. Type or stamp the Board office return mailing address in the space provided at the bottom of Form BOE-53.
6. Mail Form BT-53 to the postmaster at the post office of last known address.
7. Enclose a pre-stamped return envelope or E-11 Business Reply envelope for any request.

In answering a request for taxpayer address information, postmasters will provide one of the following responses:

1. Mail is Delivered to Address Given: the address the Board provided is verified by the postal service as one to which mail for the taxpayer is currently being delivered.

2. Not Known at Address Given: mail for the taxpayer is not currently being delivered to the address given.

3. Moved, Left No Forwarding Address: the addressee is believed to have moved and has not provided the post office with a change-of-address order. The address is verified as one to which mail for the taxpayer is not currently being delivered.

4. No Such Address: the address given is nonexistent.

5. Other (Specify): as appropriate, postmasters will provide other responses such as "Returned - Sent to Wrong Post Office," "Addressee is Deceased," "Address Given is Insufficient," etc.

6. New Address: if the addressee has submitted a change-of-address order, the new forwarding address will be provided.

7. Boxholder Street Address: if the last known address is a post office box, the taxpayer's street address, as shown on USPS Form 1093, *Application for Post Office Box or Call Number*, will be provided. The location of rural route boxes is public information. Post offices usually have route maps posted in the lobby. Under some circumstances, post offices are authorized to give names and addresses of box holders when the box is being used to solicit business from the public. You should discuss individual cases with the local postmaster. Section 261.24 of the Postal Manual contains some directions on this subject.

~~INTERDISTRICT AND INTRADISTRICT TRANSFER OF COMPLIANCE ASSIGNMENTS 721.000~~

~~GENERAL 721.010~~

~~Form BOE-142, District Request for Investigation, includes both interdistrict and intradistrict assignments. The purpose of this form is to refer an assignment to another district or branch office and receive back a reply in the form of a progress report or a completed assignment.~~

~~PROCEDURE FOR MAKING REFERRAL 721.020~~

~~Intradistrict: Form BOE-142 may be used by district offices to send assignments to their branch offices and shift assignments between branch offices.~~

~~Interdistrict: Form BOE-142 may be used for making assignments to other districts, but only when a field call is necessary. Assignments should never be transferred from one inside collector to another.~~

~~All pertinent information should be transmitted with the assignment. This would include copies of correspondence, billings and other related documents. Supplemental sheets containing any additional information, such as file notes, should be included.~~

~~If additional information is later received by the referring office that might be helpful to the receiving office or that would supplement or alter information forwarded with the original assignment, the additional information should be promptly forwarded to the receiving office.~~

~~Form BOE-142 has a reply section. Referring offices must prepare the form in sufficient copies so that at least one copy, in addition to the original, is available to the receiving office for making progress reports. Should sufficient copies not be available to the receiving district for making a series of progress reports, copies of the original assignment may be used for this purpose.~~

~~Suggested number of copies and distribution:~~

~~Original~~	~~to receiving district~~
~~First and Second~~	~~to receiving district~~
~~Third and Fourth~~	~~Referring district file and assignment follow-up file~~

~~CONTROL OF ASSIGNMENT BY REFERRING DISTRICT 721.030~~

~~When an assignment is referred to another district, the referring district shall enter the assignment in an approved assignment control system such as the Compliance Assignment Control Program (COMPASS), BOE-93, Assignment Control Sheets, or alphabetical binder containing copies of the assignments until cleared (see CPMG 205.100). The follow-up controls are based upon the time intervals in Subsection 721.050.~~

~~CLEARANCE OF ASSIGNMENT BY REQUESTING DISTRICT 721.040~~

~~If the referring district clears the referred case, they should promptly notify the receiving district to return the assignment. Prompt notification is important in matters involving collection items. Failure to do so could result in continued collection activity against a taxpayer that has no liability. Notification of receipt of partial payments on collection assignments should be made to the receiving district by the referring district.~~

~~A copy of the Payment Application Document or Form BOE-424, Advice of Payment, (See Subsection 799.015) should be used for the purpose of notifying districts that payments have been received. The referring district shall prepare the Payment Application Document or Form BOE-424, for each payment collected by their district, and shall forward a copy of the document to the receiving district.~~

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~~RESPONSIBILITY OF RECEIVING DISTRICTS 721.050~~

~~Upon receipt of an assignment from another district, the receiving district will log the assignment into an approved Assignment Control Program (see CPMG 205.100). A follow-up date of forty-five days from the day the assignment is received in the district will be set to initially review the assignment. The receiving district will have sixty days, after receipt of the interdistrict assignment, to advise the referring district of progress made. Thereafter, progress reports must be made every sixty days. Receiving districts may use a copy of Form BOE–142 as a progress report. The BOE–142 assignment, when returned to the referring district, will be accompanied by the original assignment request, along with any documents that may have been generated.~~

~~In all cases where a receiving district makes a collection on a case referred by another district, a copy of the Payment Application Document or Form BOE–424, Advice of Payment, will be forwarded to the referring district.~~

~~REASSIGNMENT BY RECEIVING DISTRICT 721.060~~

~~If the receiving district needs to reassign the case to a third district, notes must be entered on the account in ACMS and the request returned to the requestor. The original requestor will initiate a new BOE-142.~~

~~DISTRICT RESPONSIBILITY — Determination billings 721.070~~

~~If a BOE–414–A, Report of Field Audit, BOE–414–B, Field Billing Order or, Compliance Assessment, is being done for another district, the district preparing the assessment will be responsible for controlling the request until a billing is issued, to avoid losing the document.~~

~~TRANSFER OF REVOKED ACCOUNTS~~ ~~721.080~~

~~Prior to making an interdistrict transfer of a revoked account, all reasonable attempts to clear the revocation should be made. Reasonable attempts would include, but are not limited to: (1) making contact with the taxpayer to determine whether the account is active or should be closed-out; (2) if contact is made with the taxpayer, can the cause for revocation be cleared and the account reinstated prior to transfer; or (3) if unable to contact the taxpayer, initiate a Form BOE–142, District Request for Investigation, to the district where the taxpayer is operating.~~

~~The account may be transferred only after it has been proven the taxpayer has been found to be actually operating in another district and the district of record cannot clear the cause of revocation and the account cannot be reinstated. The following steps must be followed when transferring an account:~~

1. ~~The originating district's Principal Compliance Supervisor will send to the receiving district's Principal Compliance Supervisor a memorandum indicating a revoked account is being transferred.~~
2. ~~The word "REVOKED" will be printed in red or highlighted on the Form BOE–1047, Notice to Change Account Record, in Section D, #2, on the Delinquency line.~~
3. ~~The BOE–1047 and the memorandum will be stapled to the front exterior of the account file folder being transferred.~~

~~The originating district should not send new or replacement permit card(s) to the taxpayer nor should the original BOE–1047 be sent to Headquarters Registration Unit. The originating district should forward all documents to the receiving district. Documents being forwarded would include all notes the representative made during the investigation. Any original documents that need to be mailed to the taxpayer and/or headquarters will be mailed by the receiving district when applicable. If the receiving district cannot complete the transfer of the account, all paperwork and the file folder will be returned to the originating district.~~

~~Any attempts to transfer an account without following the above instructions will cause the receiving district to return all documents and the file to the originating district.~~

CONDUCTING THE INTERVIEW 722.030

The objective of every contact with the taxpayer is to obtain full payment of the liability. Therefore, the representative must be in firm control of the interview from the very start. The representative should impress upon the taxpayer the seriousness of failing to pay immediately and apprise the taxpayer of the consequences for nonpayment. If payment is not forthcoming, the collector does not need to disclose the specific collection action(s) that will occur to enforce compliance.

Prior to contacting the taxpayer, it is helpful to outline a plan for working a collection case. A typical plan would include a timeline and intended actions such as the following:

WITHIN 10 WORKING DAYS FROM DATE OF ASSIGNMENT:

1. Confirm the identity of the owner(s).
2. Contact the owner, partners, or corporate officers.
3. Create a sense of urgency on the part of the taxpayer to clear the problem.
4. Give the taxpayer all the information necessary to clear the assignment.
5. Ask for payment in full on accounts receivable.
6. Ask for returns on delinquent or revoked accounts and give a specific due date. Make a reasonable effort to get the taxpayer to file returns before a Compliance Assessment (CAS) is prepared to estimate the liability. (Note: current policy is no more than two CAS's in any 12 month period).
7. Contact third parties such as accountants or business managers when requested and authorized but in such cases you should make it clear to the taxpayer that the taxpayer remains responsible for the correction of the problem, including failure of the third party to comply.
8. Do not allow third party delays. If the problem is not corrected or delays continue you must contact the taxpayer directly.

DURING THE FIRST CONTACT:

1. Verify ownership information.
2. Obtain pertinent collection/delinquency information. Example: banks, accounts receivable, suppliers, etc.
3. Personally serve the *Notice of Revocation* at your first in-person contact with the taxpayer, whether in the office or the field (document the service for possible prosecution).
4. Explain RTC section 6071 and advise the taxpayer to surrender the permit until the account is reinstated.
5. Set definite dates and times for compliance.
6. If practical, write down your agreement with the taxpayer and provide him or her with a copy.

IMMEDIATELY AFTER CONTACT:

Document all contacts and actions in the case notes. Case notes are considered to be public records that may be requested by and provided to taxpayers. Therefore, it is important to:

1. Minimize use of abbreviations and acronyms.
2. Not use jargon and slang terms.
3. Avoid including any derogatory or personal comments about taxpayers or staff.

Minimum documentation must include:

1. Date of contact.
2. The name and title of the person contacted.
3. The actions that were agreed upon or that will be taken.
4. When performance is expected, including date and time.
5. An intended follow-up date.

IMPORTANT: IF IT IS NOT DOCUMENTED, IT IS ASSUMED IT WAS NOT DONE.

SET DEADLINES FOR ACTION OR INFORMATION & ESTABLISH FOLLOW UPS:
Time expectation: Follow-ups should range from immediately to a maximum of two weeks, depending upon the nature of the request unless extenuating circumstances are documented.

Follow-up procedure: Taking timely and appropriate action(s) reflects favorably on the professionalism of the representative and is necessary to sustain a sense of urgency on the part of the taxpayer to resolve the problem. Actions should be progressively more serious and multiple actions should be implemented if the case is not resolved quickly. It is the collector's responsibility to initiate a discussion with his or her supervisor if unsure how to proceed with a case.

The key to prompt action is the use of an effective follow-up system to monitor deadlines.

1. Enter deadlines (date and time for follow up) for the next action in the ACMS case notes.
2. Set deadlines for information or taxpayer action within two weeks of contact, when appropriate.
3. Thoroughly document in ACMS case notes the reason(s) for any delay beyond the stated time expectations.

If, after discussing the case with the taxpayer, the collector is certain that full payment cannot be obtained immediately, direct questions need to be asked to secure as much information as possible regarding sources of income, available assets, and ability to pay. This information is always documented for future reference, for reporting purposes, or for the use of another staff person should reassignment of the case become necessary.

If the taxpayer cannot pay the liability in full, attempt to obtain a substantial payment on account, or a definite promise to pay at an early date. The collector must stress to the taxpayer that if payment is not made as promised, collection action will be taken to compel compliance. When a promise of full or substantial payment is obtained, the representative has an obligation to follow up with the taxpayer to make sure payment is made as promised. Failure to conduct timely follow-up actions will give the taxpayer the impression that the situation is not important to the collector.

If the taxpayer insists that payment cannot be made in full and is reluctant to enter into an installment payment agreement, do not attempt to provide the taxpayer with any legal alternatives. It is never appropriate for Board employees to offer advice regarding filing a petition in bankruptcy or to give any legal advice other than an interpretation of the tax laws administered by the Board. Instead, the taxpayer should be encouraged to seek the expertise of an CPAaccounant, attorney, or other paid professional who is qualified to address the taxpayer's specific situation.

If the case cannot be cleared in the office, it may be necessary to make a field call. When conducting a field call, make definite arrangements for compliance with the taxpayer, including date and time. Calendar the follow-up to ensure the taxpayer performs as promised. Serve the taxpayer with the *Notice of Revocation* if the account is revoked. Remove the seller's permit from the premises and document continued operation after revocation. Obtain as much information as possible and thoroughly document it in the case notes. If the place of business is vacant or the taxpayer cannot be located, contact the taxpayer's neighbors and nearby businesses, since they may be a good source of information about the taxpayer.

Information obtained should include, but is not limited to:

1. Type of business (same as BOE records?).
2. Verification of ownership.
3. Banks and suppliers.
4. Business hours.
5. Nature and value of fixtures and equipment.
6. Description and license numbers of vehicles.
7. Spouse's employer.
8. Name, address and telephone number of the landlord.
9. Customer names and sales information as evidence.
10. Residence address or place where the taxpayer can be reached.
11. Sales volume and suitability for requesting a keeper warrant.

PARTNERSHIP COLLECTIONS 724.000

GENERAL 724.010

A partnership is a "person" as defined in RTC section 6005. A partnership is an association of two or more "persons" formed to carry on a business for profit. Partnerships can be formed either by written or verbal agreement. With sufficient evidence, a person may be considered a partner without an agreement if the person invested in the business or if, in the operation of the business, the person exercised rights or authority normally reserved to a partner. There are three main types of partnerships:

1. A general partnership (entity type "P") is one in which all the partners share in the profits, losses, and management of the business, although their capital contributions may vary. The general partners are also jointly and severally liable for all of the debts and obligations incurred by the partnership.

2. A limited partnership (entity type "L") consists of one or more general partners and one or more "limited" or "silent" partners. The limited partners are not involved in the operation or management of the business and their liability is limited to the amount of their capital contribution to the partnership as written into the partnership agreement.

3. A limited liability partnership (entity type "K") is only available for the business operations of accountants, architects and lawyers. A LLP is similar to a general partnership in that the partners share in the profits, losses and management of the business but the partners have limited liability for the debts and obligations incurred by the limited liability partnership.

The Board of Equalization issues permits to all three types of partnerships but most commonly to general partnerships. All general partnerships and LLPs are governed by the Revised Uniform Partnership Act (RUPA). Limited partnerships are governed by the California Revised Limited Partnership Act rather than RUPA, but RUPA does apply to some activities of general partners in a limited partnership. Under these acts, limited partnerships and limited liability companies are required to have written partnership agreements and must file with the Secretary of State.

A "partnership" also includes a joint venture (entity type "V"). As used in this section, "partnership" refers to entities whose partners have joint and individual liability, which includes partners of entity types "P" and "V", and general partners of entity type "L", but does not include partners of entity type "K" or limited partners of entity type "L".

Note: A business specified as a "co-ownership" such as a husband and wife co-ownership (entity type "M") or a registered domestic partnership (entity type "N") is not a "partnership", but IRIS does allow separate notices to be issued to each spouse or registered domestic partner.

A partnership is an entity composed of two or more persons who have contracted to join in business and share the profits either equally or otherwise.

Partnerships may be formed either by written or verbal agreements. With sufficient evidence, a person may be considered a partner without an agreement if there was an investment in the business, participation in profit sharing, or if in the operation of the business, there was an

exercise of rights or authority normally reserved to a partner. This is rebuttable by the taxpayer. When there is uncertainty whether a partnership existed, a complete report should be forwarded to the Special Procedures Section for a decision.

REVISED UNIFORM PARTNERSHIP ACT (RUPA) 724.012

RUPA provides that a partnership is a distinct and separate entity from its individual partners and that the individual partners are distinct and separate entities from each other and from the partnership. RUPA requires that a separate notice for a liability be served on the partnership entity and on each partner individually. RUPA also imposes certain conditions on the collection of partnership debt from assets of individual partners and provides for the continuation of a partnership after the addition or deletion of partners.

RTC section 6831 (and similar statutes for other Board of Equalization-administered tax and fee programs) states, in part:

> The Board of Equalization shall not be subject to subdivisions (c)[1] and (d)[2] of Section 16307 of the Corporations Code unless, at the time of application for a seller's permit, the applicant furnishes to the Board of Equalization a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

The subdivisions of the Corporations Code referred to above impose the noticing requirements for issuing billings and specify the conditions under which collection can be made from the assets of individual partners. Although RUPA provisions may not apply to the Board of Equalization's tax programs unless the applicant provides a copy of the partnership agreement, it is Board of Equalization policy to follow RUPA guidelines for all billings issued to partnership accounts, notwithstanding RTC section 6831 and other related statutes.

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[1] Corporations Code Section 16307(c) states: "A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against a partner." This is the section of RUPA that requires separate and distinct notices (billings) to the partnership entity and to each partner. A *Notice of Determination* that becomes final is, in essence, the legal equivalent to a "judgment" against the debtor to whom the liability was assessed. This is also true for demand billings for tax, penalty, and interest on NR/PR returns, dishonored checks, etc.

[2] Corporations Code Section 16307(d) states, in part: "A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless either of the following apply:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

(2) The partnership is a debtor in bankruptcy…."

While other conditions also apply (e.g., a partner can agree that a creditor need not exhaust partnership assets before attempting to collect from the partners), these two subdivisions of the Corporations Code are the two that most affect the Board's administration of partnership accounts.

Summary of Key RUPA Provisions

1. The legal theory of "entity" applies, i.e., the partnership is a distinct and separate entity from each of its partners. A notification sent to one partner is not sufficient to assert liability against the partnership or the other partners.

2. A partnership (entity) survives the addition or deletion of partners (unless the written partnership agreement stipulates that the partnership terminates in such circumstances).

3. Partners are jointly and severally liable for the debts and obligations incurred by the partnership, subject to certain limitations and conditions as discussed in CPPM 724.020.

4. A partnership entity must be billed separately from individual partners, and each partner must receive a separate billing.

5. Attempts to collect partnership debt must be taken first against assets of the partnership and the partnership assets must be insufficient to satisfy the liability before collection can be attempted against assets of individual partners (unless the partnership is a debtor in bankruptcy).

6. Pursuant to RTC section 6831 and other related statutes, RUPA billing and debt collection requirements may not apply to the Board of Equalization in every case. However, the Board of Equalization's policy is that all partnership accounts are presumed to have RUPA rights for billing and collection purposes, even if they legally may not.

LIABILITY OF PARTNERS **724.020**

As noted previously, all general partners are jointly and severally liable for all the debts and obligations incurred by the partnership. Partners in a LLP (accountants, attorneys and architects) have limited liability except for liabilities arising from their own professional malpractice. In a limited partnership, a limited partner has no liability for debts of the partnership unless the limited partner takes part in the control of the business (Corporations Code section 15507).

If the partnership is no longer operating and all partnership assets have been distributed, collection action may be taken against the individual assets of the former partners without concern as to whether equal amounts are collected from each of them. Board of Equalization staff should not lead any general partner to believe that the partner will be relieved of further liability if a payment equal to the partner's particular percentage of the partnership is made. The fact that one or more members of a partnership may be making payments is not a reason to withhold action against other partners. Until the liability is paid in full, collection action should be against any or all of the partners.

It should be noted that each individual partner, depending on that partner's period of association with the partnership, may be held responsible for all, part or none of the total liability of the partnership. Because the partnership liability may vary between partners, the IRIS system tracks each partner separately (through the creation of a RUPA account) so that the proper collection action may occur when necessary.

Whether voluntarily or by expulsion, when a partner "dissociates" from a partnership the partner's liability does not automatically terminate for the debts and obligations incurred by the partnership *after* the separation. RUPA does not require the dissociating partner to give any notice of the separation. If the dissociating partner notifies the Board of Equalization directly, this is "actual" notice and the partner's liability terminates as of the date of such notification. If the dissociating partner elects to file a *Statement of Dissociation* with the Secretary of State, this constitutes "constructive" notice and RUPA limits the dissociating partner's liability to 90 days from the date the notice was filed. If no notice is given, RUPA extends the dissociating partner's liability to two years from the date of separation for debts incurred by the continuing partnership after that date.

When an individual general partner, without notifying the Board of Equalization, withdraws from a partnership, and thereby causes a change in the ownership of the partnership, RTC section 6487.2 limits the liability of the individual general partner to three years after the last day of the quarter in which the general partner withdrew. This limitation extends beyond the time provided by RUPA for a partner to be held liable for partnership obligations occurring after dissociation (90 days or two years). RTC section 6487.2 states that a "change in ownership" means a new "person" is established. Under RUPA, however, a partner's withdrawal from the partnership does not mean that a new person is formed, unless the partnership agreement so specifies. Therefore, application of RTC section 6487.2 is limited to those situations in which the partner's withdrawal causes the termination of a partnership, in which case any continuation of the business would be by a new partnership or other entity.

RTC section 6071.1 provides the consequences for failure of a permit holder to surrender a seller's permit upon transfer of a business. The transferor (predecessor) may be held liable for up to four quarters for taxes incurred by the transferee (successor) after the transfer. Since a partner's dissociation does not cause a partnership to terminate under RUPA (unless so stipulated in the partnership agreement), application of RTC section 6071.1 applies in the rare case where the dissociation triggers the termination of the partnership and the partnership business continues, with no actual or constructive notice being received from the dissociating partner or the partnership.

Referral to the Board of Equalization Legal Department

If it is necessary to determine post-dissociation liability in a given case and there is doubt as to what the appropriate liability period should be, staff may contact the Board of Equalization's Legal Department for assistance. The request should be directed to the staff attorney regularly assigned to the Department handling the case and should be made at the Business Taxes Compliance Specialist level or above.

A referral to the Legal Department should be made only after there has been sufficient investigation and review of all the facts, circumstances, and available evidence, including a review of the partnership agreement if there is one. Board of Equalization electronic files and records should be checked for relevant information about the partnership account, such as comments that might have been entered in the IRIS system. Files in district offices, Taxpayer Records Section, and other headquarters units should be checked for information or copies of documents, such as a partnership agreement.

In addition to Board of Equalization files, the Secretary of State's Office maintains information on partnerships. Both limited partnerships and limited liability partnerships are required to register with the Secretary of State by filing a *Certificate of Limited Partnership* (LP-1), a *Registered Limited Liability Partnership Registration* (LLP-1), or a *Foreign Limited Partnership Application for Registration* (LP-5).

Federal or state income tax returns can also be valuable sources of partnership information. All partnerships are required to file Form 1065, *U. S. Partnership Return of Income*, with the IRS and attach a Schedule K-1, *Partner's Share of Income, Credits, Deductions, etc,"* for each partner active in the partnership business during the taxable year. The Franchise Tax Board (FTB) requires a similar filing (California Form 565) with the same Schedule K-1 attachments.

Key points to remember:

In the case of a disputed tax liability, the taxpayer has the burden of proof to show the liability is not owed[3]. Accordingly, in cases regarding a partner's claim of dissociation, the burden of proving the date of dissociation is on the dissociating partner. Standard appeal procedures apply.

Dissociating general partners are each 100 percent liable for all the debts and obligations incurred by the partnership before dissociation, for the entire time they were in the partnership.

When a liability is created by a general partnership, the partners are collectively and individually liable for the entire amount owing. This means the entire liability may be collected from the assets of one individual partner or from the collective assets of the general partnership.

No representative of the Board should lead any partner to believe the partner will be relieved of further liability if a payment equal to their particular percentage of the partnership is made.

If the partnership entity is still operating, the first efforts toward collection should be from partnership assets. If collection cannot be made readily from this source, there should be no delay in proceeding against the assets of the individuals who comprise the partnership. If a partnership agreement was filed with the Board, then refer to Section 6831 of the Sales and Use Tax Law and the applicable Corporations Code Sections.

If the partnership is no longer operating and all partnership assets have been distributed, the action to be taken will be against individual assets of the former partners without concern as to whether equal amounts are collected from each of them.

The fact that one or more members of a partnership may be making payments is not a reason to withhold action against other partners. Until the liability is paid in full, there should be no relaxation of effort against any of the partners.

Generally, a partner cannot be held responsible for a liability accrued after the dissolution of the partnership in which the partner has retired. The retired partner may be held liable, however, if the Board was not notified of the retirement or if the partner did not in fact retire but continued to participate in the partnership affairs. The retiring partner may be held liable if the taxable transactions were made in winding up the partnership affairs or in completing transactions unfinished at the time of dissolution of the partnership.

Where a billing is to be made when the above situation is encountered, a complete report should be forwarded to the Headquarters Special Procedures Section together with the district recommendation. The determination against the original entity would be issued on the basis that failure to provide notification of dissolution of the partnership deprived the Board of an

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[3] ~~It is well-established case law that the burden of proving an exemption from tax is on the taxpayer (H.J. Heinz Co. vs. SBE; Hotel Del Coronado vs. SBE; Standard Oil vs. SBE, etc.). While legislative attempts are periodically made to shift the burden of proof in a tax dispute to the taxing agency, so far all of these have been unsuccessful: SB 1222, AB 572, and AB 436, for example, were attempts in 1999 that failed to pass into law – all were defeated either in the house of their origin or in the full Legislature.~~

opportunity to obtain from the new entity adequate security, thereby resulting in a loss to the state unless collected from the entity that held the seller's permit.

PARTNERSHIP BILLINGS 724.022

RUPA noticing requirements for billing purposes apply to the *assertion* of liability. These requirements do not apply after a liability has been assessed and has become final. Therefore, the Board of Equalization is only obligated to apply RUPA rules for noticing (billing) the partnership and the partners when issuing a *Notice of Determination* or a *Notice of Redetermination*, and for initial billings for tax, penalty, and interest due to receiving a NR/PR return, a dishonored check(s), etc. The Board of Equalization has determined, however, that the RUPA noticing rules will be followed for all billings generated by IRIS to partnership accounts. This is because the first 30-day lien warning (required by the Taxpayer's Bill of Rights, RTC section 7097) does not appear in IRIS billings until the demand billing is sent, which occurs substantially after the original *Notice of Determination* (or *Notice of Redetermination*) has become final.

PARTNERSHIP COLLECTIONS 724.023

As previously stated, RUPA rules regarding the collection of partnership debt do not apply to Board of Equalization collections unless, at the time of application, the applicant files a copy of the partnership agreement specifying that all assets are to be held in the name of the partnership. If there is such an agreement filed at time of application, then RUPA rules do apply and collection must first be attempted from assets of the partnership entity before collection can be attempted from assets of the individual partners. The partnership assets must also be insufficient to satisfy the liability before collection is allowed against the partners.

When a partnership collection case is assigned to a collector, it is the responsibility of the collector to ensure that RUPA collection requirements are followed (if appropriate). Although RTC section 6831 (or the other related statutes) may provide relief from RUPA collection rules under certain conditions, it is imperative that the collector first make sure that RTC section 6831 (or its equivalent section under other Board of Equalization-administered tax and fee programs) actually applies. The collector must know if a partnership agreement was filed and, if so, whether or not it contains the appropriate statutory language. Accordingly, it is the responsibility of the collector to investigate this by reviewing the document, if there is one, before taking active collection action on the account.

Check the TAR AI screen in IRIS for the presence of account characteristic code 19. If entered, the abbreviation "AGMT" will appear, indicating that a partnership agreement was filed. If "AGMT" appears, the collector should contact the Taxpayer Records Section and arrange for a copy of the partnership agreement to be faxed or mailed to him or her. Review the document for the relevant RTC section 6831 language. If the specific language is present, then take active collection action against the partnership assets first, before beginning active collection action against any of the individual partners. If the language is not present, then full collection action can proceed against any or all assets of the individual partners, beginning with passive collection actions first. If "AGMT" does not appear in IRIS, the collector should investigate for a partnership agreement on file anyway. Checking the taxpayer's file, if one exists, and the Taxpayer Records Section file is always recommended.

NON-PARTNER CLAIMS **724.025**

If a partner is billed for a partnership liability and claims that he or she was not involved as a partner during all or part of a liability period (and therefore should not be held responsible for payment of the liability), the claimant must make a written request for relief. The burden of proof for substantiating the request rests with the claimant. The claimant's request must state the specific reason(s) why the claimant should not be held liable as a partner and must include supporting documentation. The request should be presented to the district office of control. Examples of supporting documentation include the following:

1. Federal and state income tax returns for the periods in question for the claimant and the business. Schedule K-1 of Form 1065, *U.S. Partnership Return of Income*, should list each partner and its individual share of income from the partnership business.
2. Statement of Partnership Authority, Statement of Denial, and/or Statement of Dissociation filed with the California Secretary of State.
3. Registration records and tax returns from other government agencies.
4. Public records, such as a city business license, fictitious name statement, liquor license, etc.
5. Copy of business premises lease agreement, utilities billings, etc.
6. Canceled business checks and bank records showing authorized signers.
7. Any other evidence that will assist in substantiating the true ownership of the business during the period in question.

The receiving office will forward the written request along with the claimant's documentation to the Special Procedures Section (SPS), whose staff will review the documents, the seller's permit application, tax return signatures, other Board of Equalization records, and the submitted reasons when considering the claimant's request. SPS makes a recommendation and forwards the case to the appropriate Chief of Field Operations for an approval or denial decision. After rendering a decision, that Chief of Field Operations returns the case to the SPS Supervisor who will send the requester a denial or approval notification letter with a copy to both the receiving office and the Chief of Field Operations who made the decision.

For approved requests, the case is forwarded to the Tax Policy Division's Registration Specialist, Compliance Policy Unit (or appropriate program area) for removal of the claimant from the liability. If the request is denied, an appeal must be made through the refund request/appeal process as long as the refund request is for paid amounts or the appeal is within statutory periods.

If a partner claims that he or she was not involved as a partner during all or part of a liability period and therefore not liable for all amounts due, he or she (claimant) must request relief in writing. The request must state the grounds or reasons why the claimant should not be held liable as a partner. The burden of proof rests with the claimant. Evidence or documentation supporting the claim is required to be presented to the district office of control. Examples of evidence or documentation should include the following:

Federal and state income tax returns for the periods in question for the claimant and the business. Schedule K-1 of Form 1065, *U.S. Partnership Return of Income*, should list each partner and their individual shares of income from the partnership business.

Statement of Partnership Authority, Statement of Denial, and/or Statement of Dissociation filed with the California Secretary of State.

Registration records and tax returns from other government agencies.

Public records, such as a city business license, fictitious name statement, liquor license, etc.

Copy of business premises lease agreement, utilities billings, etc.

Canceled business checks and bank records showing authorized signers.

Any other evidence that will assist in substantiating the true ownership of the business during the period in question.

The receiving office will forward the written request and evidence or documentation to the Special Procedures Section for review. The Special Procedures Section will review the documents, the seller's permit application, tax return signatures, other Board records, and the submitted reasons or grounds when considering the claimant's request. The Special Procedures Section makes a recommendation and forwards the case to the Chief of Field Operations for an approval or denial decision. After a decision is rendered, the Chief of Field Operations returns the case to the Special Procedures Section Supervisor who will send the requester a denial or approval notification letter with a copy to the receiving office, and the Chief of Field Operations. If the request is approved, the case will be forwarded to the Registration Specialist, Petition Special Projects Team, Program Planning Division Section for removal of the claimant from the liability.

If the request is denied, an appeal must be made through the refund request/appeal process as long as the refund request is for paid amounts or the appeal is within statutory periods.

As noted in CPPM 724.020, the liability of a limited partner for debts of the partnership extends only to its contributed and un-contributed obligation to the business enterprise. Contributions of a limited partner may be in the form of money, goods, real or personal property, and, in the case of restaurants, bars or liquor stores, interest in the liquor license. All of these are subject to levy and execution for debts of the limited partnership. However, unless a limited partner contributed real property that was all or part of the partner's contribution to the business, the name of the limited partner cannot be included in liens or abstracts recorded to acquire liens on the real property.

The liability of a limited partner extends only to their contribution to the business enterprise. On July 1, 1984, the California Revised Limited Partnership Act was created. This act partially repealed the existing Uniform Limited Partnership Act. If a limited partnership existed on July 1, 1984, and elected not to be governed by the Revised Limited Partnership Act, the limited partners incurred no personal liability if the limited partnership was duly established under Corporation Code Section 15502 and had complied with the provisions of Sections 15501 through 15533, except as provided therein. (see, e.g., Sections 15506, 15507, 15511, 15517.) If a limited partnership was established after June 30, 1984, as well as those existing limited partnerships electing to be governed by the Revised Limited Partnership Act, the limited partners incurred no personal liability when the limited partnership was duly established under the Corporation Code Section 15621 and has complied with the provisions of Sections 15611 through 15723, except as provided therein (see, e.g., Sections 15632, 15633). Both the new and the old limited partnership acts are found in the Corporation Code.

Contributions of a limited partner may be in the form of money, goods, real or personal property, and, in the case of bars or liquor stores, interest in the liquor license. These are subject to levy and execution for debts of the limited partnership. The names of limited partners cannot be included in liens or abstracts recorded to acquire liens on real property unless the real property was all or part of the contribution to the business.

JOINT VENTURE **724.040**

A joint venture is a legal organization that takes the form of a short-term partnership in which the persons jointly undertake a transaction for mutual profit. Generally, each person contributes assets and shares the risks. Like a partnership, joint ventures can involve any type of business transaction and the "persons" involved can be individuals, groups of individuals, companies or corporations.

In general, collection of liabilities from joint ventures is governed by and enforceable under the rules applicable to partnerships. If collection cannot be made from the assets of the joint venture, then collection action may commence on the assets belonging to the members of the joint venture.

> In general, collection of liabilities from joint ventures is governed by and enforceable under the rules applicable to partnerships. If collection cannot be made from the assets of the joint venture, then from which of the members of the joint ventures collection is made becomes immaterial.

Under Section 6456 of the Revenue and Taxation Code, a spouse may be eligible to receive relief or partial relief of liability if the claiming spouse meets certain qualifying conditions. The conditions are listed in Regulation 1705.1, *Innocent Spouse Relief from Liability*. Innocent Spouse (IS) accounts that qualify for consideration are accounts that have been registered as husband and wife co-ownership accounts. To seek relief, the claiming spouse must submit a request in writing for Innocent Spouse Relief. The request must be received within the applicable statute of limitation period; that is, within one year from the date of first contact for collections, or within five years from the finality date of the assessment, or within five years of the due date of the return.

IS cases normally occur when the spouses divorce, separate, or no longer live with one another. Generally, the requesting spouse claims no involvement with the business at the time the liability was generated. The burden of proof rests with the requesting spouse.

IS requests received in district or headquarters' offices should be directed to the OIC Section in the Taxpayer's Rights and Equal Opportunity Division for review. A memo outlining support of the spouse's claim or information that may be contrary to the spouse's claim should accompany the spouse's request. In addition, any information regarding the actual date of first contact and information pertaining to the claiming spouses involvement with the business during the period(s) of liability, or benefits received (both indirect and direct) from the business during the periods of liability should also be sent by the forwarding section along with the request.

After a decision is made regarding the request for relief, the OIC Section will send an approval or denial letter to the claiming spouse. If the request is approved, appropriate changes will be made to IRIS registration records, reflecting the periods involved, and a single party release of lien may be issued*.

Effective January 1, 2001, innocent spouse relief was expanded to provide relief of liability for spouses that may have not qualified for IS as set forth in subdivision (a) of Section 6456. A spouse may be relieved of liability under this expanded provision, termed "equitable relief", for any **unpaid** tax or deficiency, if, after considering all the facts and circumstances, it is found to be inequitable to hold the spouse liable. Regulation 1705.1 lists several factors that are considered before a decision to approve or deny a claim can be reached.

The regulation also requires the Board to send notification of the claim for relief and the basis for the claim to the nonclaiming spouse. The nonclaiming spouse is sent a questionnaire and given the opportunity to provide input regarding the requesting spouse's claim.

Regulation 1705.1 also allows the Board to reconsider cases denied for equitable relief. Taxpayers who are denied equitable relief are entitled to continue their administrative appeal through an appeals conference and a Board hearing.

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* Although the IS may receive real property through a divorce settlement, the property may have been transferred without clear title (quit claim). A single party release of lien may not

remove the effects of our tax lien for the non-claiming spouse's ownership interest or for community property interests.

IS cases may result in partial relief being granted on a particular period of liability. In these cases, the claiming spouse's name is not removed from registration and the claiming spouse may not receive a single party release of lien.

CORPORATE COLLECTIONS 726.000

GENERAL 726.010

RTC section 6005 recognizes a corporation as a "person" separate and distinct from its members, stockholders, directors, or officers. Generally, a corporate liability is collectable only from assets of the corporation. Although personal liability for amounts owed by a corporation can be asserted against members, stockholders, directors, or officers under certain conditions, they do not acquire personal liability solely through affiliation with the corporate entity.

When a corporation has no assets, is defunct, or when personal liability cannot be asserted against the corporate officers, there is no source from which collection can be made. Therefore, to minimize losses arising from delinquent corporate liabilities, it is necessary to take appropriate actions at the time of registering the account, such as:

1. If financial documentation is provided by the applicant, thoroughly analyzing the corporation's financial status when the corporation applies for a permit.
2. Obtaining an adequate security deposit.
3. Reappraising the security requirements whenever difficulties with the corporate account develop.
4. Documenting all responsible parties and verifying that it is the normal practice of the corporation to collect tax reimbursement.

REQUIREMENTS TO QUALIFY AS A CORPORATION 726.020

A corporation is formed after filing articles of incorporation with, and receiving a corporate charter from, the Secretary of State's office. A corporation does not legally exist until this process is complete. If the unincorporated entity begins to make retail sales, or purchases tangible personal property for self-consumption in California without payment of use tax, a dual determination for sales or use taxes applicable to those sales or purchases should be issued against the individual owner(s), sole proprietorship(s), partnership(s), joint venture(s) or other entities comprising the ownership of the business.

If an entity, after obtaining a seller's permit as a corporation, is found to actually be an unincorporated entity, a dual determination should be issued against the true owners of the business, e.g., a sole proprietorship, an individual or individuals, a partnership, a joint venture or other entity. For purposes of tax administration, a foreign corporation that has not registered with the California Secretary of State is an incorporated entity, although it is not qualified to conduct business in this state.

Under RTC section 23301, a corporation may have its active status suspended for a variety of reasons. If a corporation is suspended, the liability for payment of sales and use taxes becomes the obligation of the individual members, stockholders, directors or officers for the period in which the corporation is suspended. Certain requirements must be satisfied prior to issuing a determination against a corporate officer or officers of a suspended corporation.

INCORPORATION WITHOUT NOTIFICATION TO THE BOARD OF EQUALIZATION 726.030

Occasionally, an individual or partnership will obtain a seller's permit and then incorporate without notifying the Board of Equalization to obtain a new seller's permit. The newly formed corporation is a separate "person" under RTC section 6005, and is required to obtain a new permit. If a liability is disclosed that was incurred after the date of incorporation, staff will assess the liability against the corporation by issuing a new permit to the corporation or through use of an "arbitrary" permit number.

If the liability is uncollectible from the corporation, a report may be sent to SPS requesting a dual determination against the entity to which the initial permit was issued (the predecessor). The basis for issuing a dual determination against the predecessor is that the taxpayer's failure to notify the Board of Equalization of the incorporation deprived the Board of Equalization of an opportunity to obtain an adequate security deposit resulting in a loss to the state. To request a dual determination in the above circumstance, notify SPS by sending a memorandum along with supporting documentation.

BUSINESS CONVERSIONS 726.033

Limited partnerships and limited liability companies may convert into an "other" business entity (defined to include a corporation, business trust, and real estate investment trust) or a foreign limited partnership or foreign limited liability company, under certain conditions. In addition, corporations have the ability to "merge" into an "other" business entity, defined to mean a domestic or foreign general partnership, limited partnership, limited liability company, business trust, real estate investment trust, unincorporated association (other than a non-profit association), or a domestic reciprocal insurer organized after 1974 to provide medical malpractice insurance.

A merger involves two or more entities while a conversion involves only one. In a merger, one entity is absorbed by another so that the assets, debts, obligations, etc., of the disappearing entity are transferred to and become part of the combined assets, debts, and obligations of the surviving entity. In a conversion, the entity that converts into another is for all purposes the same entity that existed before the conversion, except that the form of business organization (and possibly the name) has changed. In both cases, the law stipulates that the debts and obligations of the former entity become the debts and obligations of the new or surviving entity.

Since the debts and obligations of the former entity become the debts and obligations of the converted or merged entity, it is inappropriate to issue successor billings or dual determinations to transfer or replicate a liability established against the former entity to the converted entity. By operation of law, these merged or converted entities are not entitled to the statutory 30-day petition rights accorded rightful dualees or successors. Instead, a demand billing will be sent to the surviving or converted entity for payment of the liability incurred by the former entity, with conversion information and appropriate reference to the origin of the liability included. This also applies to billing to a surviving corporation in a statutory corporate merger.

If a conversion billing needs to be sent to a converted entity, a memo or e-mail request should be sent to SPS with all pertinent information included such as the names and account numbers of the former and succeeding entities, amount(s) and periods of liability, documentation and information sources, etc. Any other evidence, such as written statements or documents should also be forwarded.

INCORRECT CORPORATE REGISTRATION 726.035

It may happen that a California corporation holding a seller's permit dissolves and then incorporates in another state without notifying the Board of Equalization and without significantly changing the conduct of their business in California. The dissolution invalidates the seller's permit as the "person" that the seller's permit was issued to no longer exists, and therefore the dissolved corporation cannot continue to engage in business as a retailer in this state. The new corporate entity must first register with the Secretary of State's office and then obtain its own seller's permit from the Board of Equalization.

If the dissolved corporation has an existing liability, or a liability is disclosed through investigation or audit subsequent to dissolution, a dual determination should be requested against the new entity. In cases where the successor has terminated and the security deposit is in the form of a surety bond, see CPPM 732.000 et seq.

California corporate law applies to both California corporations and foreign (out-of-state) corporations doing business in this state. If a California corporation dissolves, it is required to notify the Board of Equalization, the Secretary of State's office, and all other creditors whose addresses appear in the corporate records. If it does not do so and there is no security deposit or other means of collection because the corporate assets have been distributed, individual shareholders who are, or were, responsible persons may be held liable for any debts of the corporation arising before dissolution. Examination of the company stock register or the Secretary of State files will provide information on corporate shareholders. (See Corporations Code sections 1901(a), 1901(c), and 2011(a)).

UNPAID LOANS **726.045**

A corporation may authorize a loan of corporate funds or assets to stockholder(s), officer(s) or director(s). When authorized corporate loans to stockholders, officers, or directors remain unpaid and the corporation has a sales and use tax liability, collection from such person(s) may be pursued. In other words, if the stockholder, officer or director owes money or assets to the corporation, the money or assets can be reached through the following:

1. Notice to withhold.
2. Notice of levy.
3. Warrant.

Loans that are not voted on by the holders of a majority of the shares of all classes of stock (other than stock held by the benefited person) are unauthorized loans. If officers or directors approve unauthorized loans, similar collection action can be taken against those directors and/or shareholder recipients.

When either unpaid authorized loans or unauthorized loans exist, the auditor or collector should document the type of loan, name of recipient, terms of loan, balance unpaid and type of action by the board of directors authorizing such loans (Corporation Code sections 315, 316(a)(3)).

UNLAWFUL DISTRIBUTIONS **726.050**

When collection of a corporate liability is doubtful and an unlawful distribution or other unlawful act by a director or directors (as described below) is suspected, the minutes of the corporate Board meetings should be examined for proof of such unlawful distribution or other unlawful acts. Other documents that may need to be examined are the retained earnings statement, the balance sheet, the statement of changes in financial position, etc.

Shareholders of a corporation may be liable for unlawful distributions that they knowingly receive. Corporations Code section 506 describes the actions that constitute unlawful distributions. Corporations Code sections 309 and 316 provide that directors who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders:

1. The distribution of retained earnings or assets to the corporation's shareholders in the following circumstances:

    a. When the amounts of retained earnings prior to the distribution do not at least equal or exceed the amount of the proposed distribution; or

    b. When immediately after the distribution:

        1. The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) is not at least equal to 1 1/4 times its liabilities (not including deferred taxes, deferred income and other deferred credits); and

        2. The current assets of the corporation are not at least equal to the corporation's current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense to the corporation for such fiscal years if the average earnings were not at least equal to 1 1/4 times current liabilities (Corporations Code section 500); or

    c. When a corporation makes a distribution and it is likely the corporation will be unable to meet any liabilities as they mature (Corporations Code section 501).

2. The distribution of assets to shareholders after institution of dissolution proceedings without paying or adequately providing for all known liabilities.

If there is sufficient proof of an unlawful distribution, the Board of Equalization may seek legal action through the Attorney General to pursue collection of the liability against the directors and/or shareholders.

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~~SUCCESSOR'S LIABILITY 727.000~~

~~POLICY REGARDING COLLECTION FROM SUCCESSORS 727.010~~

~~Any purchaser who does not avail themself of the protection provided in the law becomes liable as of the date of the purchase of the business or as of the date the predecessor's liability becomes final. However, no collection action can be taken against the successor until a notice of successor's liability is issued and becomes final.~~

~~As a policy, first efforts to collect will be directed against the predecessor. This policy will be adhered to only as long as collection in full can be made within a reasonable period of time, either directly from the predecessor or from assets belonging to the predecessor held by a third person. This policy will be disregarded if successor collection will become jeopardized by delaying future collection action.~~

~~LIABILITY SECURED BY SURETY BOND 727.020~~

~~If the liability of the predecessor is secured entirely by a surety bond, no collection action should be taken against the successor even though a successor's billing has been issued. This billing will merely notify the successor of what might be termed a "contingent liability". In these cases if collection cannot be made from the predecessor, demand will be made upon the surety to clear the liability.~~

~~If a portion of the predecessor liability is secured by a surety bond, demand should first be made on the surety before requiring the successor to pay or, if action is taken against the successor before payment by the surety, the approximate amount to be received from the surety should be taken into consideration.~~

~~The amount for which a successor is liable is not reduced by the amount for which the surety of the predecessor is liable until payment is made by the surety.~~

~~SURETY BOND ON SUCCESSOR'S ACCOUNT 727.030~~

~~The surety of a successor cannot be held liable for the amount its principal owes as a successor.~~

~~SUCCESSOR'S LIABILITY AS A TAX 727.040~~

~~The liability of a successor is considered a tax liability and is subject to all the remedies and priorities the same as if the liability had been incurred by the successor through his/her own operations. A successor's liability will be included in bankruptcy, assignment or probate claims filed against the estate of successors and is entitled to the same priority as other tax claims.~~

~~Agreements or contracts between the buyer and seller that attempt to place the responsibility and time of payment of the liability cannot overcome the requirements of the law and will be disregarded.~~

~~SUCCESSOR BILLINGS 727.050~~

~~Billings against a successor are made for any amounts over $100 on a notice of successor's liability. The law requires a notice of successor liability be issued and the successor be allowed 30 days within which to petition the liability prior to any collection action (see Section 6814 of the Sales and Use Tax Law).~~

~~AMOUNTS NOT DUE OR DELINQUENT AT TIME OF SALE 727.060~~

~~Even though the liability of the seller might not be due or delinquent at the time of transfer of the business or might be disclosed by an audit at a later date, the purchaser is liable for these~~

~~amounts up to the amount of the purchase price. These amounts need not be a matter of record at the time the sale of the business takes place.~~

~~*Reference: Sales Tax Regulation 1702*~~

~~SUCCESSOR'S LIABILITY RESTRICTED TO LOCATION PURCHASED 727.070~~

~~In addition to the other limitations, the liability of the successor is limited to amounts owed by the predecessor that were incurred at the location purchased. If the seller operated at more than one location, while incurring a total liability for all locations, his/her liability incurred at the location being sold must be determined. This represents the amount for which the successor can be held liable.~~

~~PURCHASE OF FIXTURES AND EQUIPMENT OR PART OF A BUSINESS 727.080~~

~~Before a purchaser can be held liable as a successor, the fact, "a business or stock of goods" has been purchased must be established. If the purchase involved only an item or items such as fixtures, equipment, name, lease or a liquor license, successor's liability is not necessarily applicable.~~

~~If the purchaser acquired only a portion of the business or stock of goods of the seller, the portion purchased must be substantial in order to assert successor's liability. In all cases where there is doubt as to whether the purchaser has acquired sufficient of the predecessor's business to become liable, a comprehensive report should be submitted to the next level of supervision for possible referral to the Headquarters Special Procedures Section for further review.~~

~~CONSIDERATION IN A FORM OTHER THAN MONEY 727.090~~

~~The purchase price paid for a business need not be in the form of money to establish a liability against the successor. If the purchaser agrees to the assumption of obligations owed by the seller, or agrees to cancel amounts owed to him by the seller, or gives something other than money as a consideration for the transfer of the business, the purchaser can be held liable as a successor. In cases where the consideration is represented by something other than money, the value of the business or stock of goods purchased must be determined to define the extent of liability.~~

~~*Reference: Section 6812 Sales and Use Tax Law*~~

~~PENALTY AND INTEREST — SUCCESSOR'S LIABILITY 727.100~~

~~The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him or her, that include taxes, interest thereon to the date of payment of the taxes, and penalties including penalties for nonpayment of taxes. Liability also extends to penalties determined and unpaid at the time of sale for negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, and fraud or intent to evade the Sales and Use Tax Law or authorized rules and regulations.~~

~~Section 6814 (b)(1) of the Revenue and Taxation Code, added in late 1989, states:~~

~~"If the Board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability."~~

~~Section 6814 (b)(2) of the Revenue and Taxation Code states "Any successor seeking to be relieved of the penalty shall file with the Board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief."~~

~~*Reference: Sales Tax Regulation 1702*~~

~~PURCHASE MONEY DEPOSITED IN ESCROW DOES NOT RELIEVE A SUCCESSOR727.110~~

~~A successor cannot be relieved of liability because the purchase price was deposited, or a portion thereof, in escrow from which the Board did not receive payment. If the buyer allows funds in escrow to be distributed without first securing a clearance from the Board, the fact an escrow was conducted is of no significance.~~

~~If the funds in escrow are exhausted by levies, other creditors, or only enough funds are left to make partial payment to the Board, the successor remains liable to the extent of the purchase price.~~

~~When the discovery is made, levies are being served by other creditors on funds in escrow, the Board should promptly levy for the amount of the obligation due from the predecessor in order to secure any or all available funds.~~

~~*Reference: Sections 6811 & 6812 Sales and Use Tax Law*~~

~~PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY 727.120~~

~~If the purchaser of a business or stock of goods does not request a Certificate of Tax Clearance from the Board as outlined in Section 6812 of the Revenue and Taxation Code, the purchaser can be billed for the predecessor's liability to the extent of the purchase price valued in money.~~
~~A "Notice of Successor's Liability" billing may be issued not later than three years after the Board is notified in writing of the purchase of the business or stock of goods. The statute of limitations for issuance of the notice does not begin to run until the Board has been notified in writing of the purchase of the business. If there is no notification, there is no statute of limitation. This assumes a timely billing to the predecessor under Section 6487 of the Revenue and Taxation Code.~~

~~The time within which collection from the successor may be enforced, and during which time all summary procedures may be used, shall start to run at the time the notice of successor's liability becomes final. Summary procedures may be used at any time within ten years from the start of this period. The period may be extended by recording a Notice of State Tax Lien or abstract against the successor in any county before the expiration of the ten-year period and may be further extended by a new recording before the expiration of ten years from the date of the original recording.~~

~~*Reference: Sections 6812 & 6814 of the Sales and Use Tax Law*~~

~~HEADQUARTERS' RESPONSIBILITY — SUCCESSOR BILLINGS 727.130~~

~~Successor liability billings will be generated through the Headquarters Special Procedures Section.~~

~~The Petition Section will process, acknowledge, and control all petitions for reconsideration. This section is charged with the responsibility of seeing that petitions are resolved expeditiously and, if possible, without the necessity of a preliminary and/or Board hearing(s). Since successor billings are frequently based on sketchy or unverified information, the petition will usually be referred to the district for additional investigation. Petitions that are sent to the district will be directed to the administrator for assignment to the appropriate section. Periodically, the Petition Section will make a request for a progress report to ensure that the district of control is handling the petition on a priority basis.~~

~~DISTRICTS' RESPONSIBILITY — SUCCESSOR BILLINGS 727.140~~

~~The district offices will occasionally receive a petition for reconsideration directly from the successor. Since routine collection procedures are normally instituted on "final" liabilities, the original of the petition and the envelope in which the petition was mailed should be immediately forwarded to the Petition Section for processing. The placing of the successor billing into petition status by the Petition Section will cause an "SW" (sundry withhold) indicator to appear on the video terminal accounts receivable program and will also stop any collection activity that would normally commence on the now petitioned liability.~~

~~The district staff is responsible for ensuring all petitions for reconsideration are handled on a priority basis. Copies of any correspondence between the successor and the district or other Headquarters' staff should be sent to the Petition Section.~~

~~When the district investigation is completed, a report of the findings should be sent to the Petition Section. This report should include the following:~~

1. ~~If applicable, the district's basis for recommending that the successor billing either be reduced or canceled.~~
2. ~~Whether or not the successor agrees with the district's recommendation.~~
3. ~~Whether or not the successor wants a hearing.~~
4. ~~Information as to efforts to collect from the predecessor. Such information also must be clearly documented in the predecessor file and included in hearing information prepared for Board hearings.~~

~~Form BOE–467, Notice of Requirement in the Sale of a Business, or Form BOE–1274, Notice of Amounts Due, will be used during the close-out process when the predecessor's existing liability exceeds or is expected to exceed $100.~~

~~CORPORATE COLLECTIONS 730.000~~

~~GENERAL 730.010~~

~~Sales and Use Tax Law recognizes a corporation as a "person" within the meaning of the law subject to the same requirements as any other type of taxpayer.~~

~~A corporation is an entity created by statute and is distinct and separate from members or stockholders and from directors or officers. Consequently, a corporate liability generally can be collected only from assets o personal liability solely through affiliation with the corporate entity. Exceptions that relate to tax f the corporation. Stockholders, directors, and officers acquire no collection are discussed in Subsections 730.045 and 730.050.~~

~~Approximately 65% of all amounts due, for which discharge from accountability was obtained during a three-year period, were balances due from corporations. This amount represents less than one-third of the total number of items written off. When a corporation is without assets, is defunct, and/or there is no personal liability, there is no source from which collection can be made. Therefore, you must take prompt appropriate action to enforce collection of delinquent liabilities from corporations as soon as difficulties are apparent.~~

~~By thoroughly analyzing the situation at the time the application for permit is filed, obtaining adequate security, reappraising security requirements when difficulties first develop, documenting tax reimbursement for possible future use in justifying action under Section 6829, and promptly utilizing appropriate remedies including dual determinations against corporate officers, losses on corporation accounts can be held to a minimum.~~

~~REQUIREMENTS TO QUALIFY AS A CORPORATION 730.020~~

~~Before a corporation can operate as such the incorporators must file with the office of the Secretary of State articles of incorporation and then must be issued a corporate charter. Should the corporation later be suspended, the corporation will become incapable of exercising its rights, privileges, and powers until such time as it is revived.~~

~~INCORPORATION WITHOUT NOTIFICATION TO THE BOARD 730.030~~

~~Cases arise where a seller's permit has been issued to an individual or partnership and the entity to which the permit was issued later incorporates without notification to the Board. A liability is then disclosed that was incurred during the period subsequent to the date of incorporation and is assessed against the corporation. If the liability is uncollectible from the corporation, a report will be made to the Headquarters Special Procedures Section where consideration will be given to the issuance of a dual determination against the entity to which the permit was issued.~~

~~The dual determination against the original entity would be issued on the basis that failing to provide notification of incorporation has deprived the Board of an opportunity to obtain from the corporation adequate security that resulted in a loss to the state.~~

~~INCORRECT CORPORATE REGISTRATION 730.035~~

~~A significant number of California corporations re-incorporate in other states without notifying the Board. Once a corporation has been identified as being out of compliance with regard to Board registration, new registration should be requested and sanctions imposed if the corporation fails to comply.~~

~~If the dissolved corporation has a liability or a liability is disclosed through investigation or audit, a successor billing should be requested and cleared through established collection procedure. In cases where the successor has terminated and their security is in the form of a surety bond, the procedures to follow are explained in Subsection 727.000 et. seq.~~

~~An action against corporate shareholders is still another remedy. The California Corporations Code requires a notice must be filed with the Secretary of State upon dissolution of the California corporation (Section 1901 (a) Corporations Code). The notice must be sent to all~~

~~shareholders, known creditors and claimants whose addresses appear on corporate records (Section 1903 (c) Corporations Code).~~

~~If notice is not given, where there is no security or other means of collection, and assets have been distributed, shareholders may be sued in the corporate name for any liability of the corporation arising prior to dissolution (Section 2011 (a) Corporations Code). The stock register, corporation commissioner or Secretary of State files should be checked for shareholder information. California corporate law will generally apply to foreign (out-of-state) corporations doing business within California, as well as California corporations.~~

~~UNPAID LOANS~~ ~~730.045~~

~~When loans to stockholders, officers or directors remain unpaid, a legal basis for collection action from such person(s) exists. If directors approve unauthorized loans, court action can be taken against those directors and/or shareholder recipients. An unauthorized loan is one not voted on by the holders of a majority of the shares of all classes of stock other than stock held by the benefited person. When either unpaid authorized loans or unauthorized loans exist, an audit or investigation should document the type of loan, name of recipient, terms of loan, balance unpaid and type of action by the board of directors authorizing such loans (Corp. Code Section 315, 316(a)(3)).~~

~~UNLAWFUL DISTRIBUTIONS~~ ~~730.050~~

~~Sections 309 and 316 of the Corporations Code provide that directors who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders:~~

1. ~~The distribution of retained earnings or assets to the corporation's shareholders in the following circumstances:~~
   1. ~~When the amounts of retained earnings prior to the distribution do not at least equal or exceed the amount of the proposed distribution; or~~
   2. ~~When immediately after the distribution:~~
      1. ~~The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) is not at least equal to 1 1/4 times its liabilities (not including deferred taxes, deferred income and other deferred credits); and~~
      2. ~~The current assets of the corporation are not at least equal to the corporation's current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years were less than the average of the interest expense to the corporation for such fiscal years if the average earnings were not at least equal to 1 1/4 times current liabilities (Corp. Code Section 500); or~~
   13. ~~When a corporation makes a distribution and it is likely the corporation will be unable to meet any liabilities as they mature (Corp. Code Section 501).~~

a. ~~The distribution of assets to shareholders after institution of dissolution proceedings without paying or adequately providing for all known liabilities.~~

~~In addition, shareholders may be liable for unlawful distributions knowingly received (Corp. Code Section 506).~~

~~When collection of the liability from the corporation is doubtful and an unlawful distribution or other unlawful act by a director or directors (as described above) is suspected, the minutes of the board meetings should be examined for proof of such unlawful distribution or other unlawful acts. Other documents that may need to be examined are the retained earnings statement, the balance sheet, the statement of changes in financial position, etc.~~

~~If there is sufficient proof of an unlawful distribution, the Board may seek court action to pursue collection of the liability against the directors and/or shareholders.~~

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OUT-OF-STATE COLLECTIONS 731.000

GENERAL - SUTD 731.010

The collection of delinquent sales and use taxes from persons who incurred liabilities in this state but who have since relocated outside California is the responsibility of each district office and/or CCS. Staff will attempt to locate missing tax debtors or assets by using correspondence, telephone calls, and requesting out-of-state DMV reports, IRS returns, credit reports, county assessor checks or information from any other out-of-state agency or source of information that may be of assistance. Out-of-state collection cases other than sales and use tax are the responsibility of the program area that administers the tax or fee.

A case may be referred to the Out-of-State District office for additional investigation if:

1. In-state collection action is not successful or feasible,
2. The taxpayer has been located,
3. There appear to be attachable assets, and
4. The amount owing is sufficient to warrant an out-of-state auditor making personal contact.

Referral is made using Form BOE-142, *District Request for Investigation* (see CPPM 704.000) and the referral must include all pertinent case information.

REFERRAL OF CASE TO OUT-OF-STATE DISTRICT OFFICE 731.020

Before referring a case to the Out-of-State District office, the in-state district must consider:

1. The size of the liability, and
2. Whether the Out-of-State District office has a course of collection action to pursue.

Accounts should not be referred to the Out-of-State District office if the amount owing is relatively small or if it is obvious that no further action can be taken beyond the actions already completed. In addition, do not refer accounts to the Out-of-State District office if there is a clear indication the account should be written off.

OUT-OF-STATE DISTRICT OFFICE ACTION 731.023

Upon receipt of a Form BOE-142, the Out-of-State District office reviews the account, the liability, and any other significant factors to determine whether an auditor should make a field call when an audit is assigned in the taxpayer's area. If an auditor makes contact with the taxpayer, the auditor should obtain as much information as possible concerning the taxpayer's assets and notify the Out-of-State District office so that the compliance staff can take appropriate action.

The Out-of-State District office will return the assignment to the referring district office (with the results of the investigation) when:

1. Personal contact is not practical.
2. Personal contact by the out-of-state auditor does not result in payment or positive information on assets.
3. Collection action cannot be pursued by the Out-of-State District office.

OUT-OF-STATE DISTRICT OFFICE ACTION (CONT.) 731.023

The report will describe the actions taken on the account and any information that may be helpful in determining whether a referral to the Attorney General or a write-off of the liability is warranted. The referring district office is responsible for writing off the liability or requesting referral of the case to the Attorney General if personal contact by an Out-of-State District office auditor is not practical, or if personal contact by the auditor does not result in payment or yield information on the taxpayer's assets.

OUT-OF-STATE TAXPAYER - COLLECTION ACTIONS 731.025

Under RTC section 6757, a perfected and enforceable state tax lien is created when a taxpayer fails to timely pay its taxes, including interest, penalties, and any additional costs, when they become due. The lien is created by operation of law. Although not recorded with the Secretary of State or with a county recorder, the lien satisfies any lien requirements mandated by the various California Codes that address earnings withholding orders for taxes (EWO).

Generally, assets of a taxpayer located outside California are outside the jurisdiction of the State of California to collect. However, when a taxpayer who owes a liability is located out of state and is employed, collectors may send an EWO to the out-of-state employer if the employer has a place of business, payroll office, payroll account, or some other presence in California or has a designated agent for service of process in California. In such case, the employer has submitted itself to California's jurisdiction and must honor the EWO by garnishing the wages of the specified employee.

OUT-OF-STATE DISTRICT COLLECTION RESPONSIBILITY 731.040

Other than collections, the Out-of-State District office is responsible for performing all of the compliance functions for retailers whose records are located out of state but who maintain a place of business in this state. CCS is responsible for the collection function for out-of-state accounts.

The Out-of-State District office compliance staff does not perform field calls. Therefore, if an out-of-state account has a business location in California, the responsible in-state district office may be called upon for assistance in performing a field investigation.

If an out-of-state branch office reports that a taxpayer may have assets in California, such as accounts receivable or property (real or personal), the Out-of-State District office will send a copy of the report to CCS. CCS will proceed with collection action against these assets in the same manner as any other account.

SUCCESSOR'S LIABILITY 732.000

POLICY REGARDING COLLECTION FROM SUCCESSORS 732.010

The purchaser of a business or stock of goods should require the seller to produce a Form BOE -471, *Certificate of Payment*, issued by the Board of Equalization showing that the seller's sales and use tax liabilities have been paid and that no tax is due. If the seller does not produce a Form BOE-471, the purchaser should withhold up to the amount of the purchase price from the seller and request a tax clearance from the Board of Equalization under R&TC section 6812. The Board of Equalization will issue a Form BOE-471 if no sales or use taxes are due from the seller. If the seller owes a liability to this agency, Form BOE-1274, *Notice of Amounts Due and Conditional Release*, will be provided that shows the amount that must be paid in order to obtain a release from liability for amounts owed by the seller.

If a purchaser requests a tax clearance, the Board of Equalization must issue either Form BOE-471 or BOE-1274 within 60 days of the latest of the following three dates or successor liability can no longer be assessed against the purchaser:

1. The date the Board of Equalization receives the written request from the purchaser.
2. The date of the sale of the business or stock of goods.
3. The date the seller's records are made available to the Board of Equalization for audit.

If a purchaser of a business or stock of goods does not receive a *Certificate of Payment* from the seller or does not request a tax clearance from the Board of Equalization pursuant to RTC section 6812 and withhold a sufficient portion of the purchase price from the seller (predecessor) to cover the seller's sales and use tax liabilities, the purchaser becomes personally liable for the seller's unpaid sales and use tax liabilities to the extent of the purchase price valued in money. However, no collection action can be taken against the purchaser (successor) until a notice of successor's liability is issued and becomes final.

Certain types of transactions do not support issuing a notice of successor billing, such as a purchase of a business or a stock of goods:

1. Through a bankruptcy proceeding.
2. From a franchisor.
3. From a creditor who has obtained a judgment and seized the business assets.
4. From a landlord who has evicted a tenant and seized assets.

First efforts to collect will be directed against the predecessor. This policy will be adhered to only as long as collection in full can be made within a reasonable period of time, either directly from the predecessor or from assets belonging to the predecessor but held by a third party.

LIABILITY SECURED BY SURETY BOND 732.020

If the liability of the predecessor is secured entirely by a surety bond, no collection action should be taken against the successor even though a successor's billing has been issued. If collection cannot be made from the predecessor, demand for payment will be made upon the surety to clear the liability. The billing to the successor serves as notification of a "contingent liability" since it is anticipated that the surety will pay the liability.

LIABILITY SECURED BY SURETY BOND (CONT.) 732.020

If only a portion of the predecessor's liability is secured by a surety bond and the predecessor has no assets to pay the liability, demand should be made on the surety before requiring the successor to pay. The approximate amount anticipated from the surety should be taken into consideration if collection action commences against the successor before the surety makes payment to the Board of Equalization. However, the successor's liability is not reduced by the amount for which the surety of the predecessor is liable until the Board of Equalization receives payment from the surety.

SURETY BOND ON SUCCESSOR'S ACCOUNT 732.030

The successor may be required to post a security deposit upon obtaining a seller's permit for the purchased business. If the successor posts a surety bond, the surety (usually an insurance carrier) can only be held liable for amounts arising from the business operations of the successor. In other words, a surety bond posted by a successor cannot be used to satisfy an obligation billed to the successor for successor's liability.

SUCCESSOR'S LIABILITY AS A TAX 732.040

With the exception of the preceding section, the liability of a successor is considered to be a tax liability and is subject to all remedies and priorities as if the liability had been incurred by the successor through its own operations. A successor's liability may be included in bankruptcy, an assignment for benefit of creditors, or probate claims filed against the estate of a successor and is entitled to the same priority as other tax claims.

Agreements or contracts between the buyer and seller that attempt to place the responsibility and time of payment of the liability cannot overcome the requirements of the law and will be disregarded.

SUCCESSOR BILLINGS 732.050

The law requires the Board of Equalization to issue a notice of successor liability to the purchaser of a business or stock of goods in order to enforce the purchaser's successor liability. A notice of successor liability is issued for any amount owed by the predecessor over $100, up to the purchase price of the business or stock of goods. Once the notice of successor liability is mailed, the successor has 30 days to petition the liability prior to the initiation of collection action (RTC section 6814). If the successor files a timely petition of the amount determined to be due, the account will not enter into active collection status in ACMS pending the outcome of the petition.

AMOUNTS NOT DUE OR DELINQUENT AT TIME OF SALE 732.060

A successor's liability only extends to the amount the successor was required to withhold from the purchase price at the time the successor purchased the predecessor's business or stock of goods. The amount a successor is required to withhold includes all of the seller's sales and use tax liabilities (taxes, interest, and penalties) incurred with regard to the business or stock of goods up to the date of the purchase regardless of whether the liabilities have been reported, billed, or become final, to the extent of the purchase price. The amount does not need to be a matter of record when the sale of the business takes place. For example, the successor's liability may be disclosed during a close-out audit of the predecessor's account or generated if, subsequent to the sale, the predecessor files a final return without payment (or with a partial payment).

SUCCESSOR'S LIABILITY RESTRICTED TO LOCATION PURCHASED 732.070

The liability of the successor is limited to amounts owed by the predecessor incurred at the business location(s) purchased. If the predecessor operated the business at multiple locations, the liability incurred at the purchased location(s) must be determined to assert successor's liability against the purchaser.

PURCHASE OF FIXTURES AND EQUIPMENT OR PART OF A BUSINESS 732.080

Before a purchaser can be held liable as a successor, the fact that "a business or stock of goods" has been purchased must be established. If the purchase involved only an item or items such as fixtures, equipment, name, lease, or a liquor license, successor's liability is not necessarily applicable.

If the purchaser acquired only a portion of the business or stock of goods of the seller, the portion purchased must be substantial in order to assert successor's liability. In all cases where there is doubt as to whether the purchaser has acquired sufficient of the predecessor's business to become liable as a successor, a comprehensive report should be submitted to the next level of supervision for review and possible referral to SPS.

CONSIDERATION IN A FORM OTHER THAN MONEY 732.090

The purchase price paid for a business need not be in the form of money to establish a liability against the successor. Furthermore, the sale of a business or stock of goods may occur with or without documents that convey the terms of the sale and an escrow may not be involved. If the purchaser agrees to the assumption of obligations owed by the seller, agrees to cancel amounts owed to him by the seller, or gives something other than money as a consideration for the transfer of the business, the purchaser can be held liable as a successor. In cases where the consideration is represented by something other than money, the value of the business or stock of goods purchased must be determined to define the extent of liability. (RTC section 6812).

When the only consideration is an assumption of debt, the purchase price of a business is that portion of the seller's debt obligation that the buyer has assumed. A written request should be sent to both the buyer and the seller to obtain documents relative to the transfer of the business assets. Based on the response, additional evidence may be required to support a successor's liability action.

Some examples of documentation that may support an assumption of liability for a successor billing include:

1. Buyer's income tax returns listing expenses of the seller.
2. Information from a county assessor or state agency that shows the buyer paid back-taxes and/or fees on the seller's behalf

Documentation to support a request for a successor's liability billing can be generated from many different sources such as:

1. Reviewing all file material and history notes for supplier and landlord information.
2. Searching the Internet (sites such as LexisNexis or other available sources).
3. Making field calls to identify suppliers.
4. Reviewing the predecessor's audit information.

Use Form BOE-1511, *Dual Determination – Creditor/Supplier/Landlord*, to obtain documentation from these sources. In certain instances, a subpoena duces tecum (subpoena for production of records) may be necessary to obtain copies of the payments made by the seller.

PENALTY AND INTEREST — SUCCESSOR'S LIABILITY 732.100

A seller's sales and use tax liabilities incurred with regard to the business or stock of goods up to the date of the purchase includes all the sales taxes the seller owes for taxable sales made up to the time the sale is consummated, the penalties imposed thereon (i.e., failure to file, failure to pay, negligence, fraud, etc.) and any interest that accrues on such taxes up to the date of the sale regardless of whether the liabilities have been reported, billed, or become final. Such penalties may be relieved under certain circumstances.

RTC section 6814 (b)(1) states:

> "If the Board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability."

RTC section 6814(b)(2) states:

> "Any successor seeking to be relieved of the penalty shall file with the Board of Equalization a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief."

Also, Sales and Use Tax Regulation 1702(d)(2) states that:

> "On or after January 1, 1990, a successor shall be relieved of any penalty originally imposed upon the predecessor included in the notice of successor liability regardless of when the notice was issued where there is no relationship between the successor and predecessor. A relationship exists between the successor and predecessor if there is any common ownership or if the successor was a responsible person defined in Sales and Use Tax Regulation 1702.5(b)(1) in the predecessor entity. A successor seeking relief of a penalty must file a written statement with the Board [of Equalization] under penalty of perjury stating the facts upon which he or she bases the claim for relief."

Successors seeking relief under RTC section 6814(b)(2) will be sent Form BOE-193, *Request for Relief from Penalty and/or Interest*, **not** Form BOE-735, *Request for Relief from Penalty*, since interest does not apply to successor billings and must be manually reversed. Form BOE-193 is available in ACMS. The taxpayer will also be instructed to return the completed form to the district office that handles the taxpayer's account and not to headquarters. Whenever possible, staff should include a self-addressed envelope to ensure that the form is returned to the proper office.

The collector will update ACMS with a note upon receipt of a completed Form BOE-193. The ACMS note will include the successor's reasons for making the request. If appropriate, the Form BOE-193 is then approved and signed by the District Administrator or his/her designee. The person approving the form should likewise enter notes in ACMS and send the form to headquarters for processing, which includes further review of the request and adjustment of the penalty and interest, if warranted. If the liability has not been petitioned, the Form BOE-193 should be sent to SPS. If the liability has been petitioned or a late protest has been submitted, send the form to the Petition Section.

PURCHASE MONEY DEPOSITED IN ESCROW DOES NOT RELIEVE A SUCCESSOR 732.110

If the purchaser allows funds in escrow to be distributed without first securing a tax clearance from the Board of Equalization, the fact an escrow was conducted is of no significance. A successor cannot be relieved of liability because funds in the amount of the purchase price or a portion thereof were deposited in an escrow from which the Board of Equalization did not receive payment.

If other creditors are serving levies on funds in escrow, the Board of Equalization should promptly levy for the amount of the obligation due from the predecessor in order to secure the available escrow funds. If the escrow funds are exhausted, or if there is only enough money for a partial payment against the predecessor's debt to the Board of Equalization, the successor remains liable for the predecessor's liability to the extent of the purchase price.

REQUESTING A SUCCESSOR BILLING 732.115

All requests for successor billings are made through ACMS using Form BOE-200-A, *Special Procedures Action Request*. The BOE-200-A is sent to SPS along with copies of the supporting documentation and a separate memo that describes the reason for the request and basis for the assessment. The memo may also contain observations from field calls and other information developed from personal contacts.

PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY 732.120

A notice of "successor's liability" may be issued no later than three years after the Board of Equalization is notified in writing of the purchase of the business or stock of goods. The statute of limitations for issuing the notice does not begin until the Board of Equalization has been notified in writing of the purchase of the business. If there is no notification, there is no statute of limitation, assuming there was a timely billing to the predecessor under RTC section 6487.

Once a notice of successor's liability becomes final, collection from the successor may be enforced using all collection actions. Active collection action may be used at any time within ten years after the finality date of the liability. The period may be extended by recording a Notice of State Tax Lien or abstract against the successor in any county before the expiration of the ten-year period and may be further extended by a new recording before the expiration of ten years from the date of the original recording.

HEADQUARTERS' RESPONSIBILITY — SUCCESSOR BILLINGS 732.130

Successor liability billings are generated by SPS. The Petitions Section processes, acknowledges, and controls all petitions for reconsideration of a Notice of Successor Liability. The Petition Section is charged with the responsibility of seeing that petitions are resolved expeditiously and, if possible, without the necessity of a preliminary and/or Board hearing(s).

Since successor billings may be based on limited information, the Petitions Section may refer a taxpayer's petition to the responsible district for additional investigation. Petitions referred to the district will be directed to the District Administrator for assignment to the appropriate section. Periodically, the Petitions Section will request a progress report to ensure that the district of control is handling the petition on a priority basis.

DISTRICT RESPONSIBILITY — SUCCESSOR BILLINGS 732.140

The district offices occasionally receive a petition for reconsideration of a notice of successor's liability directly from the successor. Since routine collection procedures are normally instituted on "final" liabilities, the original petition and the envelope in which the petition was mailed should be immediately forwarded to the Petitions Section for processing. When the Petitions Section places the successor billing into petition status, the account is flagged in ACMS to stop any collection activity that would normally commence on the petitioned liability.

The district staff is responsible for ensuring that all petitions for redetermination are handled on a priority basis. Copies of any correspondence between the successor and the district or other headquarters' staff should be sent to the Petitions Section.

When the district investigation is completed, a report of the findings should be sent to the Petitions Section. This report should include the following:

1. If applicable, the district's basis for recommending that the successor billing either be reduced or canceled.
2. Whether or not the successor agrees with the district's recommendation.
3. Whether or not the successor wants a hearing.
4. Information summarizing efforts to collect from the predecessor. This information must also be clearly documented in the predecessor's file and included in hearing information prepared for Board hearings.

~~OUT-OF-STATE COLLECTIONS 733.000~~

~~GENERAL 733.010~~

~~Each in-state district is responsible for taking action to collect delinquent amounts of sales and use tax from persons who are located outside of the state but who have incurred liabilities in this state. The in-state district in which the liability was incurred is the district that is responsible for taking this action. In those cases where the person has departed from California leaving no means of collection in this state, such action will consist of efforts to collect through the use of correspondence, telephone calls, out-of-state DMV, IRS returns, credit reports and county assessor checks and requests to any other out-of-state agency that may be of assistance in locating the taxpayer or assets. Board levies **may not** be served on out-of-state entities holding property located outside the state. EWO's **may not** be served on out-of-state entities holding wages earned outside the state by an employee residing outside the state. If these efforts are unsuccessful in clearing the liability but the taxpayer has been located, and there appear to be attachable assets, and the amount owing is sufficient to warrant an out-of-state auditor making personal contact, the assignment should be referred to the Out-of-State District. When referral is made to the Out-of-State District, all pertinent information must be included with the referral letter.~~

~~AMOUNT OF LIABILITY 733.020~~

~~In determining whether further action by the Out-of-State District is warranted, the in-state district will consider the amount owing, as well as whether a course of further action is available to the Out-of-State District. Accounts should not be referred to the Out-of-State District if the amount owing is relatively small or if it is obvious that no further action can be taken beyond that already taken by the in-state district. Accounts should not be referred to the Out-of-State District if there is a clear indication they should be written off. When further action on accounts of this type is not warranted or is not available, a recommendation for discharge from accountability should be sent to the Headquarters Special Procedures Section from the district.~~

~~OUT-OF-STATE DISTRICT ACTION 733.030~~

~~Upon receipt of in-state district referrals, the Out-of-State District will consider the amount owing with any other significant factors, and determine whether to have an auditor make personal contact when assigned an audit in the taxpayer's area. If a personal contact is not practical, or if personal contact by the out-of-state auditor does not result in payment or positive information on assets, the Out-of-State District will return the assignment to the in-state district office with a report on the investigation. If the out-of-state auditor makes contact with the taxpayer, the auditor should obtain as much information as possible concerning the taxpayer's assets and forward this information to the Out-of-State District for their action or referral. In any case, the report should detail any action taken on the account or relay any information that may be helpful in determining whether a referral to the Attorney General or a write off is warranted. The responsibility of the in-state district office is to then write off the liability or ask Headquarters Special Procedures Section to refer the case to the Attorney General.~~

~~If reports received from the Out-of-State branch offices indicate the possibility of assets in California, such as accounts receivable, real or personal property, the Out-of-State District will furnish the in-state district a copy of the report. The in-state district will proceed with collection action against these assets in the same manner as any other account.~~

~~OUT-OF-STATE DISTRICT COLLECTION RESPONSIBILITY 733.040~~

~~Persons who maintain a place of business in this State, but whose records are located out-of-state, are assigned Out-of-State District account numbers (see Section 230.000 et seq.). The Out-of-State District has the responsibility for all compliance functions, including accounts receivable. The Out-of-State District may call upon in-state districts for assistance in performing compliance functions, particularly on those accounts with in-state business locations.~~

~~If reports received from the Out-of-State branch offices indicate the possibility of assets in California, such as accounts receivable, real or personal property, the Out-of-State District will furnish the in-state district a copy of the report. The in-state district will proceed with collection action against these assets in the same manner as any other account.~~

~~SPECIAL PROCEDURES SECTION — AUTHORITY AND RESPONSIBILITY 733.050~~

~~The Headquarters Special Procedures Section has final authority for determining whether a request for discharge from accountability should be made pursuant to an Out-of-State District recommendation. The Headquarters Special Procedures Section will thoroughly review each Form BOE–479 received. If there is concurrence in the recommendation, the request for discharge from accountability will be processed. If, however, for any reason, the Special Procedures Section does not concur with the recommendation, the write-off will be returned to the district office.~~

~~The Headquarters Special Procedures Section also has final authority in determining whether referral to the Attorney General should be made pursuant to an Out-of-State District recommendation. In most cases, when such a recommendation is received, the Special Procedures Section will arrange to secure a credit report on the taxpayer. After securing the credit report, the Special Procedures Section will consider all factors and determine whether the case should be referred to the Attorney General.~~

~~NOTIFICATION OF ACTION TO DISTRICTS 733.060~~

~~In every case where a Form BOE–479 is received by the Headquarters Special Procedures Section, or where referral to the office of the Attorney General has been recommended, the Special Procedures Section will inform the district of the action taken. Such notification may be in the form of a copy of Form BOE–479, or a copy of the letter referring the case to the Attorney General.~~

PREDECESSOR'S LIABILITY FOR SUCCESSORS' TAX 734.000

GENERAL 734.010

Upon discontinuing or transferring a business, the permit holder shall promptly notify the Board of Equalization of the change in status. Under RTC section 6072, a person will surrender its seller's permit to the Board of Equalization for cancellation when the person is no longer actively engaged in conducting business that requires the person to hold a permit. Notifying another state agency of the transfer does not constitute notice to the Board of Equalization. If the predecessor claims that the Board of Equalization received constructive notice that the business was transferred to a successor, the information supporting the claim should be referred to SPS for possible cancellation of the predecessor's liability.

Notice of the transfer must be received by either:

1. An oral or written statement to a Board of Equalization office or authorized representative accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. (The permit itself need not be delivered to the Board of Equalization if it is lost, destroyed, or is unavailable for some other acceptable reason).
2. Receipt of the transferee's (successor's) application for seller's permit. It is unlawful for a transferee (successor) of a business to operate the business without a permit issued in his/her name.

If the transferor has actual or constructive knowledge that the transferee is using the transferor's permit in any way, the failure of the transferor to notify the Board of Equalization of the transfer or to deliver the seller's permit for cancellation subjects the transferor to liability for taxes, interest, and penalties (excluding fraud penalties) incurred by the transferee. Except in the case where, after the transfer, 80 percent or more of the real or ultimate ownership of the business transferred is held by the predecessor (substantially the same ownership), the liability is limited to the quarter in which the business is transferred, and the three subsequent quarters (Regulation 1699(f)). Some of the ways the transferee may improperly use the transferor's permit include:

1. Displaying the transferor's permit in transferee's place of business.
2. Issuing resale certificates using the transferor's seller's permit number.
3. Filing tax returns using the name and seller's permit number of the transferor.

Collectors should attempt to collect from the successor first. However, collection efforts should begin against the predecessor if it appears that delaying action against the predecessor will jeopardize the collection of the liability. When it is evident that the predecessor did not notify the Board of the business transfer, a notice of determination in the name of the predecessor should be requested by sending a memo to SPS. The request must explain the circumstances involved. The notice of determination, when issued, is a formal notice informing the predecessor of his/her liability. Active collection actions can be taken after the finality date of the notice of determination.

DUAL DETERMINATIONS AGAINST PREDECESSOR – WHEN APPLICABLE 734.012

When a predecessor fails to notify the Board of Equalization that he or she discontinued, sold, or transferred his or her business, the predecessor may be held liable for tax, interest, and penalty (except for fraud or intent to evade) incurred by the successor/transferee, if the predecessor had actual or constructive knowledge that the successor/transferee was using his or her permit in any manner. The predecessor's liability, however, is limited to the quarter in which the business was transferred, and the three subsequent quarters. However, the limitation on liability does not apply in cases where, after the transfer, 80 percent or more of the real or ultimate ownership of the business is still owned or held by the predecessor (see RTC section 6071.1(a) and (b), and Regulation 1699(f).)

DUAL DETERMINATIONS AGAINST PREDECESSOR FOR SUCCESSOR'S LIABILITY 734.015

Collection problems can arise due to the length of time between the determination of liability against the successor and issuing a dual determination against the predecessor. Some examples of these problems are:

1. The predecessor's account is closed out with no record of a liability and the predecessor's security deposit is refunded prior to issuing a dual determination.
2. The predecessor is not immediately informed of a tax liability that he/she shares equally with the successor.
3. The predecessor's file, along with possible collection leads, may have been destroyed prior to the issuance of the dual determination.

When a predecessor's liability is involved, three determinations may result.

1. A determination issued against the predecessor for any period that he/she actually operated the business.
2. A second determination issued against the successor for the period during which he/she operated the business.
3. A dual determination issued against the predecessor concurrent with the issuance of a determination against the successor. The dual determination should be issued beginning with the date on which the Board of Equalization first had knowledge of the change in ownership. As stated in the previous section, except in the case where the ownership is substantially the same after the transfer as before the transfer, the liability is limited to the quarter in which the business was transferred and the three subsequent quarters. Periods prior to the transfer date may not be included in dual determination for predecessor's liability as they are not legally assessable against the predecessor.

DUAL DETERMINATIONS AGAINST PREDECESSOR
FOR SUCCESSOR'S LIABILITY **(CONT.) 734.015**

In the case of a billing for predecessor's liability, current practices applying to dual determinations will be followed. The only exception would arise if a 25% fraud penalty is applied to the successor's tax liability. Sales and Use Tax Regulation 1699 specifically states that the predecessor is not liable for any fraud penalties. In this instance, the fraud penalty will be replaced by a 10% negligence penalty on the dual determination issued against the predecessor.

COLLECTION FROM SURETIES AND GUARANTORS 735.000

EFFECTIVE PERIODS AND LIABILITY 735.010

A surety can be held liable for an amount that its principal failed to pay only if the liability results from transactions that occurred during the effective period of the bond. The bond effective period runs from the date shown on the face of the bond until 30 days after the Board of Equalization receives a notice of termination from the surety. The liability of the surety extends to tax, penalty, and interest regardless of the location(s) where the liability was incurred.

NOTIFICATION TO SURETIES 735.020

When a demand for payment is issued against a taxpayer whose security is in the form of a surety bond, notification of the delinquency is generally sent by SPS to the surety.

In order to keep sureties informed of the status of the accounts of their principals, they are also notified when SPS files claims in bankruptcies, assignments, or probates, and in certain cases, when installment proposals are accepted.

DEMANDS ON SURETIES - DISTRICT RECOMMENDATIONS 735.030

As soon as it is apparent payment cannot be expected from the taxpayer, the district office may recommend making demand on the surety if:

1. The liability exceeds $50.
2. Collection from the taxpayer is not possible.
3. There is no corporate officer personal liability.
4. There are no assets upon which to levy.

DEMANDS ON SURETIES - CORPORATE ACCOUNTS 735.035

While the district recommendation can be initiated as soon as collection from the taxpayer appears doubtful, Civil Code section 2845 states:

> "A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced."

Therefore, the Board of Equalization must exhaust all collection avenues and investigate all other available remedies prior to making demand upon a surety bond unless the surety has similar remedies. If a bond is indemnified by the corporate officer(s) who would also be the individual(s) billed by the Board of Equalization, similar remedies exist.

DEMANDS ON SURETIES - CORPORATE ACCOUNTS (CONT.) 735.035

In view of the above, the following procedures will be followed when a surety bond secures liability on a corporate account.

1. If collection cannot be made from the corporation, the corporate officer(s) indemnify the bond, and the liability for the secured bond does not exceed the amount of the bond plus $500 (normal minimum amount of liability required to issue a dual determination), a request for demand on the bond is in order.
2. If the liability for the secured period exceeds the penal sum of the bond by more than $500, corporate officer/employee liability must be explored. If the review for individual liability is negative, a request for demand on the bond is in order. If the review is positive, the individuals should be billed and demand on the bond deferred until the potential for collection from the individual(s) has been thoroughly explored.

INTEREST CHARGES ON DEMANDS 735.040

In many cases, the amount of the tax-debtor's liability covered by the surety is not sufficient to pay the liability in full. When a demand is made on a surety:

1. If the total amount of the tax-debtor's liability is less than the amount of the bond, the demand will provide for interest (calculated on the tax portion of the liability) at the prevailing interest rate required under the Revenue and Taxation Code and any portion of the penalty, up to the full amount of the liability.
2. If the liability exceeds the total amount of the bond, the demand will be for the full amount of the bond. In addition, the demand will provide for additional legal interest at the prevailing per annum rate as provided for in the Code of Civil Procedure.

APPLICATION OF PAYMENTS FROM SURETIES 735.050

Payments received from a surety for application to a liability incurred during the effective period of the bond will be applied as follows (except as otherwise authorized by the supervisor of SPS):

1. Tax.
2. Interest.
3. Penalty.

LIMITATION PERIODS FOR DEMANDS 735.070

The Board of Equalization's legal staff believes that the limitation period for making demand on a surety bond or guaranty is within ten years from the date a tax liability becomes due, or within ten years from the effective date of termination by the surety or guarantor, whichever is earlier. SPS will make demand on the surety well in advance of the expiration of the limitation period to allow for the filing of a legal action, if necessary, or to obtain a waiver of the limitation period. If the surety will not furnish a waiver and has not made payment, SPS will refer the matter to the Attorney General to file legal action if the amount of the liability warrants such action. Legal action must be filed against the surety or guarantor before the limitation period expires.

DEMANDS INVOLVING MORE THAN ONE SURETY 735.080

If there is more than one surety on an account, demands will be made on each surety for the amount of liability incurred during the effective periods to the extent of the penal sum of each bond. If there is an overlap of the effective periods, the liability due for the overlap period will be pro-rated between the sureties. If an overlap exists, each surety is liable for the full amount incurred during the overlap period.

COLLECTION FROM GUARANTORS 735.090

The provisions applying to collection from guarantors in relation to effective periods, limitation of liability, notification, demands, interest charges, application of payments due, and limitation periods for demands are the same as those applying to sureties.

~~NOTICE TO WITHHOLD — FORMS BOE–465~~ ~~736.000~~

~~GENERAL~~ ~~736.010~~

~~Forms BOE–465, Notice to Withhold, are used respectively under sales and use tax as a simple means of preventing the transfer of assets belonging to delinquent taxpayers when the assets are in the possession of other persons and, for some reason, use of a Notice of Levy is not desired. Persons who hold the assets and who are served with the Notice to Withhold may neither transfer nor make other disposition of the assets during the effective period of the notice without first receiving consent of the Board (see Subsection 135.070).~~

~~The notice attaches only those assets in the person's possession at the time of service and has no effect on assets that later come under that person's control. The notice will not be used to garnish wages.~~

~~Any person who, after being served with the notice, makes a transfer or other disposition of assets during the effective period of the notice without first receiving consent of the Board, becomes personally liable to the extent of the value of the assets transferred if, solely by reason of the transfer, collection cannot be made.~~

~~The notice provides an effective collection aid if not abused by indiscriminate use. In general, the notice should be utilized only after the taxpayer has had an opportunity to pay voluntarily and has failed to do so or to stop the transfer of assets when the transfer would jeopardize collections. The notice should not be used in a routine manner on ordinary delinquent accounts as the first effort to collect or as a means of trying to "reform" a troublesome taxpayer. At the same time, unreasonable restrictions tending to discourage the use of the notice should not be imposed.~~

SERVICE OF NOTICE — FORM BOE–465 736.020

~~Service of the Notice to Withhold may be made within three years from the date the liability became final or within ten years from the last recording of an abstract or a lien (see Subsection 712.030).~~

~~The service may be made by first class mail. However, if the district office feels it is in the state's best interest, service may be made in person or by certified or registered mail. When service is accomplished in person, an acknowledged copy of the notice should be obtained at the time of the service. At the same time, an effort should be made to obtain a report of the assets of the taxpayer being held pursuant to the notice. Since it is not always possible to obtain a report immediately, depending upon the type of organization served or the type of assets being held, a follow-up must be maintained to be sure a report is received in cases of this type as well as when service is made by mail.~~

~~RELEASE OF NOTICES TO WITHHOLD AND LEVY~~ ~~736.025~~

~~Whenever possible, a photocopy of the Notice to Withhold or Notice of Levy should be used for the release instead of Form BOE–465–F or dictated letter. Stamp the upper-right corner of the notice with the release stamp, complete the blanks including authorized signature and prepare photocopies for the taxpayer and person(s) served.~~

~~Form BOE–465–F has been revised for use when a copy of the notice is not available or photocopies are illegible. Note the office address and type of notice must be entered. Offices may continue to use Form BOE–465–F, Rev. 2, to release Notices to Withhold until existing supplies are exhausted.~~

~~REFUSAL OF PERSONAL SERVICE OF FORM BOE–465~~ ~~736.030~~

~~When the person served refuses to acknowledge service, a notation should be made on the form and the date and time of service should be shown with the name of the person with whom the notice was left.~~

~~If a person refuses to accept personal service of a notice of withhold, an attempt should be made to have the notice served either by certified or registered mail.~~

~~If this service is also refused, a Notice of Levy should be served or, if the assets are other than money, a warrant should be obtained from Headquarters for levy by the sheriff, marshal constable or California Highway Patrol.~~

~~REPORT OF ASSETS HELD~~ ~~736.040~~

~~When a report has been received that assets are being held, an attempt should be made to immediately contact the taxpayer and arrange for either payment of the liability or release to the Board of the assets held if they are in the form of money. If the taxpayer refuses to cooperate or is not available, a warrant should be promptly requested or a Notice of Levy should be promptly served.~~

~~ASSETS TO BE HELD BY A PERSON SERVED FORM BOE–465~~ ~~736.070~~

~~The person, other than a bank, served with a Notice to Withhold, is required to hold all of the assets belonging to the taxpayer over which control is exercised, regardless of their value or form and regardless of the amount set forth on the notice (see Subsection 135.070).~~

~~Banks and Federal and State Savings and Loan Associations are required to hold not in excess of two times the amount, including penalty and interest, shown on the Form BOE–465 with respect to deposits, credits or personal property in their possession or under their control.~~

~~Generally, where the value of assets held exceed the amount of liability, an order to authorize release of excessive assets so as not to work an undue hardship on the taxpayer will be issued. Caution must be exercised in determining the amount to be released since a sufficient amount should be retained to pay all of the liability plus any costs that might develop through the necessity to use warrant procedures. Releasing assets as described will almost always be applicable only when money is being withheld.~~

~~SERVICE OF FORM BOE-465 ON JOINT BANK ACCOUNTS~~ ~~736.080~~

~~Service of the BOE–465 may be made on a delinquent taxpayer who maintains a joint bank, savings and loan, or credit union account with another person. A bank, savings and loan association or a credit union that withholds amounts pursuant to a Notice to Withhold issued by the Board, is not liable to any other persons who have an interest on the withheld account. Similarly, the institution is not liable to a third party for withholding the account of the third party pursuant to a state order, when the delinquent taxpayer has no interest in the withheld account. In each case where the Board has issued a Notice to Withhold, the institution is required to mail a notice to each person named on the account indicating the reason the account is being withheld and the amount. The institution may assess the account a reasonable service charge for providing the notice.~~

~~If, after review of the reply, there is uncertainty as to the extent of the taxpayer's interest in the account, a Notice of Levy should be served. This action places the burden of determining the taxpayer's interest in the account on the institution. The institution will usually hold the entire account to avoid becoming liable through an~~

~~improper release.~~

~~EFFECTIVE PERIOD OF FORM BOE–465 736.090~~

~~The effective period of the withhold notice is 60 days from the date of service unless released sooner by the Board.~~

~~When necessary to maintain the withhold in excess of the effective period, the time may be extended by making a new service prior to the expiration of the original notice. Since the notice is used for collection purposes, there should seldom be more than one service. After an effective service is made, the taxpayer should either arrange for payment or release to the Board the assets held or the warrant procedure should be used.~~

~~SERVICE OF FORM BOE–465 CREATES NO LIEN 736.100~~

~~The service of the Notice to Withhold does not create a lien upon the assets being held. To create a lien, a Notice of Levy or a levy under a warrant is necessary. As long as the assets are held pursuant to the notice they are subject to the liens of other creditors who might levy under a Writ of Execution and thereby assert priority over the Board's withhold. Therefore, a Notice of Levy should be promptly served to seize the assets and/or perfect the Board's lien.~~

~~SERVICE OF FORM BOE–465 TO REACH RESERVE ACCOUNTS 736.110~~

~~If service of a notice upon a bank or finance company reveals a reserve account against which there is a contingent liability, the service should be promptly followed by a Notice of Levy. Usually, a considerable period of time is required for the contingent liability to be eliminated during which time other creditors can levy under a Writ of Execution. Therefore, the Notice of Levy procedure should be used to establish a lien (that will be in effect two years) rather than renewals of the Notice to Withhold.~~

~~SERVICE OF FORM BOE–465 ON EMPLOYERS 736.120~~

~~Form BOE-465 will not be served on employers to reach salaries, wages or commissions due taxpayers.~~

~~DISTRICT OFFICE CONTROLS — FORM BOE–465 736.130~~

~~Each district office should establish proper controls over the use of the notice. All employees must clearly understand who is authorized to sign and approve the use of the BOE-465 and those persons so authorized should have a thorough understanding of the situations and circumstances when utilization is proper. After service has been made, the person sending the notice has the responsibility for maintaining a follow-up and taking appropriate follow-up action to bring the matter to a successful conclusion.~~

~~UNAUTHORIZED TRANSFER OF ASSETS 736.140~~

~~Any person, who, after being served with the notice, transfers assets belonging to the taxpayer without consent of the Board and before the expiration of the effective period, can become liable to the extent of the value of the assets transferred. This will occur only if the amount is uncollectible from the taxpayer solely because of the unauthorized transfer. Comprehensive reports should be made to the Special Procedures Section in all such cases. The Special Procedures Section will determine whether the matter should be referred to the Attorney General for appropriate action against the transferor.~~

~~SERVICE OF FORM BOE–465 TO REACH COMMUNITY INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT 736.150~~

~~Family Code Section 910 provides:~~

a. Except as otherwise expressly provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

Family Code Section 911 provides:

a. The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are not commingled with other community property, except property insignificant in amount. As used in this subdivision, "deposit account" has the meaning prescribed in Section 9105 of the Commercial Code, and "earnings" means compensation for personal services performed, whether as an employee or otherwise.

The BOE–465 has been revised to include the blurb "Service of this notice is intended to reach any and all community property interest of defendant in any account held in the name of the spouse. We believe the account(s) in the name of taxpayer name is community funded and subject to this order [Cal. Family Code Section 910(a)]." You should also attach Form BOE–425–L4, Levy/Withhold Attachment — Spousal Affidavit. This form is available only through ACMS DOCGEN and the LAN in Special Taxes.

The use of the above statement, on your Notice to Withhold, is recommended when the intent is to reach the community property interest, that the taxpayer may hold, in an account standing in the name of the spouse. The spouse should be specifically named on the withhold and the taxpayer would continue to be named as defendant. If the social security number is available, the number should be entered below his or her name, as should any alias. On partnership defendants, name only the partner on whom you wish to reach a community property interest.

Should the necessity arise to levy a Warrant of Collection on the asset, notify Headquarters Special Procedures Section with a BOE–200–W and include the name and social security number of the spouse.

COMMUNITY PROPERTY AND SEPARATE PROPERTY 736.160

Separate property includes the following:

1. Property owned by either spouse before marriage.
2. Property acquired during marriage by gift, devise, bequest, or descent.
3. The rents, issues and profits of separate property.
4. Property acquired during marriage with the proceeds of separate property.
5. Personal injury damages acquired from an interspousal action.

Family Code Section 760 says community property includes all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state, and property held in trust pursuant to certain revocable trusts (see Family Code Section 761).

The most common types of community property are:

1. Earnings of either spouse.
2. Personal injury damages.

a. Wrongful death of or injuries to a child.

NOTE: The recovery of the wrongful death of a spouse belongs to heirs, and is not community property [Fiske v. Wilke,67 C.A.2d 440,444(1945).].

b. Workman's Compensation award.

3. The proceeds of community property and proceeds of earnings, including pension and retirement benefits.
4. A proportionate share of the profits of a separate property business to which a spouse contributes labor or skills.
5. A loan on personal credit. NOTE: Money borrowed on the credit of separate property is separate property. An example of this is when separate property is used as security (mortgaged) so that money can be borrowed.

LIABILITY OF SEPARATE AND COMMUNITY PROPERTY FOR DEBT 736.165

Due to the complexities of California's community property law, use the following approach to any community property question:

1. Is the property you wish to secure community property, the separate property of the taxpayer, or the separate property of the taxpayer's spouse?
2. Did the taxpayer or the spouse incur the debt?
3. Was the debt incurred before, during or after the marriage?

In general, community property is liable for a debt incurred by either spouse before or during marriage. However, the earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage until such earnings are deposited in an account in which the person's spouse has a right of withdrawal or are commingled with other community property.

Once a marriage is terminated, the person's debts are his or her own. Separate property and property received in the division of property at dissolution of marriage is liable for a debt incurred by the person before or during marriage even when the debt was assigned for payment by the person's spouse. Such property is not liable for a debt incurred by the person's spouse before or during marriage unless the debt was assigned for payment by the person in the division of the property. (This does not affect the liability of property for the satisfaction of a lien on the property.)

FIELD CALLS 749.000

GENERAL 749.010

For compliance purposes, there are seven primary reasons to make a field call:

1. To reinstate an account after revocation of the permit or license.
2. To obtain payment and/or delinquent tax returns.
3. To verify that the business is operating or closed.
4. To gather collection and skip-tracing leads.
5. To gather evidence for prosecution.
6. To maintain a physical presence in the business community.
7. To conduct certain non-collection related activities, such as permit inspections pertaining to swap meets.

In addition to the seven reasons above, there are other reasons to make field calls such as witnessing the destruction of alcoholic beverages or conducting an investigation for city or county annexation purposes (an annexation investigation may be necessary when a city or county incorporates territory into its existing geographic area. When this occurs, the businesses within that area will need to have the tax area code changed.) Although the majority of compliance field calls are oriented toward reinstating accounts and collecting money, all field calls require advance planning and should never occur without proper preparation.

Before making a field call, the collector should have a plan of action and be completely familiar with the taxpayer's account information, ACMS history, and the requirements the taxpayer must meet in order to reinstate the permit or license, if a revocation exists. In addition, the collector should be prepared to collect all amounts owed by the taxpayer, obtain all tax returns that are due from the taxpayer, and provide the taxpayer with all the necessary documents to complete the assignment.

For each field call, the collector should have a primary plan and some contingency plans. For example, a field call reveals that the business location is vacant. In this case, the primary plan to reinstate the taxpayer's account must be altered and the contingency of talking to the nearby business neighbors, visiting the taxpayer's home address, contacting the landlord, or another alternative plan put into action.

The collector will normally schedule a number of field calls on the same day and should map out the business locations to be visited. Clustering the field calls together allows the collector to minimize travel time. Mapping requires the use of a Thomas Guide map book or similar resource, such as MapQuest. If the vehicle taken to the field is equipped with an onboard navigation system, the route to the various businesses can be preprogrammed to provide the most economical route.

CONDUCTING FIELD CALLS 749.020

The following tips will help to insure successful field calls:

1. Present yourself professionally by dressing and behaving professionally. By doing so, you demonstrate that you take your position as a representative of the Board of Equalization seriously and create an atmosphere of respect and credibility with the taxpayer.
2. Before leaving the office, you must know your reason(s) for meeting with the taxpayer, have reviewed the case history, mapped out your route, and ensured that you have all the information necessary to complete your assignment. Some recommended items to bring with you on a field call include:

   a. State of California identification card and business cards.
   b. Receipt book.
   c. Cell phone.
   d. Copy of the revocation notice.
   e. Extra tax return forms.
   f. Applications for the taxpayer to obtain a permit or license.
   g. Pertinent regulations or publications.
   h. Envelopes, notepad, and tape (for taping notices to the door when necessary).
   i. Calculator.
   j. Thomas Guide or similar map book.
   k. Coins for parking meters.
   l. BOE-945, *Receipt for Books and Records of Account*.
   m. Counterfeit bill detection pen.
   n. Security deposit documents

3. Do not return to the office empty-handed. Secure all tax returns, payments, or other information that will clear your assignment.
4. While in the field, safeguard the security of all Board of Equalization property, including equipment, work papers, receipt books and payments.
5. Upon returning to the office, complete Form BOE-609, *Tax Representative Dailiy Report.*

FIELD CALLS – SPECIAL EVENTS **749.030**

RTC section 6073 provides that the Board of Equalization may:

1. Require the operator of a swap meet, flea market, or special event to verify that any person desiring to engage in or conduct business as a seller on premises owned or operated by the operator holds a valid seller's permit.
2. Obtain a written statement from any seller not holding a seller's permit that he or she is not offering for sale any item the sale of which is subject to sales or use tax or that he or she is otherwise not required to hold a valid seller's permit.
3. No more than three times a year, require an operator to submit a list of vendors conducting business on its premises as a seller.
4. Impose a fine not to exceed $1,000 for each offense on any operator of a swap meet, flea market or special event who refuses or fails to comply with the provisions of RTC section 6073.

It is often desirable to conduct a "permit inspection" of these types of special events. Prior to making a field call for this purpose, the collector should:

1. Contact the event operator and obtain a list of event participants and the booth or space number for each participant.
2. Check the names of the participants against registration information in IRIS and verify that the permit is valid, active and in good standing.
3. Identify the participants who do not hold a valid seller's permit and return the list to the event operator. Advise the operator that the identified participants will need to meet with you prior to opening their booth on the first day of the special event.
4. Make a field call to the special event on the first day to obtain compliance from those participants who did not resolve the situation prior to the start of the event.

DISHONORED CHECK PROCEDURE 750.000

GENERAL 750.010

Processing dishonored checks, credit cards, EFT transactions, etc, hereinafter "checks" is a priority for both headquarters and district office staff so that monies due to the State of California are promptly collected. Close examination of potential collection cases and prompt, firm action by collection staff when the first offense occurs will tend to reduce the number of dishonored checks submitted by taxpayers.

The Cashier in headquarters will send dishonored checks to the responsible headquarters units and district offices using a dishonored check transmittal. Experience shows that possession of a taxpayer's dishonored check increases the effectiveness of the collection program and facilitates the collection effort.

Payment by personal check should not be accepted to replace a check previously dishonored by the financial institution. Staff will request that the taxpayer replace the dishonored check in full with certified funds, including penalty and interest. Payment plans should not be accepted for a liability arising from the intentional filing of a dishonored check or payment with the Board of Equalization.

When a dishonored check is replaced in certified funds, the account should be reviewed for adequate security, appropriate reporting basis and eligibility for audit. If a guaranty is held as a security deposit, the current financial condition of the guarantor(s) should be re-evaluated to verify adequate assets are available to cover any potential tax liability. (A new guaranty should not be obtained from persons whose guaranties are already on file for the account.)

Staff should be aware that a demand billing or statement of account prepared due to a dishonored check may not be a complete statement of the taxpayer's liability because non-final items are billed separately from final items.

DISHONORED CHECKS FOR REINSTATEMENT FEES AND SECURITY DEPOSITS 750.020

Whenever a check for payment of reinstatement fees is dishonored, the Cashier in headquarters will forward the check(s) to the responsible unit or office using a dishonored check transmittal form in the same manner as other dishonored checks. The dishonored check transmittal form is also used to transmit dishonored checks for special taxes and timber tax accounts.

Dishonored checks for security deposits posted for sales and use tax accounts are sent to the responsible unit or office with a Security Deposit Cost Security Detail/Maintain printout.

CANCELLATION OF CHARGES DUE TO BANK ERRORS 750.030

When it is determined that a financial institution dishonored a taxpayer's check in error, the penalty and interest charges assessed on the account will be canceled. For district office accounts, letters from financial institutions acknowledging errors should be promptly forwarded to the Return Analysis and Allocation Section for adjustment. The Consumer Use Tax Section and Special Taxes Division will review all bank letters for their own accounts and make the appropriate adjustments.

If a check is dishonored because of insufficient funds and the taxpayer requests relief from penalty due to extenuating circumstances, the request should be referred to the Return Analysis and Allocation Section, Consumer Use Tax Section, or Special Taxes Division, depending on the type of permit or license held by the taxpayer.

PHOTOCOPIES OF DISHONORED CHECKS 750.040

Occasionally, a financial institution will return a photocopy rather than the original dishonored check. This occurs when the original check is lost in transit between the depository bank and the financial institution on which the check is drawn. Returning photocopies of dishonored checks lost in transit appears to be a common and acceptable banking practice. Photocopies of dishonored checks should be treated the same as original dishonored checks.

There have been instances where a check that was lost-in-transit found its way back to the taxpayer. The taxpayer will generally bring this fact to the collector's attention upon initiation of collection efforts to replace the dishonored item.

If the taxpayer alleges that the bank actually honored the returned check, the following procedure will clear the taxpayer's account:

1. Obtain a copy of the front and back of the original check showing the cashier's batch number and date. Note: If the check can be traced (using PAY TR in IRIS) and it is confirmed that it was posted to an incorrect account number, complete Form BOE-523, *Tax Return and/or Account Adjustment Notice*, and submit it to the Return Analysis Unit in order to have the payment moved to the correct account.

   Secure a copy of the entire bank statement showing the taxpayer's checking account was debited for the correct amount, and a copy of the subsequent bank statement to make sure the amount has not been credited back to the taxpayer's account. ~~If the amount was credited on another statement, a copy of that statement is also needed.~~

2. Circle the appropriate check number and amount on the bank statement(s).

3. Forward the copy of the bank statement to the Cashier in headquarters along with the copy of the check.

DISHONORED CHECKS - PUNITIVE DAMAGES 750.050

Legal action should be considered as an alternative to citing the account for failure to pay taxes when that failure results from a returned check and the account exhibits a history of returned checks because of insufficient funds. The legal action remedy is proper if, over a period of two years, the account has had more than three dishonored checks that were not paid by the bank.

Existing law makes it a crime to fraudulently write a bad check. This means that the maker of the check knows there are insufficient funds in the checking account to cover the check.

Civil Code section 1719 (a)(1) authorizes a $25 service charge for the first dishonored check and $35 for each subsequent dishonored check. Civil Code section 1719(a)(2) creates a liability for triple the amount of the check, but in no case less than $100 or more than $1500 for failure to pay a dishonored check. A written demand must be delivered by certified mail to the maker of the dishonored check. If the maker fails to pay the amount of the dishonored item within 30 days, a cause of action can be initiated. A cause of action may be brought in any appropriate court, including small claims court (as long as the amount does not exceed the jurisdiction of that court).

When the first dishonored check is billed to the account, a bill note will inform the taxpayer that a court action can result if the dishonored check is not paid immediately. This bill note does not take the place of the demand letter, which by law must be sent via certified mail; it merely places the person on notice that such action can take place.

The district of control, or the responsible Headquarters unit, is responsible for initiating and maintaining a record of these actions. Use the five-step guide below to initiate legal action.

If the bank sends notice that a check was dishonored:

1. Contact the maker of the check in person, by telephone, or by letter. Notify the maker that the check has been dishonored and you are requesting immediate payment.

2. A decision to initiate civil proceedings to collect damages should be made if immediate payment is not received. A demand for payment, Form BOE-119 (available in ACMS), must be mailed by certified mail with a return receipt requested.

3. If payment is not received on or before 30 days from the date the demand letter was mailed, a claim may be filed in Small Claims ($7500 limit) or Municipal Court. This requires filling out forms and paying a fee. The fee may be recovered if a favorable judgment is reached; recovery is up to the discretion of the court.

4. The court will notify the Board of Equalization of the date when the case will be heard. After a court date has been set and a Notice of State Tax Lien has been filed, all the documents related to the case must be assembled. These documents should include:

   a. The notice from the bank.
   b. Notes of conversations with the tax or fee-payer.
   c. Any correspondence with the tax or fee-payer regarding collection efforts.
   d. A copy of the demand letter and certified receipt. (The returned receipt is a valuable addition when presenting evidence to the court.)

   During the court hearing, the responsible collector or designee must be prepared to detail all efforts taken to collect the debt. The person who accepted the check should also attend the court hearing for the purpose of identifying the maker and testifying about any initials, identification or information written on the check.

5. A favorable judgment is good for ten years. Money can be collected at any time during that period using collection procedures and legal remedies available for any debt. Please note, up to $500 in damages and the amount of the check and court costs may be recovered.

DISHONORED CHECKS - PUNITIVE DAMAGES (CONT. 2) 750.050

If the court renders a favorable judgment, the damages and other charges are collectable by requesting a writ of execution at any time within the ten-year life of the judgment. The notice of levy or warrant for collection may not be used to enforce collection. Monies collected on the judgment for damages or other charges will be reported on Form BOE-904, *Advice of Miscellaneous Receipts*, and identified as "recovery for damages/costs of judgement # XYZ-007". Form BOE-904 will be required for reimbursement of any costs advanced and a second BOE-904 for recovery of damages. Do not apply amounts collected for damages (or damages and costs) to the accounts receivable as no billing will be made. Damages collected will become a part of "General Fund-Miscellaneous Revenue."

An abstract of judgment may be recorded in the county in which the judgment debtor owns real property, if this action is considered beneficial in aiding collection. (An advance for recording fees and other services will be made, if necessary.)

ELECTRONIC MAIL - NOTICE OF DISHONORED CHECKS **750.060**
AND NO REMITTANCE/PARTIAL REMITTANCE RETURNS

The Cashier in headquarters notifies the district office or special taxes division by e-mail of dishonored checks, no remittance (NR) tax returns and partial remittance (PR) tax returns, in order to expedite collection efforts. The amount used as a minimum for immediate notification of dishonored checks, NR returns and PR returns is $15,000. If e-mail is down more than 24 hours, the Cashier in headquarters will telephone the responsible district office or special taxes division with the information.

INFORMATION TO BE PROVIDED 750.070

The Cashier in headquarters will provide the following information (when available and legible) to the responsible district office or special taxes division when there is a dishonored check for $15,000 or more:

1. **Account number.**
2. **Taxpayer's name and telephone number.**
3. **Name of person who signed the check.**
4. **Amount of the dishonored check.**
5. **Reporting period(s) the remittance was to cover.**
6. **Reason the check was dishonored.**
7. **Bank, branch and address of bank.**

The Cashier in headquarters will provide the following information (when available and legible) to the district office or special taxes division when there is a NR or PR tax return for $15,000 or more:

1. **Account number.**
2. **Taxpayer's name and telephone number.**
3. **If the return is NR or PR.**
4. **If a PR tax return, the amount of the check received with the return, the bank/branch address and the name of the person who signed the check.**
5. **Reporting period of the return.**
6. **Signature on the return.**
7. **Amount due with return (tax only).**

For dishonored checks exceeding fifteen thousand dollars ($15,000) the Cashier in headquarters will e-mail the dishonored check information to the district office. The information will be e-mailed to the designated Business Taxes Compliance Supervisor (BTCS) in the district office and the information is usually e-mailed to more than one BTCS to ensure that there is a back-up person who receives the check information.

The Cashier in headquarters will send the dishonored checks to the appropriate offices. If there are any questions about the checks, the Cashier in headquarters must be contacted as soon as possible.

The Cashier in headquarters will e-mail the NR and PR tax return information to the designated BTCS without delay. Any questions in reference to the tax return information must be asked as soon as possible after receiving the e-mail.

DISTRICT OFFICE PROCEDURES 750.090

The appropriate Business Taxes Compliance Supervisors must check their e-mail mailbox each working day after 8:00 a.m. and after 1:00 p.m. to determine whether their office has received any dishonored checks, NR or PR tax returns. To ensure receipt of this information, district offices may wish to set at least one of the BTCS's mailboxes to "print and retain." This will cause the printer to automatically print any information in their mailbox for future reference. The information should be distributed to district or branch office staff immediately for their review and action.

District and branch office staff, through the appropriate BTCS, should then contact the Cashier in headquarters within the above noted window periods if they have any questions. To contact the Cashier in headquarters in reference to these dishonored checks, NR or PR returns, the BTCS can use e-mail or the telephone. District offices must contact the Cashier in headquarters within the same day with any questions.

The Cashier in headquarters has a list of the compliance supervisors in each district office who are designated to receive the e-mail. If a designated compliance supervisor promotions, transfers, etc., the new BTCS should receive a mailbox immediately and the Cashier in headquarters must be notified of the change.

Generally, an assignment is automatically created in ACMS once a check has been dishonored and billed in IRIS. However, if an ACMS assignment does not exist at the time replacement funds are received, a manual case setup should be created in ACMS. **After ensuring that a collection assignment exists, any useful information on the check should be transcribed onto the asset field (using the asset fastpath button), followed by sending the check to the taxpayer's file in the Taxpayer Records Unit in Headquarters.**

RETURNING DISHONORED CHECKS 750.100

Dishonored checks are retained in the taxpayer's file in the Taxpayer Records Unit unless the taxpayer makes a written request to have the check returned and pays acceptable replacement funds in the amount of the dishonored check. Upon receiving such a request and payment, staff will prepare a signed memo and send it to the Taxpayer Records Unit to retrieve the check. When returning the dishonored check to the taxpayer, staff will also send the taxpayer ACMS Form BOE-134, *Letter Re: Dishonored Checks*.

NOTICE TO WITHHOLD — FORM BOE-465 752.000

GENERAL 752.010

Despite the title, Form BOE-465, *Notice of Withhold*, is not an earnings withholding order for taxes (see CPPM 755.010). The *Notice of Withhold* is used to prevent the transfer of a taxpayer's assets when those assets are under the control, or in the possession, of another person and the use of a *Notice of Levy* is not warranted. The *Notice of Withhold* attaches only the taxpayer's assets that are in another person's possession at the time of service and has no effect on assets of the taxpayer that later come into the other person's control.

Any person who receives a *Notice of Withhold* and subsequently transfers or disposes of the taxpayer's assets during the effective period of the notice, without first receiving consent from the Board of Equalization, may be held personally liable up to the value of the assets transferred. However, the Board of Equalization can impose personal liability on the transferor only if the liability is not collectable solely because of the transfer or disposal of the assets.

The *Notice of Withhold* is not to be used routinely as the first step in the collection process. Collection staff should use the notice only after the taxpayer is given an opportunity to pay voluntarily but does not do so, or to stop the transfer of assets when the transfer would jeopardize the Board of Equalization's collection efforts.

SERVICE OF NOTICE - FORM BOE-465 752.020

A *Notice of Withhold* may be served upon a person within three years from the date the liability became final or within ten years from the last recording of an abstract or a lien. The service may be made by first class mail; however, if the district office or applicable division within the Property and Special Taxes Department determines that it is in the state's best interest, service may be made in person or by certified or registered mail. When service is made in person, a signed copy of the notice should be obtained from the recipient at the time of the service. At the same time, an effort should be made to obtain a report of the assets of the taxpayer being held pursuant to the notice. Depending upon the type of organization served or the type of assets being held, it is not always possible to obtain an immediate report of the assets. Therefore, appropriate follow-up is necessary to ensure that the recipient provides a report, regardless of the method chosen for serving the *Notice of Withhold*.

RELEASE OF NOTICES TO WITHHOLD AND LEVY 752.025

Form BOE-465-F, *Authorization to Release Notice of Withhold*, in ACMS is used to release both a *Notice of Withhold* and a *Notice of Levy*, except in cases where it is necessary to release the asset(s) of a partnership account. Programming limitations in ACMS prevent printing a copy addressed to each partner. In this situation, print a copy of the original document, stamp the upper-right corner of the notice with the release stamp, complete the blanks (including "authorized signature") and prepare a photocopy for each of the partner's being served. Since this form is used to release both the *Notice of Withhold* and the *Notice of Levy*, be sure to select the appropriate form when preparing to print a BOE-465-F in ACMS.

REFUSAL OF PERSONAL SERVICE OF FORM BOE-465 752.030

If the person served with a *Notice of Withhold* refuses to acknowledge service, a notation indicating the refusal should be made on the BOE-465. The date and time of service should be shown along with the name of the person with whom the notice was left. If a person refuses to accept personal service of a *Notice of Withhold*, an attempt should be made to have the notice served either by certified or registered mail.

If this service is also refused, a *Notice of Levy* should be issued if the assets are in the form of money. If the assets are not money, a warrant should be obtained from Headquarters so that the sheriff, marshal, constable or California Highway Patrol can confiscate the identified assets from the person in control or possession of the assets.

REPORT OF ASSETS HELD 752.040

After effective service is made, or when a report is received that assets are being held, the taxpayer should be contacted immediately and arrangements made for payment of the liability or to have the withheld assets released to the Board of Equalization.

Collection staff should use the levy or warrant process if the taxpayer is unwilling to make payment or to have the assets released to the Board of Equalization.

ASSETS TO BE HELD BY A PERSON SERVED FORM BOE–465 752.070

A person served with a *Notice of Withhold*, other than a bank, is required to hold all of the assets belonging to the taxpayer over which control is exercised, regardless of their value or form and regardless of the amount set forth on the notice. Banks, federal and state savings and loan associations, and federal and state credit unions are required to hold up to two times the amount, including penalty and interest, shown on the Form BOE–465 with respect to deposits, credits or personal property in their possession or under their control.

To avoid placing an undue hardship on the taxpayer, collection staff may consider issuing an order authorizing the release of excess assets when the value of assets held exceeds the amount of the liability. Before authorizing the release of excess assets, it is first necessary to determine the amount of retained assets that will pay the total liability plus any costs that might develop if it becomes necessary to use warrant procedures. Releasing excess assets as described is normally applicable only when the person is withholding money, rather than non-money assets.

SERVICE OF FORM BOE-465 ON JOINT BANK ACCOUNTS 752.080

Under RTC section 6702, the BOE-465 may be served on a bank, state or federal savings and loan association, or a state or federal credit union where a delinquent taxpayer holds an account(s) jointly with another person. When the Board has served a financial institution with a *Notice to Withhold* on a jointly held account, the financial institution is required to mail a notice to each person named on the account that indicates the amount and the reason for the withhold. If, after receiving a response to the BOE-465 from the financial institution, there is uncertainty as

to the extent of the taxpayer's interest in the account, a *Notice of Levy* should be served (see CPPM 753.010).

EFFECTIVE PERIOD OF FORM BOE–465 752.090

The effective period of a *Notice of Withhold* is 60 days from the date of service unless released sooner by the Board of Equalization. When it is necessary to require the person to withhold in excess of the 60-day period, a new *Notice of Withhold* must be served prior to the expiration of the original notice. Service more than one time should occur infrequently since the *Notice of Withhold* is used for collection purposes.

SERVICE OF FORM BOE-465 ON EMPLOYERS 752.095

A *Notice of Withhold* may not be served on employers to reach salaries, wages or commissions owed to the taxpayer. Salaries, wages or commissions must be garnished using Form BOE-425-E, *Earnings Withholding Order for Taxes*.

SERVICE OF FORM BOE-465 CREATES NO LIEN 752.100

The service of the *Notice of Withhold* does not create a lien upon the withheld assets. To create a lien, a *Notice of Levy* or a levy under a warrant is necessary. As long as the assets are held pursuant to the *Notice of Withhold*, they are subject to the liens of other creditors who might levy under a Writ of Execution and thereby assert priority over the Board of Equalization's withhold. Therefore, when a lien on the assets is desirable, a *Notice of Levy* should promptly be served to seize the assets and/or perfect the Board of Equalization's lien.

SERVICE OF FORM BOE-465 TO REACH RESERVE ACCOUNTS 752.110

If service of a *Notice of Withhold* upon a bank or other depository institution reveals a reserve account against which there is a contingent liability, issue a *Notice of Levy*. A contingent liability is one which is difficult to quantify, or which may or may not come to pass, e.g., payments that may be awarded pending the outcome of a lawsuit. Usually considerable time is required for the elimination of the contingent liability and other creditors can levy under a Writ of Execution during this period. Therefore, the *Notice of Levy* procedure should be used to establish a lien rather than repeatedly renewing the withhold period using the BOE-465.

District Office Controls — Form BOE–465 752.130

Each district office should establish proper controls over the use of the *Notice of Withhold*. All employees must clearly understand who is authorized to sign and approve the use of the BOE–465 and those persons so authorized should have a thorough understanding of the situations and circumstances when utilization is proper. After service has been made, the person sending the notice has the responsibility for maintaining a follow-up and taking appropriate follow-up action to bring the matter to a successful conclusion.

WARRANTS AND LEVIES 753.000

GENERAL 753.010

Use of a warrant is one of the Board of Equalization's most effective collection remedies. Warrants should be used with proper discretion and without unreasonable restrictions that might tend to discourage their use. There are many times when the use of a warrant or a notice of levy is necessary. When the use of these tools is indicated, there should be no hesitancy because of possible unpleasant reactions from the taxpayer. In practically all cases where the warrant or notice of levy is used, the taxpayer will have had an opportunity to clear the liability but failed to do so.

A warrant is a judicial writ authorizing an officer to make a seizure or to execute a judgment and is used to confiscate property in accordance with a legal judgment. The Board of Equalization may issue warrants to enforce liens and to collect amounts due. Warrants may be issued at any time within three years from the date on which the liability became final, or within ten years after the last recording of an abstract or lien (see RTC section 6776 and chart in CPPM 757.020). Before requesting a warrant, the case must be evaluated to ensure that such action will produce sufficient money to cover all costs and pay the liability. Rather than using a warrant, a Form BOE-425-LA, *Notice of Levy*, is used to seize money, or a right to money, held or controlled by the tax debtor or by a third party.

With the exception of wage levies (also known as Earnings Withholding Orders), a warrant to levy on tangible personal property is made by a sheriff, marshal, constable or officer of the California Highway Patrol. Upon receipt of the warrant, an officer is required to promptly serve it upon the taxpayer and take possession of the available assets according to the instructions that accompany the warrant.

Before requesting a warrant to levy on personal property, the Board of Equalization must determine if the taxpayer is the legal owner of the property. Legal ownership can often be determined by examination of financing statements (Forms UCC-1 and UCC-3) filed with the Secretary of State. If financing statements are on file, the secured party should be contacted to see what amount, if any, remains due.

Sometimes a warrant is issued upon property in which a third party has an interest and the third party files a claim objecting to the seizure. Unless the amount of the claim is posted with the levying officer, or the levying officer is notified that the Board of Equalization opposes the validity of the third party claim, the levying officer must release the property to the claimant within five days after the claim is filed. (See CPPM 753.210.)

If it is in the best interest of the Board of Equalization to pay off a third party claim and seize the property, a request for funds to pay off the amount due will be sent to the Special Procedures Section (SPS) when the warrant is requested. These requests should be made only when the third party claim is relatively small in relation to the taxpayer's equity in the personal property.

Via ACMS, staff may request the issuance of a warrant by preparing Form BOE–200–W, *Special Procedures Warrant Request*, and sending it to SPS. By virtue of a warrant:

1. A law enforcement representative (keeper) may be placed on the premises of a delinquent taxpayer for the purpose of taking possession of personal property. This procedure is most frequently used for, but is not restricted to, situations where the taxpayer is still operating a business. The officer may be instructed to levy upon the furniture, fixtures, and equipment owned by the taxpayer, the stock in trade, and cash in the register. A keeper will remain on the business premises during the hours specified on the warrant. Requesting a "keeper" warrant requires the Board of Equalization to pay advance fees to the law enforcement agency to which the warrant request is directed. (See section 753.050.

2. An officer of the California Highway Patrol can be instructed to enter a business for the purpose of taking possession of the cash in the cash register(s) on the business premises. This procedure is commonly referred to as a "till-tap." No payment of advance fees is necessary when requesting a till-tap.

3. A warrant may be issued to levy upon motor vehicles. There is no requirement that the legal owner's interest in the automobiles be recorded. The ownership of motor vehicles must be registered with the Department of Motor Vehicles (DMV) and any changes in the registered or legal ownership must be promptly reported to DMV. When consideration is given to levying upon a motor vehicle, DMV's records must be checked, in all instances, to determine the correct ownership. If the DMV records show a legal owner other than the taxpayer, a warrant will not be issued. On rare occasions, however, as in the case of a "nearly clear" motor vehicle, arrangements can be made to provide the levying officer with sufficient advance fees to allow him to pay off the small interest of a legal owner. If such a course is anticipated, SPS must be advised of the exact amount needed in order to determine whether this course of action is advisable.

4. A levy pursuant to a warrant may be placed upon real property when the liability is $5,000 or more. Before any levy is made on real property in which the delinquent taxpayer has an interest, the extent of the interest must first be established. To do this, the real property records should be searched to determine:

    a. The manner in which title is shown.
    b. Trust deeds or mortgages against the property.
    c. If there are any other encumbrances such as liens, judgments, and attachments against the property.

These encumbrances must be recorded prior to the date on which the Board of Equalization's lien certificate was recorded in order to have priority over the Board of Equalization's lien. This search should also disclose whether the property is subject to a declaration of homestead.

As a matter of policy, the Board of Equalization does not levy upon and sell a taxpayer's principal residence.

In considering a warrant to levy on real property, the following steps must be taken:

a. The fair market value of the property must be determined by a personal appraisal or by a qualified realtor familiar with the subject property. In certain cases, appraisers from the Property Taxes Department may be used.
b. All title encumbrances, including the homestead exemption, must be deducted from the fair market value and the taxpayer's interest in the remainder must be established pursuant to the manner in which title to the real property is vested, i.e., sole owner, joint tenancy, etc.
c. The anticipated amount received from the forced sale of the real property is calculated to ensure that taking such action is practical. A comprehensive report and recommendation should be submitted to SPS for a decision.

Additional information regarding the seizure and sale of real property can be found in CPPM 757.150.

KEEPER WARRANTS 753.020

Upon request, levying officers may place a keeper on the premises of an operating business for the purpose of collecting incoming receipts while allowing the business to operate. When deciding whether to request a keeper warrant, the responsible collector should keep in mind that it may become necessary to eventually sell the taxpayer's property. The keeper's function is to preserve the property and prevent its disposal pending clearance of the liability or public sale of the property. The anticipated daily receipts from the operation of the business should be weighed against the daily costs paid for the keeper.

INTEREST ACCRUALS ON COLLECTIONS BY WARRANT 753.025

Since the officer serving the warrant and making collection is acting in the capacity of an agent of the Board of Equalization, the date payment is received by the officer is considered to be the effective date of payment. Interest accruals, therefore, will depend upon the date the officer receives the funds and not on the date they are remitted to the Board of Equalization by the levying officer.

WARRANT REQUEST AUTHORITY – TILL-TAPS AND KEEPERS 753.030

A supervisor must approve all requests to issue till-tap or keeper warrants and will ensure that both of the following items have been addressed:

1. The business is actively operating and is of a type (generally cash-based) that will support the keeper or till-tap. Note: a keeper warrant may be ordered on a closed-out permit as long as it is to be installed at the exact same owner's active business location, which may have a different account number.
2. The average daily sales are enough to realistically expect payment above and beyond the fees associated with service of the warrant.

Warrant requests are initiated through ACMS using Form BOE-200-W, *Special Procedures Warrant Request*. When the responsible collector determines that a keeper or till-tap warrant is appropriate, the case must be manually routed in ACMS to the collector's supervisor for approval. Upon supervisory approval, a BOE-200-W is generated in ACMS and sent to SPS for processing.

ISSUANCE OF WARRANTS AND INSTRUCTIONS 753.040

All warrants, except those on wages, are issued by SPS upon request from staff. Requests will be reviewed by SPS to determine whether the use of a warrant is appropriate. Factors that will be considered are legality of action, anticipated results, and costs compared to amount expected to be collected.

SPS will prepare the warrant, and the instructions to the levying officer will be prepared at the same time. If, after the warrant and instructions are issued, additional assets are located, or the instructions are inadequate, administrators or persons who have been delegated authority are authorized to amend or supplement the instructions as necessary. In no case, however, will the period or amounts shown on the warrant be altered; in these instances, new warrants will be requested from SPS.

ADVANCE PAYMENT OF FEES AND EXPENSES 753.050

The Board of Equalization is authorized to make advance payment of fees and expenses, other than fees and expenses incurred under the Cigarette and Tobacco Products Tax Law. That law provides for payment of fees and expenses upon completion of the services of the levying officer.

When an advance payment is necessary and a warrant request is transmitted to SPS, the amount of advance payment and the entity to whom it should be paid must be indicated. In most cases, SPS will send the warrant and warrant instructions to the district office along with a check covering any advance fees although, at times, the warrant and instructions are sent directly to the County Sheriff, etc, with copies provided to the district office that made the request.

When a warrant for which an advance payment has been made results in full or partial payment, separate remittance advice forms must be used to transmit the payment so the amount of reimbursement for the advance is clearly identified. Form BOE–904, *Advice of Miscellaneous Receipts*, is used to transmit all non-tax items such

as the reimbursement of the levying officer's fees and expenses. Unless this is done, the account of the taxpayer will be credited with the amount of the reimbursement instead of payment being diverted to the proper fund.

STATEMENT OF COSTS REQUIRED 753.052

Whenever the Board of Equalization is required to pay the costs of a levy for which no reimbursement was received as a result of the levy, a statement of charges is required. The statement must be submitted by the levying officer in triplicate and should be forwarded through the district office to SPS for approval and referral to the Accounting Office for payment, if not already paid in advance. No payment will be made until the statement, in triplicate and detailing the items, has been received. A statement is not necessary if an advance payment was made and full reimbursement is received as a result of the levy.

COSTS AS AN OBLIGATION OF THE TAXPAYER 753.054

The advance payment required, as well as any costs incurred in the use of a warrant becomes the obligation of the taxpayer and should be collected by the officer making the levy. Whenever costs are incurred through a levy from which no satisfaction is obtained, whether an advance was made or costs were later billed to the Board of Equalization, the amount of the costs should be added to the tax liability and collected along with the tax when collection becomes possible. Those cost items are not posted to the accounts receivable, therefore, the district offices must develop other controls. When payments include reimbursement for previously paid costs, remittance advice forms will contain an explanatory statement.

LEVYING OFFICER'S RETURN OF WARRANT 753.056

Within 60 days after making a levy pursuant to a warrant, the levying officer must make a report of any action taken and/or the results of the warrant. The warrant should be returned to the Board of Equalization with a report on the response from the person upon whom the levy was made, along with a statement on the amount collected, less costs and fees, and the net amount paid. If the warrant resulted in no collection, the officer must so report and, if costs were incurred by the Board of Equalization, a statement in triplicate must be submitted to SPS for transmittal to the Cashier at Headquarters. (The Cashier Manual contains the procedures for reimbursement of advanced warrant fees by levying officers).

CANCELLATION OF WARRANT SERVICE BY LEVYING OFFICER 753.058

In rare instances, the Board of Equalization may cancel or withdraw the warrant for collection before the sheriff, marshal, constable or California Highway Patrol has served the document on the taxpayer. Withdrawals or cancellation of warrants must be made only when careful examination of the circumstances dictates that the cancellation is proper such as when the taxpayer files bankruptcy before service is made, a payment to clear the liability is made prior to service, death of a taxpayer, etc. In these situations, a telephone cancellation followed immediately by written confirmation to the sheriff, marshal, constable or CHP, with a copy to SPS, is proper. Cancellation of a warrant may be made only by authorized persons.

CIGARETTE TAX LAW WARRANTS – NO ADVANCE FEES 753.060

Since the Cigarette Tax Law does not provide for advance payment of fees and expenses, the officer who will make the levy should be contacted to learn whether the levy can be made without an advance payment. If arrangements cannot be made, SPS should be notified. SPS will then determine whether the matter should be referred to the Attorney General for action against the taxpayer.

MOTOR VEHICLE WARRANT PROCEDURE - PROTECTIVE BIDS 753.070

The Department of General Services (DGS) has authorized the Attorney General (AG) to bid upon and purchase motor vehicles at a public sale conducted pursuant to a Board of Equalization warrant. In order to avoid the possibility of a motor vehicle being sold for an unreasonably small amount, the Board of Equalization may enter a "protective" bid. The AG will designate a Board of Equalization employee as the AG's special representative to actually make the bid and SPS will coordinate this procedure. The maximum protective bid shall not exceed two-thirds of the low "as is" Kelly Blue Book value of the vehicle, or the amount of the tax, including all costs of levy, whichever is the lesser.

The responsible district office will furnish SPS with all pertinent information regarding an anticipated public sale. The information should include, but is not limited to:

1. Estimated value of the vehicle and amount of proposed bid.
2. All facts regarding third party claims.
3. Name of Board of Equalization employee who will represent the AG in making the bid.
4. Date of expected sale.

Upon reasonable prior notice, vehicles may be delivered to state garages maintained in Sacramento, San Francisco, Fresno, Los Angeles and San Diego. As a successful bidder, the special representative will take possession of and deliver the vehicle to the nearest installation of DGS. SPS will notify DGS of all facts concerning the purchase and proposed resale of the vehicle and DGS will handle the storage and resale of the vehicle.

The responsible district office must furnish the Administrative Services Division, Accounting Section, with an itemized statement of expenditures in triplicate (letter form), including the amount bid for the motor vehicle. Upon proper notice, the Accounting Section will:

1. Issue a check for sheriff's, marshal's, constable's or California Highway Patrol fees.
2. Obtain an advance from the State Controller in the amount needed for the revolving fund to credit the taxpayer's account with the amount of the bid less expenses.
3. Prepare a revolving fund check for the credit of the taxpayer's account and transmit the check to the Cashier at Headquarters through SPS.

When a motor vehicle purchased by the Board of Equalization through bid-in procedures is subsequently resold by DGS, the proceeds from the sale that are transmitted to the Board of Equalization will be distributed as follows:

1. The revolving fund will be reimbursed for all funds advanced.
2. The remaining funds will be transferred to the general fund.

FRAUDULENT CONVEYANCES 753.095

Generally, a fraudulent conveyance is a transfer of a property interest that is made for the purpose of preventing creditors from obtaining the asset(s) in satisfaction of claim(s).

To establish a fraudulent conveyance, one or more of the following elements must be substantiated:

1. Fraudulent intent. This is actual intent, as distinguished from the intent presumed in law, to hinder, delay or defraud creditors. An example of fraudulent intent is when corporate assets are transferred to the officers of the corporation, or their relatives or other persons associated with the corporation, to prevent creditors from obtaining the assets in satisfaction of claims. (Civil Code section 3439.04).
2. Insolvency. Every conveyance made and every obligation incurred by a person which is or will be thereby rendered insolvent is fraudulent as to creditors without regard to the actual intent if the conveyance is made or the obligation is incurred without fair consideration (Civil Code section 3439.05). Fair consideration is given for property conveyed when a fair equivalent value is received in good faith in exchange for such property (also see below).
3. Lack of Fair Consideration. Every conveyance made without fair consideration is fraudulent when the person making the conveyance of property either:
    a. "Intended to incur, or believed or reasonably should have believed he or she would incur, debts beyond his or her ability to pay as they became due" (Civil Code section 3439.04.)
    b. Is engaged in a transaction or business for which the remaining capital is unreasonably small (Civil Code section 3439.04).
4. Bulk Transfers. Any bulk transfer, such as a sale of a business, is fraudulent and void against any creditor of the transferor unless the transferee gives notice of the transfer in any recognized legal publication, such as McCords Daily, in the manner provided by Uniform Commercial Code section 6105 (see also UCC section 6105).

The supporting documentation for establishing a fraudulent conveyance should include a description of the property transferred and the name and address of the transferee. The transferee may be served with a notice of levy and/or a summons in a creditor's suit under Code of Civil Procedures section 708.210, et seq.

There are three situations when either real or personal property not in the name of the taxpayer are subject to levy, lien, or some other enforcement procedure. These situations are:

1. Liability of the community property for debts of either spouse.
2. Property that was subjected to a lien when owned by the taxpayer.
3. Property that the taxpayer has fraudulently conveyed.

The last situation is where a nominee lien could be used.

A nominee is a person in whose name property is titled but who is not the actual owner. A nominee lien is an instrument recorded against certain property to allege the property is being held by another, the "nominee," for the benefit and use of the taxpayer. The nominee, as recorded owner, has mere color of title while the taxpayer holds the equitable title. Filing a nominee lien gives notice that property is held by a nominee but really belongs to the taxpayer.

The filing of a nominee lien is proper procedure when a nominee third party holds title to the property as the result of a fraudulent conveyance by a delinquent taxpayer, or in cases where the circumstances of the transfer are similar to those of a fraudulent conveyance. The nominee lien is also used when the transferee is merely the alter ego of the taxpayer.

The filing of a nominee *Notice of Tax Lien* gives the transferee and potential purchasers of a specific property notice that the Board of Equalization asserts a lien on that property on the basis of the fraudulent transfer, and establishes the priority of the state's lien under Government Code section 7171. Without the filing of a nominee *Notice of Tax Lien*, the state could lose priority if other Lienors described in Government Code section 7170 (mechanics, judgment lien creditors, etc.) perfect their interests before the nominee lien is recorded.

The nominee lien procedure is easier to accomplish than a suit to set aside a fraudulent transfer or suit to establish transferee liability. The nominee lien enables the state to more securely encumber property of the taxpayer standing in the name of a third party.

The lien compels the taxpayer to take the action to remove the resulting cloud on the title of its property rather than the Board of Equalization having to initiate action to set aside a fraudulent conveyance. A cause of action with respect to a fraudulent transfer is subject to the provisions of Civil Code section 3439.09.

EVIDENCE TO SUPPORT NOMINEE ~~CASES~~LIENS 753.110

To determine whether a conveyance is fraudulent involves the consideration of various elements and factors, such as the:

1. Intent of the parties.
2. Financial conditions of the transfer.
3. Consideration, or lack of consideration, for the transfer.
4. Relationship of the parties.

Regarding intent of the parties, and the financial conditions and considerations of the transfer, see Civil Code sections 3439.04 and 3439.05 respectively.

Indications of intent (to be considered in combination with 2 and 4 above as strong evidence of fraudulent intent) include:

1. Concealment or disappearance of the taxpayer.
2. Efforts to hide the facts of the transfer from creditors.
3. Secrecy surrounding the transfer.
4. Transfer of all the taxpayer's property.
5. Reservation of some benefit to the taxpayer.
6. Reliance by the taxpayer upon the transferred property for future support.

Actual intent to defraud must be proved by clear and convincing evidence, but circumstantial evidence often suffices to constitute such proof.

Regarding the financial conditions of the transfer, Civil Code section 3439.04 provides that every conveyance made and every obligation incurred by a person who is, or will be, thereby rendered insolvent is fraudulent as to creditors without regard to the actual intent if the conveyance is made or the obligation is incurred without fair consideration. Therefore, close scrutiny of the relationship of the parties is required where the transferee is closely related to, or controlled by, the transferor or debtor.

NOMINEE LIEN APPROVAL 753.120

In each case, a memorandum must be sent by the district administrator or special taxes division administrator, through SPS, to the legal staff for review and approval prior to SPS forwarding the nominee *Notice of Tax Lien* for recordation. Do not send the memorandum directly to the Legal Department.

The memorandum should:

1. Outline the facts of the case.
2. List all criteria upon which the staff is relying to assert that the person who holds title is merely a nominee of the taxpayer.
3. Include copies of relevant documents.

4. Include a property address and parcel number or property legal description.

1. Determine that the real property on which a nominee lien is desired is not currently deeded to the taxpayer.
2. Document the date of the transfer (copy of current deed).
3. Document the date the taxpayer first became aware of the pending tax liability.
4. Obtain copies of grant deeds, quit claim deeds, and deeds of trust in the chain of title from taxpayer forward (attach to request).
5. Obtain current county assessor's property tax assessment and parcel number.
6. If property was never titled in taxpayer, obtain the documentation to validate the request (attaché to request).
7. Document all facts that support the case, i.e., relationship, consideration or lack of consideration, etc.

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LEVY POLICY 753.200

Use of Form BOE-425-LA, *Notice of Levy*, should be approved by the district administrator, special taxes division administrator, or ~~their~~a designee. This designation may be made to the level of Business Taxes Representative, Range B, who may also be the person serving the levy. With the exception of a tax debtor's interest in a decedent's estate, a levy notice will only be used to levy on money, or right to money, held or controlled by the taxpayer or by a third party. Warrants will continue to be requested for keepers or to reach any assets other than money or right to money (excepting wages). An addressed envelope should be included with the levy notice to ensure the reply is directed to the correct Board of Equalization office.

Notice of Withhold forms BOE-465 and BOE-465-B may be used for any reason where use of the levy notice is not desired (see CPPM 752.000.)

Staff will delete the taxpayer's social security number from all copies of the *Notice of Levy* when the levy is being sent to entities other than financial institutions. In ACMS, click on the drop down menu near the bottom of the first page of the levy just after the statement, "You are notified in the capacity of a", select "person in possession of monies owed to tax debtor," and then delete the populated taxpayer's social security number in the Identification of Taxpayer window on the original levy notice.

NOTICE OF LEVY 753.205

The *Notice of Levy* is a two-page document. The first page of the form is sent to the entity being levied, i.e. a bank, savings and loan association, etc., who is known as the "garnishee." The second copy is sent directly to the tax debtor informing them of the levy.

Taxpayer's are entitled to the exemptions provided in Code of Civil Procedure (CCP) section 704.010. Therefore, Form BOE-425, *Exemptions from the Enforcement of Judgments*, and Form BOE-425-L3, *Notice of Levy - Information Sheet*, must accompany the copies of the levy notice sent to the garnishee and the tax debtor. Centralized banks can take from ten (10) to twenty (20) days to acknowledge receipt of a *Notice of Levy* or to attach funds in a taxpayer's account. The tax debtor's copy, including the instruction sheet and exemptions list shall be mailed to the tax debtor within a reasonable period after the levy has been mailed to the garnishee. This mailing is required by CCP section 700.010. Per CCP section 703.520, the taxpayer has ten days from the date of receipt of the *Notice of Levy* to file a claim of exemption with the office that issued the levy.

RTC section 6703 permits the Board of Equalization to serve a notice of levy, in person or by first class mail, on the tax debtor or on a third party holding personal property belonging to the tax debtor. If the asset consists of money other than wages, the person served with Form BOE-425-LA, *Notice of Levy*, is required to turn the money over to the officer who will turn the money over to the Board of Equalization to credit the taxpayer's account, after deducting fees, expenses and commissions. If the asset is other than money, the officer will take possession of the property and arrange for its sale to the highest bidder at public auction. After deducting fees, expenses and commissions from the proceeds of the sale, the levying officer will remit the remainder

to the Board of Equalization to credit the taxpayer's account.

The notice of levy may not be used to levy on wages or on out-of-state entities that are holding property belonging to the tax debtor that is also located outside of California. However, the registration of an agent for service of process within the State of California is an established basis for California's jurisdiction over a foreign person or legal entity. If the levy is properly served on a foreign person's or legal entity's registered agent for service of process in California, the foreign person or legal entity recognizes California's jurisdiction and the Board of Equalization should continue to enforce the levy and not release it. (See Code of Civil Procedure section 416.10).

The levy creates a lien for a period of two years on all property described in the notice that is held at the time of service, and the person in possession or control of the property is required to deliver it to the levying officer. (See CPPM 753.250).

In addition, RTC section 6703 provides for a continuous levy. The *Notice of Levy* is effective until the amount specified in the notice, including accrued interest, is paid in full; until the levy is withdrawn; or until one year from the date the notice is received, whichever occurs first. There are two limitations to the continuous levy:

1. The continuous levy is applicable only to sales or use tax or fuel tax liabilities.
2. Funds in a deposit account, as defined by Uniform Commercial Code section 9102, are not subject to a continuous levy. This section defines "deposit account" as a demand, time savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization other than accounts evidenced by a negotiable certificate of deposit. Therefore, only the funds available in the deposit account when the levy notice is served on a financial institution are subject to withhold and subsequent payment to the Board of Equalization.

THIRD PARTY CLAIMS 753.210

A third party may claim ownership or the right to possession of the property pursuant to Code of Civil Procedure (CCP) section 688.030. A third-party claimant should file its third party claim with the district office that issued the *Notice of Levy*. The district office issuing the levy is responsible for advising the third-party claimant of all the requirements for a valid claim and determining whether a third-party claim conforms with the requirements of CCP section 720.130.

CCP section 720.120 requires that a third-party claim must be made by the person claiming ownership and submitted prior to the Board of Equalization receiving the levied funds. If a third-party claim is received after the Board of Equalization has deposited the funds, the only recourse available to the claimant is to follow the claim for refund process.

The third-party claim must be signed under penalty of perjury and contain all of the following:

1. The name of the third-party and an address in this state where service by mail may be made upon the third-party.
2. A description of the property in which an interest is claimed.
3. A description of the ownership interest claimed, including a statement of the facts upon which the claim is based.
4. An estimate of the market value of the interest claimed.

A copy of any documentation upon which the claim is based should be attached to the third-party claim. However, documentation need not be provided in order for a third-party claim to be valid.

All third-party claims conforming to CCP section 720.130 should immediately be referred to the Legal Affairs Division of the Board of Equalization's Legal Department as follows:

1. Notification of receipt of a third-party claim should be sent via email to the Assistant Chief Counsel of the Legal Affairs Division with a copy to the respective SUTD division chief.
2. The third-party claim along with documentation, if any, is to be immediately faxed to the Assistant Chief Counsel of the Legal Affairs Division and the hard copy will follow by inter-office mail to MIC 82.

An attorney in the Legal Affairs Division will determine whether to release the levy or refer the matter to the office of the Attorney General for commencement of a third-party claim legal proceeding.

SERVICE OF FORM BOE-425-L4 TO REACH COMMUNITY INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT **753.220**

RTC 6703 authorizes the Board of Equalization to serve a *Notice of Levy* on a third party holding property belonging to a tax debtor. Funds held in a joint bank account are presumed to be community property (Probate Code § 5305(a)) and to reach community property interests, staff must attach a spousal affidavit to the *Notice of Levy*.

Family Code section 910 provides:

> "(a) Except as otherwise expressly provided by statute, the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt.
>
> (b) "During marriage" for purposes of this section does not include the period during which the spouses are living separate and apart before a judgment of dissolution of marriage or legal separation of the parties."

Family Code section 911 provides:

> "(a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.
>
> (b) As used in this section:
>
> (1) "Deposit account" has the meaning prescribed in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.
>
> (2) "Earnings" means compensation for personal services performed, whether as an employee or otherwise."

The community property blurb, "Service of this Notice also intended to reach any and all community property interest of defendant in any account held in the name of the spouse/registered domestic partner, ********, SSN ********. (Cal. Family Code Section 910[a])."

should be included when levying on a joint account held in the names of the tax debtor and the tax debtor's spouse. For privacy protection purposes, the social security numbers are automatically censored in ACMS on the taxpayer's copy of the *Notice of Levy* when entered into the "Identification of Tax Debtor" area of the levy. Do not enter the blurb within the "Property to be levied upon is described as:" area of the levy because the spouse's social security number will not be censored.

The use of the community property blurb on the levy notice is recommended when the intent is to reach the community property interest that the taxpayer may hold in an account standing in the name of the spouse. The spouse should be specifically named

on the *Notice of Levy* and the taxpayer named as tax debtor. If the social security number of the spouse is available, the number should be entered with his or her name, as should any alias. For partnership defendants, name only the partner on whom you wish to reach a community property interest.

Should the necessity arise to levy via warrant on the asset, notify SPS with a Form BOE-200-W and include the spouse's name and social security number.

COMMUNITY PROPERTY AND SEPARATE PROPERTY 753.230

Family Code section 760 provides that all community property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property. In addition, under Family Code 761, community property transferred into a revocable trust during the marriage remains community property as long as the rights and interest of the property held in trust require the consent of both spouses.

The most common types of community property are:

1. Earnings of either spouse.
2. Personal injury damages for:
    a. The wrongful death of, or injuries to, a child. NOTE: The recovery of the wrongful death of a spouse belongs to the heirs, and is not community property [Fiske v. Wilke, 67 C.A.2d 440,444(1945)].
    b. A Worker's Compensation award.
3. The proceeds of community property and proceeds of earnings, including pension and retirement benefits.
4. A proportionate share of the profits of a separate property business to which a spouse contributes labor or skills.
5. A loan on personal credit. NOTE: Money borrowed on the credit of separate property is separate property. An example of this is when separate property is used as security (mortgaged) so that money can be borrowed.

Separate property includes the following:

1. Property owned by either spouse before marriage.
2. Property acquired during marriage by gift, devise, bequest, or descent.
3. The rents, issues and profits of separate property.
4. Property acquired during marriage with the proceeds of separate property.
5. Personal injury damages acquired from an inter-spousal action.

LIABILITY OF SEPARATE AND COMMUNITY PROPERTY FOR DEBT 753.240

In general, community property is liable for a debt incurred by either spouse before or during marriage.~~Due to the complexities of California's community property law, use t~~The following approach should be applied to any community property question:

1. ~~Is~~Determine whether the property ~~you wish~~ to be secured is community property, the separate property of the taxpayer, or the separate property of the taxpayer's spouse~~?~~.
2. Did the taxpayer or the spouse incur the debt?
3. Was the debt incurred before, during or after the marriage?

~~In general, community property is liable for a debt incurred by either spouse before or during marriage. However,~~

~~t~~The earnings of a married person during marriage are not ~~liable for a debt incurred by the person's spouse before marriage~~community property until such earnings are deposited in an account in which the person's spouse has a right of withdrawal or are commingled with other community property. At that time, the earnings become liable for payment of a debt or debts incurred by the person's spouse.

~~Once a marriage is terminated, the person's debts are his or her own~~Debt incurred by a person after the dissolution of marriage is his or her own. Separate property of the tax debtor, and property received in the division of property at dissolution of marriage that was community property during the marriage, is liable for payment of a debt or debts incurred by the person before or during marriage, even ~~when~~if the debt was assigned to ~~for payment by~~ the person's spouse for payment. Such property is not liable for payment of a debt or debts incurred by the person's spouse before or during marriage unless the debt was assigned for payment by the person in the division of the property. (This does not affect the liability of property for the satisfaction of a lien on the property.)

FAILURE OF GARNISHEE TO DELIVER 753.245

Although an officer who makes a levy to reach personal property belonging to the taxpayer will demand that the property be delivered to the levying officer, the levying officer is under no obligation to take any further action to press the garnishee for delivery.

If the garnishee fails to deliver, the responsibility for taking further action rests with the Board of Equalization. In these cases, staff should contact the person and attempt to have delivery made to the officer or, where appropriate, directly to the Board of Equalization. If the garnishee refuses to make the delivery voluntarily, the only recourse available is to file an action (creditor's suit) for delivery or for damages if the property has been disposed of. A prompt report should be made to SPS when a situation of this type develops.

NOTICE OF LEVY TO CREATE A LIEN 753.250

Situations exist in which the taxpayer has an interest in personal property held by another person but against which there is a contingent liability, or for some other reason the property cannot be turned over to the levying officer. For example, a reserve account with a bank or finance company, against which there remains unpaid installment contracts on merchandise sold while the person was in business and where a number of months or even years are required before the contracts will pay off.

In such a situation, a *Notice of Levy* should be sent to the bank or finance company in order to perfect a lien upon the reserve account as protection against other executing creditors. Code of Civil Procedures section 697.710 provides that liens created by levies of this type are valid for two years from the date appearing on the levy document. The lien may be extended by making a renewal levy before the expiration of the two-year period. The holder of the reserve account or property should be contacted from time to time regarding the status of the matter. (Liens created by levy on a judgment debtor's interest in personal property of a decedent's estate are valid for one year after the decree distributing the interest has become final. Code of Civil Procedure section 700.200.)

LEVY ON PROPERTY SUBJECT TO FEDERAL LIENS 753.253

When the Federal Government issues an assessment, a lien is created on all property, real and personal, belonging to the person against whom the assessment is made. The Board of Equalization's assessment lien has equal priority, based on time of assessment. As far as the effect of the federal lien against money is concerned, Board of Equalization levies can be made upon the holder of funds and collection made, if the holder is unaware of the existence of the federal lien at the time the funds are paid over. The federal authorities can intervene and assert their priority at any time before the funds come into the possession of the Board of Equalization.

LEVY ON PERSONAL PROPERTY LOCATED IN A PRIVATE PLACE 753.255

Code of Civil Procedure section 699.030 provides a mechanism whereby the Board of Equalization may apply to the court for an order directing the levying officer to seize property in a private place such as a garage, store and lock facility (mini storage), etc. An important feature of this code section is that the Board of Equalization is allowed to apply for a court order to seize the property in a private place "ex parte." Ex Parte is defined as:

> On one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be "ex parte" when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

If it appears that the taxpayer will remove the property in question if given advance notification, and the judge concurs, the order to seize the property will be granted without notification to the taxpayer.

This procedure requires an Attorney General referral and a declaration by the person investigating the case. Documentation for requesting a levy ex parte is sent to SPS for referral to the Attorney General. A sample declaration follows.

SAMPLE EX PARTE APPLICATION FOR LEVY

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of the State of California

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Attorneys for Applicant
Board of Equalization

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF [Name]

BOARD OF EQUALIZATION,	)	No.
	)	
Plaintiff,	)	APPLICATION FOR ORDER
	)	DIRECTING SEIZURE OF PROPERTY
v.	)	IN A PRIVATE PLACE
	)	(Code of Civ. Proc. section 699.030)
	)	
[Name 1]- and [Name 2]	)	
	)	
Defendants	)	

INTRODUCTION

The Board of Equalization applies ex parte pursuant to Code of Civil Procedure section 699.030 for an order directing the California State Police or any other California law enforcement agency to seize certain vehicles owned by respondents [Name 1] and [Name 2] in satisfaction of their outstanding tax liability.

The application is made ex parte because, if given notice, respondents may remove the vehicles. An ex parte application is specifically authorized by section 699.030.

ARGUMENT

The following are the facts and legal principles on which the application is based:

1. Respondents, [Name 1] and [Name 2] owe, but refuse to pay, their sales tax liability of $325,873.90 for the period July 1, 19XX to June 30, 19XX;
2. The Board's numerous attempts to obtain voluntary payment from respondents have been unsuccessful;
3. According to DMV records respondents are the individual or joint owners of the following vehicles:

YEAR	MAKE	LICENSE NO.	VEHICLE I.D. NO.
1985	--- Motorhome	1RCVXXX	1FDEE14FOFHC3XXXX
1983	--- Pickup	PADMXXX	1FTHF47613DPAXXXX
1984	--- ---	PADMXXX	WDBDB66A9EA06XXXX
1956	--- Pickup	1G90XXX	F10D4R4XXXX
1947	--- Pickup	427XXX	71GC35XXXX
1951	--- House Car	2AEMXXX	4392XXXX
1957	--- House Car	2AMEXXX	TGH31XXXX
1985	--- Pickup	2P87XXX	1FDKF5634FBP7XXXX
1978	---	MYTXXX	6L47S8Q97XXXX

These vehicles have been observed parked at respondents' residence XXXX --- Court, Beantown or according to information received by the Board may be parked either in a garage adjacent to the above address or stored at --- --- Mini Storage, XXXXX --- ---, ---, in room numbers 52, 90, 126, 164, 174, 175, 176, 177, 231 and 300.

4. The Board has issued respondents a warrant for the collection of the tax. The Board is authorized to issue such a warrant, which has the same force and effect as a writ of execution. (Rev. & Tax Code section 6703);

5. A state agency which may lawfully issue a warrant may use any of the remedies available to a judgment creditor, including those set forth in Code of Civil Procedure section 699.030. (Code of Civ. Proc. section 688.020);

6. A judgment creditor may apply ex parte for an order directing the seizure of property in a private place. (Code of Civ. Proc. section 699.030.)

CONCLUSION

For the reasons set forth above, this Court should issue an order directing the California Highway Patrol or any other California law enforcement official to seize respondent's automobiles from their residence or storage areas.

DATED: December 31, 1988

EDMUND G. BROWN, JR., Attorney General
of the State of California

NANCY A. BENINATI
Deputy Attorney General

Attorneys for Applicant
Board of Equalization

RELEASE AFTER LEVY **753.257**

In some instances, the levy upon personal property will result in a contact by the taxpayer to make payment in full or to arrange a satisfactory installment payment agreement (full payment is the primary objective). The levy(s) must be released if the taxpayer enters into an installment payment agreement or pays the liability in full. The release notice is addressed to the officer who made the levy and accompanied by instructions to release the property to the taxpayer. The taxpayer is responsible for full payment of all expenses incurred in seizing the property and must reimburse the Board of Equalization or the levying officer for those expenses.

Although a levy may be released through ACMS using Form BOE-465-F, *Authorization to Release Notice of Withhold*, from the "Send Letter" function, there may be situations requiring the use of a photocopy of the notice. In this case, a levy release stamp must be used and all relevant information provided. A copy of the stamped document is then sent to the taxpayer and to the garnishee.

Form BOE-465, *Notice of Withhold*, does not create a lien; service of the notice merely "freezes" the asset up to 60 days during which a warrant is issued so the sheriff, marshal constable, or CHP can levy on the property.

Code of Civil Procedure (CCP) sections 703.010 through 704.995 allows tax debtors to claim exemptions from levy (see Form BOE-425, *Exemptions from the Enforcement of Judgments*). CCP section 703.510 et seq., details the procedures for determining the validity of claimed exemptions.

As explained in CCP section 704.080, certain types of property are not subject to levy and a Claim of Exemption does not need to be filed for them. Included in this category are "social security benefits" and "public benefits."

"Social security benefits" are payments authorized by the Social Security Administration for regular retirement and survivors benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

Under CCP 704.080, exempt social security benefits for 2008 include:

1. The first two thousand four hundred twenty-five dollars ($2,425) where one depositor is the designated payee of directly deposited social security payments.
2. Three thousand six hundred fifty dollars ($3,650) where two or more depositors are the designated payees of directly deposited social security payments.
3. If those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exempt amount is two thousand four hundred twenty-five dollars ($2,425).

The amounts under CCP section 704.080 change annually so staff should periodically check for updated amounts at www.leginfo.ca.gov.

Under the Welfare and Institutions Code, "public benefits" means aid payments authorized pursuant to section 11450(a), payments for supportive services as described in section 11323.2 and general assistance payments made pursuant to section 17000.5.

As set forth in CCP 704.080, exempt public benefits include:

1. The first one thousand eight hundred twenty-five dollars ($1,825) where two or more depositors are the designated payees of the directly deposited public benefits payments.
2. If those depositors are joint payees of directly deposited public benefits payments that represent a benefit to only one of the depositors, the exempt amount is one thousand two hundred twenty-five dollars ($1,225).

Within 10 days, the financial institution shall provide the levying officer with a written notice stating that the deposit amount is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent, but the balance of the deposit account exceeds the exemption. Promptly upon receipt of the notice, the levying officer shall serve the notice on the taxpayer personally or by mail. The taxpayer has five days after the levying officer serves the notice to file an affidavit alleging that the excess amount is not exempt. Banks and other financial institutions normally also notify depositors of withholds and levies against accounts and inform the depositors of their right to certain exemptions. The levying officer must be notified to release the money if the amount of the funds levied on is less than the statutory exemption claimed (or allowable, in cases where no claim is required) and the district cannot show by affidavit on Notice of Opposition that the exemption is invalid or improper.

GENERAL PROBLEMS IN CONNECTION WITH LEVIES 753.270

The manner in which levies are made in certain situations may vary. Therefore, the problems that can arise in connection with serving levies are also many and varied. For these reasons, to describe all of these situations and attempt to set forth instructions covering all possible contingencies is not practical. When unusual situations arise, staff are expected to use their best judgment in handling the matter and, when necessary, obtain supervisory approval to submit the problem to SPS for resolution.

Generally, a levy is in order when an entity that is indebted to the taxpayer has possession of, or control over, assets belonging to the taxpayer, or when personal property, owned free and clear by the taxpayer, has been located. Whenever a levy is made, the person requesting the levy should always be prepared to carry the action through to a sale of the property levied upon or, in the case of money, to seize all of the funds available or a sufficient amount to clear the liability plus costs.

Although proper discretion must be used in deciding whether to levy, there should be no hesitancy about using this action when necessary. The levy procedure is an extremely effective collection tool that will frequently result in immediate payment. Even when payment is not immediate, the levy process provides the state with protection against the taxpayer's other creditors. Failure to make use of levies at the proper time often results in loss to the state.

CALIFORNIA RIGHT TO PRIVACY ACT 753.280

The California Right to Privacy Act restricts state agencies from obtaining certain information from banks and other financial institutions in regard to taxpayer's affairs, unless the agency has prior written permission from the taxpayer. (See CPPM 135.070). SPS should be consulted whenever questions arise on this topic.

WAGE GARNISHMENTS 755.000

GENERAL 755.010

The state is the levying officer for wage garnishments (Code of Civil Procedure (CCP) section 706.074). Earnings owed to a taxpayer by his or her employer are only reachable by:

1. Earnings Withholding Order for Taxes (EWO), (Form BOE-425-E).
2. Jeopardy Earnings Withholding Order for Taxes (Form BOE-425-E).

EWO's may not be served on out-of-state employers when the employee's job location and residence is also outside the state. Following is a description of each of these instruments, as well as instructions for their use.

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO) 755.020

Receipt of an EWO requires the employer to begin withholding earnings on the first workday occurring ten or more days after service of the EWO. Under CCP 706.074 and USC Title 15, section 1673, the maximum amount that may be withheld from the aggregate disposable earnings of an individual for any workweek is the lesser of:

1. Twenty-five percent (25%) of weekly disposable earnings.
2. The amount of weekly disposable earnings that exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable.

The EWO remains in effect until the total amount indicated in the EWO is paid or the EWO is withdrawn. If the taxpayer terminates his or her employment, the EWO continues in effect for one year after such termination. If employment resumes (with the same employer) within the year following termination, the EWO remains in effect.

Priority

The EWO has priority over all private creditors except Orders Assigning Salary (for support) and Earnings Withholding Orders for Support. These apply to child and or spousal support. If a residual amount of disposable earnings remains after the employer withholds the amounts required by either of these orders, then the Board of Equalization's EWO may reach the residual amount.

Under the doctrine of "first-in-time is first-in-right," an EWO served upon the employer by another state agency will have priority over the Board of Equalization's EWO if the employer receives the other agency's EWO first. Similarly, if the Board of Equalization and the I.R.S. serve an EWO upon the State Controller to attach a state employee's wages, the first EWO received by the State Controller takes priority.

Service

Service of an EWO may be made by first class mail or in person by any Board of Equalization employee. The follow-up will be set in such a way as to ensure:

1. The employer responds within 15 days of service, as required by law.
2. The employer remits amounts withheld from the employee's earnings. At any time after service of the EWO, the taxpayer/employee may request an administrative hearing for reconsideration or modification of the amount to be withheld by the employer.

Administrative Hearing

If the taxpayer requests an administrative hearing, the taxpayer should complete a financial statement prior to the hearing. Along with providing the financial statement form, the Board of Equalization, no less than seven days before the hearing, must advise the taxpayer of the time, place and date of the hearing. The taxpayer should present his or her completed financial statement to the hearing officer for review on or before the date set for the hearing.

If the person requesting a hearing refuses to furnish a financial statement, the person is required to disclose the information at the hearing. The EWO should not be modified or released, if the person does not disclose the requested financial information.

District offices will assist the Centralized Collection Section by conducting reconsideration or modification hearings on their behalf. Hearings shall be informal and the hearing officer should be the lowest supervisory level. The hearing officer should not be the immediate supervisor of the employee who served the EWO.

The hearing officer must issue his or her written decision within 15 days after the request for reconsideration is received by the Board of Equalization. If the hearing officer determines that all or a part of the amount withheld is necessary for the support of the taxpayer's family, the EWO may be modified. The employer should be sent a *Modification of Order to Withhold Taxes*, Form BOE-425-M) containing either:

1. A new withhold amount.
2. Notification that the EWO is withdrawn.

Attempt to Evade by Employer

If staff discovers that an employer is deferring or accelerating an employee's earnings in an attempt to defeat or diminish the Board of Equalization's rights under the EWO, notify the Special Procedures Section (SPS) so action to recover from the employer may be initiated.

Spouse's Wages

CCP section 706.109 prohibits the Board of Equalization from attempting to reach the wages of a tax debtor's spouse without first obtaining a court order. This CCP section states:

> "An earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion."

If staff decides to pursue collection of amounts due by serving an EWO on wages of a judgment debtor's spouse, the case must be referred to SPS. This will be done only when there is no possibility of a dual and there is a substantial liability (over $2,000). SPS will prepare a referral and coordinate the case with the Attorney General. These cases, once referred, are entered in LGL AG in IRIS using Legal Type Code “EWO.”

Because of the time, cost and lengthy delays which may occur in the process, it is vital that as much information as possible, for the period when the liability was incurred and also for the current period, be obtained and listed substantially in the format shown below. This will assist SPS in preparing the referral.

MEMORANDUM REQUESTING SPOUSAL EWO

State of California **Board of Equalization**

M e m o r a n d u m

To: Supervisor of Special Procedures Date:

From: District - Compliance

Subject: Attorney General Referral

This is a request to refer a case to the Attorney General's Office to obtain a court order for issuance of an Earnings Withholding Order on Wages of the tax debtor's spouse.

Account Number -

Name of Tax Debtor SS#

Name of Spouse SS#

Employer: Name:

Address:

Amount of Liability:

Married and Living together? Yes *No

Evidence of marital status (check all that are appropriate)

Evidence	For Current Period Yes/No – Attached(√)	For Period Liability Incurred Yes/No - Attached(√)
Filed Joint income tax returns(s) for years:		
Real Property search shows joint ownership		
Joint ownership of vehicles		
Credit report shows married status		
Tax debtor states he/she is married		
Spouse states he/she is married to tax debtor		
Lease or rental of residence shows he/she is married		
Bankruptcy filed by tax debtor and spouse		

Comments:

*If the answer is no, wages are separate property and not subject to levy for debts of the community. DO NOT REFER.

JEOPARDY EARNINGS WITHHOLDING ORDER FOR TAXES 755.030

A jeopardy EWO will only be used when, in the opinion of the levying office, the Board of Equalization's interest will be jeopardized because of the ten day delay between service and actual withholding. As an example: On January 5, 1990, the responsible collector discovers that a taxpayer has terminated his or her employment and will receive his final paycheck on January 10, 1990. The only way to reach that paycheck is to serve a jeopardy EWO because a non-jeopardy EWO will not reach any earnings due to the taxpayer within ten days of service.

For all jeopardy EWOs, the word "Jeopardy" will be prominently entered on the face of all copies of the Form BOE-425-E, *Earnings Withholding Order for Taxes*. Other provisions applying to non-jeopardy EWOs apply equally to a Jeopardy EWO.

TEMPORARY EARNINGS WITHHOLDING ORDER FOR TAXES (TEO) 755.040

In certain rare circumstances, the levying officer may wish to attach more than 25% of the taxpayer's disposable income. The TEO requires that the employer hold all earnings owing to the employee, unless a lesser amount is specified on the form. Since SPS and the Attorney General's Office must become involved, this can be a costly, time consuming process. Therefore, before staff proceeds, the matter should be discussed with SPS.

When notified that this action is proper, the levying office will serve a TEO on the employer. The TEO expires 15 days after service, unless extended by a court of record in the county where the taxpayer was last known to reside. The levying office will immediately send a copy of the TEO and a report to SPS requesting the filing of an Application for Issuance of Earnings Withholding Order for Taxes with a court in the taxpayer's last known county of residence. Copies of the TEO and report will also be sent to the office of the Attorney General nearest the court where the application is to be filed.

SPS will coordinate the case with the Attorney General's Office and prepare a referral. The Attorney General's Office will prepare the Application for the Order and a declaration that the taxpayer was served with:

1. A copy of the application.
2. Notice informing the taxpayer of the purpose of the application.
3. Informing the taxpayer of his or her right to appear at the court hearing on the application.

The court will set the matter for hearing. At least ten days before the date set for hearing, the clerk of the court will send the tax debtor a notice indicating the time and place for the hearing. If, after the hearing, the Attorney General is successful on the Board of Equalization's behalf, the court will issue the Earnings Withholding Order for Taxes, requiring the employer to withhold and pay over all earnings other than that amount proved exempt, but in no event less than 25%. Follow-up on payments remitted by the employer, under court service of the EWO, will be set in the same manner as follow-up would be set if service were made by the Board of Equalization.

EARNINGS WITHHOLD ORDERS AGAINST U.S. POSTAL EMPLOYEES 755.050

The Postal Service has one designated Authorized Agent to receive postal employee wage garnishment orders under Public Law 103-94 section 9, *Authority to Garnish Federal Employee's Pay*. This federal law supersedes state law with regard to service of garnishment process. Accordingly, regardless of state law, legal process must be sent directly to, or served in person upon, the Authorized Agent named in these regulations. There will be only one agent for receipt of process for all garnishments of an employee's pay arising under state law. Other Postal Service employees are not authorized to receive process, nor are they permitted to transmit process to the Authorized Agent.

The Authorized Agent for service of EWO's directed to the wages of Postal Service employees and employees of the Postal Rate Commission (employees) is:

PAYROLL BENEFITS BRANCH
INVOLUNTARY DEDUCTIONS UNIT
2825 LONE OAK PARKWAY
EAGAN, MN 55121-9650

Service of the EWO on the Authorized Agent shall be made by certified or registered mail with return receipt requested at the above address.

EARNINGS WITHHOLD ORDERS AGAINST FEDERAL EMPLOYEES 755.060

The Hatch Act provides for the garnishment of most federal employee wages in the same manner and to the same extent as if the federal agency were a private person.

However, federal regulations regarding the involuntary allotment of active duty military pay restricts the use of an EWO to civilian federal employees. The involuntary allotment of active duty military pay involves an entirely separate application process outlined at section 755.070.

Federal Law Provisions

The following are pertinent points of the federal law allowing such garnishments. For the full text of federal wage garnishment provisions, see Exhibit A.

"Agency" means every agency of the federal government. "Legal process" means any writ, order, summons, or other similar process in the nature of garnishment that is issued by a court of competent jurisdiction within any state, territory, or possession of the United States, or an authorized official pursuant to state or local law.

Service of the EWO

Service of the garnishment may be accomplished by certified or registered mail, return receipt requested, or by personal service on the appropriate agent designated for service of process or the head of such agency, if no agent has been designated. The person served with the garnishment shall respond within 30 days after the date effective service is made.

It is anticipated that virtually all EWO's will be served by certified or registered mail, return receipt requested. In addition to the EWO itself, each garnishment served on a federal agency will also include Form BOE-425-E2, *Authority to Garnish Federal Employees' Pay* (see Exhibit C.)

The Office of Personnel Management (OPM) has issued interim regulations regarding service of process for wage garnishments. They specify that the agent for service for child support and alimony court orders will also be the agent for service for Board of Equalization EWOs. However, these regulations are more in the nature of guidelines that the agencies are free to modify to meet their needs.

For example, the Department of Defense has given notice that all wage garnishments for Department of Defense civilian employees, with certain exceptions, should be submitted to the Defense Finance and Accounting Service - Cleveland Center, Office of General Counsel, Code L, 1240 East 9th Street, P.O. Box 998002, Cleveland OH, 44199-8002. For the exceptions (see Exhibit B.)

In addition, the law requires that we adequately identify the tax debtor. The OPM regulations state that we should provide name, address, social security number, date of birth, official duty station or worksite, and component of the agency for which the tax debtor works. However, some of the larger federal agencies have stated that our normal practice of providing name, address, and social security number is sufficient to identify the tax debtor.

EXHIBIT A

5 USCS §5520a. Garnishment of pay

"(a) For purposes of this section--

"(1) 'agency' means each agency of the Federal Government, including--

"(A) an executive agency, except for the General Accounting Office [Government Accountability Office];

"(B) the United States Postal Service and the Postal Rate Commission [Postal Regulatory Commission];

"(C) any agency of the judicial branch of the Government; and

"(D) any agency of the legislative branch of the Government, including the General Accounting Office [Government Accountability Office], each office of a Member of Congress, a committee of the Congress, or other office of the Congress;

"(2) 'employee' means an employee of an agency (including a Member of Congress as defined under section 2106) [5 USCS § 2106]);

"(3) 'legal process' means any writ, order, summons, or other similar process in the nature of garnishment, that--

"(A) is issued by a court of competent jurisdiction within any State, territory, or possession of the United States, or an authorized official pursuant to an order of such a court or pursuant to State or local law; and

"(B) orders the employing agency of such employee to withhold an amount from the pay of such employee, and make a payment of such withholding to another person, for a specifically described satisfaction of a legal debt of the employee, or recovery of attorney's fees, interest, or court costs; and

"(4) 'pay' means--

"(A) basic pay, premium pay paid under subchapter V [5 USCS §§ 5541 et seq.], any payment received under subchapter VI, VII, VIII [5 USCS §§ 5591 et seq.], severance and back pay paid under subchapter IX [5 USCS §§ 5591 et seq.], sick pay, incentive pay, and any other compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus pay or otherwise; and

"(B) does not include awards for making suggestions.

"(b) Subject to the provisions of this section and the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person.

"(c)(1) Service of legal process to which an agency is subject under this section may be accomplished by certified or registered mail; return receipt requested, or by personal service, upon--

"(A) the appropriate agent designated for receipt of such service or process pursuant to the regulations issued under this section; or

"(B) the head of such agency, if no agent has been so designated.

"(2) Such legal process shall be accompanied by sufficient information to permit prompt identification of the employee and the payments involved.

"(d) Whenever any person, who is designated by law or regulation to accept service of process to which an agency is subject under this section, is effectively served with any such process or with interrogatories, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is made, send written notice that such process has been so served (together with a copy thereof) to the affected employee at his or her duty station or last-known home address.

EXHIBIT A (Cont. 1)

"(e) No employee whose duties include responding to interrogatories pursuant to requirements imposed by this section shall be subject to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by such employee in connection with the carrying out of any such employee's duties which pertain directly or indirectly to the answering of any such interrogatory.

"(f) Agencies affected by legal process under this section shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

"(g) Neither the United States, an agency, nor any disbursing officer shall be liable with respect to any payment made from payments due or payable to an employee pursuant to legal process regular on its face, provided such payment is made in accordance with this section and the regulations issued to carry out this section. In determining the amount of any payment due from, or payable by, an agency to an employee, there shall be excluded those amounts which would be excluded under section 462(g) of the Social Security Act (42 U.S.C. 662(g)).

"(h)

(1) Subject to the provisions of paragraph (2), if any agency is served under this section with more than one legal process with respect to the same payments due or payable to an employee, then such payments shall be available, subject to section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673), to satisfy such processes in priority based on the time of service, with any such process being satisfied out of such amounts as remain after satisfaction of all such processes which have been previously served.

"(2) A legal process to which an agency is subject under sections 459 of the Social Security Act (42 U.S.C. 659) for the enforcement of the employee's legal obligation to provide child support or make alimony payments, shall have priority over any legal process to which an agency is subject under this section.

"(i) The provisions of this section shall not modify or supersede the provisions of sections 459 of the Social Security Act (42 U.S.C. 659) concerning legal process brought for the enforcement of an individual's legal obligations to provide child support or make alimony payments.

"(j)

(1) Regulations implementing the provisions of this section shall be promulgated--

"(A) by the President or his designee for each executive agency, except with regard to employees of the United States Postal Service, the President or, at his discretion, the Postmaster General shall promulgate such regulations;

"(B) jointly by the President pro tempore of the Senate and the Speaker of the House of Representatives; or their designee, for the legislative branch of the Government; and

"(C) by the Chief Justice of the United States or his designee for the judicial branch of the Government.

"(2) Such regulations shall provide that an agency's administrative costs in executing a garnishment action may be added to the garnishment, and that the agency may retain costs recovered as offsetting collections.

EXHIBIT A (Cont. 2)

"(k)

(1) No later than 180 days after the date of the enactment of this Act [enacted Oct. 6, 1993], the Secretaries of the Executive departments concerned shall promulgate regulations to carry out the purposes of this section with regard to members of the uniformed services.

"(2) Such regulations shall include provisions for--

"(A) the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authority, as appropriate, to be in compliance with procedural requirements of the Servicemembers Civil Relief Act (50 App. U.S.C. 501 et seq.); and

"(B) consideration for the absence of a member of the uniformed service from an appearance in a judicial proceeding resulting from the exigencies of military duty.

"(3) The Secretaries of the Executive departments concerned shall promulgate regulations under this subsection that are, as far as practicable, uniform for all of the uniformed services. The Secretary of Defense shall consult with the Secretary of Homeland Security with regard to the promulgation of such regulation that might affect members of the Coast Guard when the Coast Guard is operating as a service in the Navy."

EXHIBIT B

The Defense Finance and Accounting Service (DFAS) has given notice that all garnishments authorized under Section 9 of Public Law No. 103-94, Hatch Act Reform Amendments of 1993, for all Department of Defense Civilian Employees, except those noted below, shall be submitted to the Defense Finance and Accounting Service - Cleveland Center, Office of General Counsel, Code L, 1240 East 9th Street, P.O. Box 998002, Cleveland, OH 44199-8002.

For requests that apply to civilian employees of the Army Corps of Engineers, the National Security Agency, the Defense Intelligence Agency, and non-appropriated fund civilian employees of the Air Force, contact the following offices:	**For civilian employees of the Army, Navy, and Marine Corps who are employed outside the United States, contact the following offices:**
Army Corps of Engineers U.S. Army Corps of Engineers, Omaha District Central Payroll Office, Attn: Garnishments P.O. Box 1439 DTS Omaha, NE 68101-1439 National Security Agency General Counsel, National Security Agency Central Security Service 9800 Savage Road, Ft. G. Meade, MD 20755-6000 Defense Intelligence Agency Office of General Counsel, Defense Intelligence Agency Pentagon, 2E238 Washington, DC 20340-1029 Air Force Non-Appropriated Fund Employees Office of General Counsel, Air Force Services Agency 10100 Reunion Place, Suite 503 San Antonio, TX 78216-4138	Army Civilian Employees Europe 266th Theater Finance Command ATTN: AEUCF-CPF APO New York 09007-0137 Army NAF Civilian Employees in Japan Commander, US Army Finance and Accounting Office, Japan Unit 45005 ATTN: APAJ-RM-FA-E-CP APO AP 96343-0087 Army Civilian Employees in Korea 175th Finance and Accounting Office, Korea Unit 15300, ATTN: EAFC-FO (Civilian Pay) APO AP 96205-0073 Army Civilian Employees in Panama DCSRM Finance and Accounting Office, Unit 7153, ATTN: SORM-FAP-C APO AA 34004-5000 Navy and Marine Corps Civilian Employees Overseas Director of the Office of Civilian Personnel Management Office of the General Counsel, Navy Department 800 N. Quincy St. Arlington, VA 22203-1998

STATE OF CALIFORNIA
Board of Equalization

EXHIBIT C

AUTHORITY TO GARNISH FEDERAL EMPLOYEES' PAY - Public Law 103-94

The California State Board of Equalization's authority to garnish federal employees' wages derives from Section 9 of Public Law No. 103-94 (5 USC 5520a). Specifically, the pertinent parts of the enactment read as follows:

SEC. 9. GARNISHMENT OF FEDERAL EMPLOYEES' PAY

(a) Subchapter II of chapter 55 of title 5, United States Code, is amended by adding at the end thereof the following new section:

5520a. Garnishment of pay

(a) For purposes of this section-

(1) "agency" means each agency of the Federal Government-

(3) "legal process" means any writ, order, summons, or other similar process in the nature of a garnishment that-

(A) is issued by a court of competent jurisdiction within any State, territory, or possession of the United States, or an authorized official pursuant to an order of such a court or pursuant to state or local law.

(c) (1) Service of legal process to which an agency is subject under this section may be accomplished by certified or registered mail, return receipt requested, or by personal service, upon-

(A) the appropriate agent designated for receipt of such service of the process pursuant to the regulations issued under this section, or

(B) the head of such agency, if no agent has been so designated.

The enclosed Earnings Withhold Order for Taxes has been issued as provided by the California Code of Civil Procedure, Sections 706.072 - 706.075, and 706.080 - 706.082.

INVOLUNTARY ALLOTMENT OF ACTIVE DUTY MILITARY PAY 755.070

The process for implementing an involuntary allotment of pay for active duty military personnel is somewhat encumbered by the Servicemember's Civil Relief Act, 50 USCS App § 501 et seq., which requires that certain affidavits must accompany the application form supplied by Department of Defense (DOD). Therefore, the following guidelines and procedures have been established:

1. Involuntary allotment may only be pursued if the delinquent balance is equal to or greater than $5,000.00 and the member is on active duty in California. If the member is on active duty and currently stationed outside California, the delinquent balance must be equal to or greater than $10,000.00.

2. Complete the latest version of DD Form 2653, *Involuntary Allotment Application*, and send to SPS. The DD Form 2653 is available on the Internet at: http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2653.pdf. (Complete only front Section I - Identification, Parts 1., 2., and 3.c.)

3. SPS will review the application and, if approved, prepare a Certificate of Delinquency to be filed by the Legal Department with a Request for Judgment in the office of the County Clerk of Sacramento County. In addition to the Certificate of Delinquency, the Request for Judgment must be accompanied by an affidavit stating whether or not the defendant is in military service and containing supporting information. If the defendant's military status is unknown, the affidavit must state that the defendant's military status is not known.

4. The affidavit must also that the court should appoint an attorney to represent the member/defendant prior to issuing a default judgment. If the judge decides that appointing an attorney for the member/defendant is not necessary or would serve no purpose and a default judgment is issued, there is compliance with the Servicemembers' Civil Relief Act and the judgment should so state. A certified copy of the judgment should then be attached to the completed Involuntary Allotment Application.

5. SPS will submit the original and three copies of the Involuntary Allotment Application and all supporting documents to the Legal Department. After review and approval of the Involuntary Allotment Application, the Legal Department will prepare and submit the Request for Judgment. Once the judgment has been issued, The Legal Department will send the entire package via certified mail to the appropriate federal agency according to the instructions on DD Form 2653, (see Exhibit D.)

EXHIBIT D

INVOLUNTARY ALLOTMENT APPLICATION	OMB No. 0704-0367 OMB approval expires Nov 30, 2010

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services Directorate, Information Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155 (0704-0367). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. SEND YOUR COMPLETED FORM TO THE ADDRESS IN THE INSTRUCTIONS BELOW.

INSTRUCTIONS

1. These instructions govern an application for involuntary allotment payment from Military Service (or Coast Guard) member's active or reserve/guard's pay under 5 USC Section 5520a.

2. In order to be processed, this form must be filled out completely, signed, and the following supporting documents attached:
   a. A copy of the judgment, certified by the clerk of the appropriate court;
   b. If the applicant is other than the original judgment holder, proof of the applicant's right to succeed to the interest of the original judgment holder.

3. Submit the original and two copies of this application and all supporting documents to:

For Army, Navy, Air Force and Marine Corps:

Defense Finance and Accounting Service
Cleveland Center, Code GAG
PO Box 998002
Cleveland, OH 44199-8002

http://www.dfas.mil/money/garnish/

For Coast Guard:

Commanding Officer
U.S. Coast Guard
Personnel Service Center (LGL)
444 S.E. Quincy Street
Topeka, KS 66683-3591

SECTION I - IDENTIFICATION

1. APPLICANT

I hereby request that an involuntary allotment be established from the pay of the following identified member of the Military Services/ Coast Guard pursuant to the provisions of Pub. L. No. 103-94, the Hatch Act Reform Amendments of 1993. The debt in question has been reduced to a judgment. A copy of the judgment, as certified by the appropriate Clerk of Court, is attached.

a. APPLICANT NAME *(Provide whole name whether a person or business)*		b. TELEPHONE NUMBER *(Incl. Area Code)*	
c. ADDRESS			
(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE	(4) ZIP CODE *(9 digit)*
2. SERVICE MEMBER			
a. NAME *(Last, First, Middle Initial)*	b. SSN	c. BRANCH OF SERVICE	
d. CURRENT DUTY ASSIGNMENT *(If known)*			
e. CURRENT ADDRESS *(If known)*			
(1) STREET AND APARTMENT OR SUITE NUMBER	(2) CITY	(3) STATE	(4) ZIP CODE *(9 digit)*

3. CASE		
a. CASE NUMBER *(As assigned by court)*	b. NAME OF ORIGINAL JUDGMENT HOLDER *(If different from applicant)*	c. ACCOUNT NUMBER OF DEBTOR
d. JUDGMENT AMOUNT		
(1) DOLLAR AMOUNT OF JUDGMENT $	(2) DOLLAR AMOUNT OF INTEREST OWED TO DATE OF APPLICATION $	(3) TOTAL DOLLAR AMOUNT DUE *(Total of sub-blocks (1) and (2))* $ 0.00

SECTION II - APPLICANT CERTIFICATION

4. I HEREBY CERTIFY THAT:

a. *(X as applicable)*

☐ (1) The judgment has not been amended, superseded, set aside, or satisfied;

☐ (2) If the judgment has been paid in part, the total amount remaining to be paid is $ _____

b. *(X as applicable)*

☐ (1) The judgment was issued while the member was not on active duty; or

☐ (2) If the judgment was issued while the member was on active duty, that the member was present or represented by an attorney of the member's choosing in the proceedings; or

☐ (3) If the member was not present or represented by an attorney at the judicial proceedings, that the judgment complies with the Servicemembers Civil Relief Act, 50 U.S.C. App. Sections 501-596 (2003). (If you obtained a default judgment and it does not contain language that indicates that the plaintiff complied with 50 U.S.C. App. 501-593, then you must submit proof that an affidavit stating the member's military service status, as required by 50 U.S.C. App. 520, was filed with the court prior to entry of the judgment.)

c. The member's pay could be garnished under applicable State law and 5 USC 5520a if the member were a civilian employee;

d. To the best of my knowledge, the debt has not been discharged in bankruptcy nor has the member filed for protection from creditors under the bankruptcy laws of the United States;

e. I will promptly notify you to discontinue the involuntary allotment at any time the judgment is satisfied prior to the collection of the total amount of the judgment through the involuntary allotment process;

f. If the member overpays the amount owed on the judgment, I will refund the amount of overpayment to the member within 30 days of discovery or notice of the overpayment, whichever is earlier, and that if I fail to repay the member, I understand that I may be denied the right to collect by involuntary allotment on other debts reduced to judgments.

5. I HEREBY ACKNOWLEDGE THAT:

As a condition of application, I agree that neither the United States, nor any disbursing official or Federal employee whose duties include processing involuntary allotment applications and payments, shall be liable with respect to any payment or failure to make payment from moneys due or payable by the United States to any person pursuant to this application.

6. CERTIFICATION

I make the foregoing statement as part of my application with full knowledge of the penalties involved for willfully making a false statement (U.S. Code, Title 18, Section 1001, provides a penalty as follows: Shall be fined under this title or imprisoned not more than 5 years, or both.

a. TYPED NAME *(Last, First, Middle Initial)*	b. TELEPHONE NO. *(Include area code)*	c. SIGNATURE	d. DATE SIGNED *(YYYYMMDD)*

Reset

NOTICES OF STATE TAX LIENS, ABSTRACTS OF JUDGMENT AND LIENS 757.000

GENERAL 757.010

Under Government Code section 7150, et seq., on the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus penalties, interest and costs, under the following laws:

Sales and Use Tax, section 6757
Motor Vehicle Fuel Tax, section 7872
Use Fuel Tax, section 8996
Cigarette and Tobacco Products Tax, section 30322
Alcoholic Beverage Tax, section 32363
Emergency Telephone Users Surcharge, section 41124.1
Energy Resources Surcharge, section 40158
Hazardous Substance Tax, section 43413
Solid Waste Disposal Site Cleanup and Maintenance, section 45451
Underground Storage Tank Maintenance Fee, section 50123
Diesel Fuel Tax Law, section 60445
Electronic Waste Recycling, section 55141
Integrated Waste Management, section 45151
California Tire Fee, section 55141
Fee Collection Procedures Law, section 55141

Government Code section 7170 states, "a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property belonging to the taxpayer and located in this state."

The lien is in force for ten years and may be extended by re-recording the lien with any county recorder's office or re-recording a *Notice of State Tax Lien* with the office of the Secretary of State within the ten-year period. The lien attaches to all property of a tax debtor by operation of law; nothing needs to be done to perfect the lien. However, Government Code section 7170 also requires the following action in order for a lien to be valid against specific interests in the same property:

> As to real property, a *Notice of State Tax Lien* must be recorded in each county where the taxpayer's real property is located prior to the time that the four classes of persons listed in Government Code section 7170(b) perfect their right, title, or interest in the property, in order for the lien to be valid against the property.
>
> As to personal property, a *Notice of State Tax Lien* must be filed with the Secretary of State. The prior filing of a *Notice of State Tax Lien* with the Secretary of State defeats the claims of three classes of persons listed in

Government Code section 7170(c), but cannot defeat the claims of numerous other classes of persons listed in the section.

An additional method of recording a lien against real property under the Sales and Use Tax Law and the Alcoholic Beverage Tax Law, is to follow the summary judgment procedure of RTC sections 6736, et seq., and 32361, et seq., and record an abstract of judgment in any county where the person owns or may be expected to own real property.

The abstract of judgment has the force, effect, and priority of a judgment lien and is effective for ten years from the time of filing with the county clerk for recordation unless sooner released by the Board of Equalization. The time limit for requesting summary judgment is within three years after an amount becomes delinquent.

RTC section 6702 requires that a Form BOE-465, *Notice of Withhold*, must be issued not later than:

1. Three years from the date a payment becomes delinquent.
2. Within ten years after the last recording of an abstract of judgment or the recording or filing of a *Notice of State Tax Lien*.

RTC section 6776 stipulates that all warrants be handled in the same manner, i.e., issued within three years from date of delinquency or within ten years from the last lien recordation date. A certificate of lien (*Notice of State Tax Lien*) may be filed or recorded in any county or with the Secretary of State at any time during the ten-year automatic or statutory lien period established by RTC section 6757, following the date of delinquency.

In order for the Board of Equalization to take court action against a debtor, such as an Attorney General referral for an out-of-state judgment, the lien must have been filed or recorded within three years from the delinquency date (see RTC section 6711). For this reason, current policy requires that liens are filed or recorded within this three-year period. Liens may be renewed twice, each for ten-year terms, after the initial ten-year lien has expired (see Government Code section 7172). The chart in CPPM 757.020 provides a quick reference for the time periods within which all of these summary procedures may be used.

According to the Board of Equalization's Legal Department, the three-year restriction does not apply to the issuance of levies pursuant to RTC section 6703, as long as the statutory lien from the operation of law (RTC section 6757) is in place.

LIMITATION PERIODS FOR SUMMARY PROCEDURES 757.020

REVENUE LAW	PERIOD WITHIN WHICH NOTICE TO WITHHOLD MAY BE USED	PERIOD WITHIN WHICH WARRANT MAY BE USED	EFFECTIVE PERIOD OF LIENS AND ABSTRACTS
Sales and Use Tax Cigarette and Tobacco Products Tax Use Fuel Tax Alcoholic Beverage	After a determination is final and remains unpaid but not later than three years after the payment became delinquent, or within ten years after the last lien recording. Reference RTC 6702	While an amount is delinquent but not later than three years after the delinquency date of the payment, or within ten years after the last lien recording. Reference RTC 6776	Ten years (Renewable) Reference Gov. Code 6757 and RTC 7172

TYPE OF RECORDATION ALLOWED BY STATUTE 757.030

REVENUE LAW	NOTICE OF STATE TAX LIEN	ABSTRACT OF JUDGMENT
Sales and Use Tax	ALLOWED	ALLOWED
Cigarette and Tobacco Products Tax	ALLOWED	NOT ALLOWED
Use Fuel Tax	ALLOWED	NOT ALLOWED
Alcoholic Beverage	ALLOWED	ALLOWED

RESPONSIBILITY FOR RECORDING AND FILING LIENS 757.040

The Special Procedures Section (SPS) is responsible for preparing the *Notice of State Tax Lien* or the abstract of judgment, forwarding these documents to the appropriate county recorder or to the office of the Secretary of State, and mailing a copy to the taxpayer.

EXTENSIONS OF LIENS 757.050

The original lien may be extended by recording a new notice or abstract of judgment in any county or, if a statewide personal property lien was previously acquired and is to be extended, by filing an extension notice with the office of the Secretary of State. The new recording or filing must be made prior to expiration of the original lien. The responsibility for filing a lien extension, as well as the original filing of a lien, lies with SPS.

POLICY AND MINIMUM AMOUNTS - NOTICE OF STATE TAX LIEN 757.060

Filing a lien protects the state's interest in a taxpayer's assets. The use of the *Notice of State Tax Lien* is an effective collection tool that often results in payment of accounts that would have been difficult, if not impossible, to collect. Taxpayers should be advised that a lien may be filed and its effects (decreases credit rating and attaches to property currently owned and later acquired.) With the exception of a jeopardy lien, a tax lien should not be filed unless there have been documented efforts made to contact the taxpayer by phone and in writing.

Per statute, a lien can be filed 30 days after the taxpayer is advised in writing that a lien may be filed. A lien is recorded in the county in which the business was located and in any other county in which the taxpayer may own real property. Generally, a lien is not filed for liabilities that do not include tax because an adjustment or request for relief of penalty may be pending, but it can be done if the amount is greater than $2,000 dollars and verification is made that there are no adjustments or requests for relief pending.

Board of Equalization policy is to file a lien 30 days after the demand date, if there is a valid business reason for such action. Otherwise, a lien will not normally be filed until after 180 days have expired. Supervisory approval of all lien requests initiated prior to the expiration of the 180 days is required and must be documented in ACMS.

A lien should be filed after 180 days if either of the following circumstances apply:

1. Requests for payment in full, installment payments and financial documentation have gone unanswered.
2. The taxpayer has not responded to phone calls or notices.

***NOTE**:* Accounts on an Installment Payment Agreement (IPA) are not subject to the 180-day policy, and liens should not be requested 180 days after the liability is established for IPA accounts. Rather, the process to initiate a lien request on an account in an IPA begins when the liability becomes 30 months old. When this occurs, staff will send the taxpayer Form BOE-407-L, *Notice of Intent to Lien.* Staff will then wait 45 days after sending the BOE-407-L before initiating the lien request through ACMS.

In most cases, a *Notice of State Tax Lien* is filed for accounts with delinquent amounts of $2,000 or more in the appropriate county or counties:

1. 180 days after an amount, if sufficient, becomes delinquent on a determination or redetermination.
2. 180 days after issuance of a billing for an amount due on a return filed without payment, or with a partial payment, or for penalty and interest because of late payment.
3. 180 days after a successor's billing is issued.

A lien should not be filed after 180 days if any of the following conditions exist:

1. There are outstanding levies. Exceptions to this procedure can occur. For example, in cases where the taxpayer has a large balance due and outstanding levies that are generating minimal payments. If payment in full is not anticipated and additional collection action is warranted, it is appropriate to file a lien. In addition, if a levy is sent to secure some assets that may not be liquidated until sometime in the future or that may have a secured interest against them, filing a lien is appropriate.
2. Payments are being received per an installment payment agreement and financial documentation indicates a lien is not necessary to secure the state's interest.
3. The installment payment agreement will satisfy the liability within one year and the taxpayer has not been a previous collection problem.
4. If the taxpayer has been extended additional time to pay.

A lien will be filed after the collection items becomes aged 30 months unless payment in full is expected within 30 days.

Liens should not be filed at any time in any of the following situations:

1. The action violates the automatic stay afforded by the bankruptcy code.
2. The liability has been discharged in bankruptcy.
3. An Offer-in-Compromise is pending and the Offer-in-Compromise Section has not been previously advised.
4. The action violates an Indian tribe's sovereign immunity (see Business Taxes Law Guide Annotation 170.0002.750, (8/22/96).)

For delinquent amounts exceeding $5,000, a lien will also be filed with the office of the California Secretary of State. SPS will file the lien:

1. Upon receipt of a request for such action by the district office.
2. If SPS's review of the file indicates such action is appropriate.

A lien will be filed with the office of the Secretary of State for all Attorney General referrals for Intervenor Actions (see CPPM 757.130).

RTC section 7097 requires that the Board of Equalization give notice to the taxpayer that a lien may be filed at least 30 days prior to filing or recording a lien. This notification is routinely included on the demand billing, which is sent to the taxpayer approximately 15 days after the liability becomes final.

If it becomes necessary to record or file a lien before the 180-day period expires, or if the lien covering real property should be extended to other counties, a request should be forwarded to SPS by the referring office using Form BOE-200, *Special Procedures Action Request*. The request for issuing an early lien should contain a reason for the action. The reason, as well as the request, must be documented in ACMS notes and have received supervisory approval.

If it is discovered that the existing lien was filed prior to July 1, 1983 and a homestead exemption was previously recorded on the property, the referring office should request a new lien from SPS.

If a taxpayer is a multiple-outlet business, SR Y for example, the referring office should request SPS to record liens in any county in which real property is found. If no real property is found, a lien will be recorded only in the county where the "master" business location is located. If an out-of-state taxpayer qualifies for a lien but owns no California property, a real property lien should be requested to be filed in Sacramento County.

For taxpayers who file bankruptcy, liens cannot be filed until after the automatic stay has been lifted. Post-petition liens on pre-petition liabilities will only be filed where:

1. The debtor filed for bankruptcy relief and the tax liability was not discharged.
2. The bankruptcy case was dismissed.

In limited circumstances, the Board of Equalization may be required to file an abstract of judgment rather than filing a lien. Current policy dictates that the filing of an abstract of judgment is limited to renewing a previously recorded abstract prior to its expiration date. This procedure is mainly used for extending the period of the lien acquired by recording of the original abstract. SPS is responsible for the timely renewal of abstracts.

UNITED STATES COAST GUARDS LIENS 757.065

Liens filed with the United States Coast Guard (USCG) must meet the provisions contained in U.S. Code Title 46, section 31343. Under this section, the Board of Equalization is required to include a signed declaration that contains the taxpayer's name and account number, vessel name and documentation number, and the lien holder or mortgagee's names and addresses. Section 31343 also requires the Board of Equalization to mail copies of the signed declaration to all outstanding lien holders or mortgagees of a vessel.

Staff must determine the names and mailing addresses of all lien holders and mortgagees of a vessel before requesting a USCG lien. These names and addresses should be entered in ACMS comments. Lien holder and mortgagee information is obtained by reviewing the USCG vessel abstract on file for all vessel use tax accounts. For sales tax accounts, collection staff should contact the Centralized Collection Section (CCS) for instructions on how to order the abstracts, or related documents, from the USCG. If mailing address information on the abstract is incomplete or missing, staff should order a copy of the lien/mortgage document from the USCG. If no lien holder or mortgagee exists, staff should make a note in ACMS comments.

When requesting a USCG lien, staff will use Form BOE-426-CG, *Notice of State Tax Lien for U.S. Coast Guard* because it contains the declaration required under U.S. Code Title 46, as stated above. The declaration and lien must be signed by the same person. SPS staff must mail a copy of the lien document to each lien holder and mortgagee identified in the earlier email and in ACMS comments. Staff must also enter ACMS comments when the copies have been sent.

REVOCABLE TRUST LIENS 757.066

A settlor (also known as a "donor" or "trustor") is one who creates a trust by giving real or personal property "in trust" to another (the trustee) for the benefit of a third person (the beneficiary).

Assets of a revocable trust are subject to the claims of creditors of the settlor(s) of the trust, during the settlor(s) lifetime. Conversely, the settlor of a revocable trust is liable for the debts of his or her revocable trust.

A *Notice of State Tax Lien* against a revocable trust should contain the name of the living settlor(s). A *Notice of State Tax Lien* against a settlor should contain the name of the trust. Requests should be forwarded to SPS on Form BOE-200-A, *Special Procedures Action Request.* Staff will check the box labeled "Other Requests," and must provide the settlor(s) name and current address, and documentation that the trust is revocable.

PRIORITY OF LIENS **757.080**

A lien on real and personal property is created as a result of a delinquent tax liability. A tax lien on real property may be perfected by:

1. Recording a notice of state tax lien with an office of the county recorder.
2. Recording of a notice of state tax lien.
3. Filing an abstract in a county recorder's office.

A lien on personal property is perfected by filing a notice of state tax lien with the office of the Secretary of State.

A tax lien of the Board of Equalization has priority over liens of other government agencies only as to the time when the liability became due and payable. As to non-government persons, priority is determined by the time of recording or filing in relation to the recordation or filing time of other notices of lien.

Under Government Code section 7170.5, the rule "first in time is first in right" is generally followed. The rule applies to federal liens as well as those of other creditors. However, a purchase money trust deed generally is first in priority even though recorded subsequent to the Board of Equalization's lien date or recording of an abstract. The date of the lien is not used in applying the "first in time is first in right" rule, rather the date when the lien is perfected is controlling. This date is the first billing date or date of assessment. The assessment date for returns is the date of the demand billing. The assessment date for determinations is the finality date. For jeopardy determinations, the assessment date is the date of the jeopardy.

A deed delivered prior to the lien date or abstract, but which is subsequently recorded after the lien date or abstract, generally has priority since the effective date is considered to be the date the instrument was delivered. In these cases, a thorough investigation should be made to be sure a subterfuge is not being attempted to overcome the effect of the Board of Equalization's lien.

Also, Board of Equalization liens do no take priority over purchase money security interests no matter when they are filed. See U.C.C. section 9103 for the definition of "Purchase Money Security Interest."

Government Code section 7170(c)(4) establishes lien priority for state tax liens in relation to purchase money security interests. Under this section, "any person (other than the taxpayer) who, notwithstanding the prior filing (emphasis added) of the notice of the state tax lien: (E) Is a holder of a purchase money security interest."

HOMESTEAD EXEMPTIONS 757.100

Person and married couples are limited to a single homestead exemption. Homestead exemptions protect a portion of the homestead from forced sale. The amount of the homestead exemption is one of the following:

1. One hundred fifty thousand dollars ($150,000) if the tax debtor or spouse is 65 years of age or older or; 55 years of age or older with a gross annual income of $15,000 (single) or $20,000 (married); or is unable to be employed due to a physical or mental disability
2. Seventy five thousand dollars ($75,000) for the head of a family
3. Fifty thousand ($50,000) for any other person.

(See Code of Civil Procedure (CCP) sections 704.720, 704.730, 704.950, 704.960 and 704.965.)

DECLARED HOMESTEAD 757.110

A dwelling in which an owner or owner's spouse resides may be selected as a declared homestead by recording a homestead declaration. (CCP section 704.910 et seq.)

If a declared homestead is voluntarily sold, the proceeds are exempt in the amount of the exemption for 6 months after the date of the sale; (CCP section 704.960), if the owner invests the proceeds in a new homestead declaration. In such case, the homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded.

On and after July 1, 1983, a state tax lien attaches to a dwelling regardless of the prior recording of a homestead declaration. (Government Code section 7170.) Therefore, if a delinquent taxpayer's file indicated the Board of Equalization's lien was filed prior to July 1, 1983, on previously homesteaded property, a new lien should be requested.

Additionally, the responsible collector should be alert to any oversight by title companies in not recognizing the Board of Equalization's lien. If an escrow company does not notify the Board of Equalization of the sale in escrow and the escrow company releases all funds, the escrow and title companies may be held liable for payment of the liability.

HOMESTEAD EXEMPTION (AUTOMATIC) 757.120

Whether or not a homestead declaration is recorded, Code of Civil Procedure section 704.710 et seq. provides for a homestead exemption for dwellings in the same amounts as outlined in CPPM 757.100. Unlike the declared homestead, this exemption also applies to mobilehomes and boats in which the debtor resides. Proceeds from involuntary transfers of a dwelling (execution sale, or condemnation for public use, insurance proceeds from damage or destruction of the homestead) are exempt in the amount of the homestead exemption for six months after the debtor receives the proceeds. The proceeds are not exempt if the debtor or debtor's spouse apply the homestead exemption to another property within the six-month period. Proceeds from the voluntary sale of the dwelling are not exempt.

LIEN ON CAUSE OF ACTION 757.130

In cases where a delinquent taxpayer either files a civil action against another person to recover a sum of money or is the defendant in the action and files a cross-complaint, there is a possibility for the Board of Equalization to place a lien on the cause of action and any judgment subsequently recovered by the taxpayer. To accomplish this, the matter must be referred to SPS with all of the details so appropriate action can be taken before judgment is entered. No case should be considered for a lien on cause of action if the liability is less than $500.

If the lien on cause of action is successful, a lien on the cause of action will be granted, which will also attach to the judgment rendered in favor of the plaintiff if the plaintiff prevails in the suit. The lien on the cause of action has priority as of the date that it is filed in the civil action. If the attorney representing the taxpayer has a written fee agreement that provides that the taxpayer grants the attorney a lien on any proceeds of the lawsuit to pay the attorney fees and costs incurred in the lawsuit, the attorney has a lien as of the date that agreement is executed. In most cases, the written fee agreement will create a lien senior to the Board of Equalization's, entitling the attorney to offset all attorney fees and costs (Cetenko v. United California Bank (1982) 30 Cal.3d 528).

INTERVENOR ACTION - INFORMATION NECESSARY FOR 757.140

If a civil action is filed by a delinquent taxpayer to recover money, and the taxpayer owes the Board of Equalization $500 or more, Form BOE–708, *Request for Notice of Lien on Cause of Action*, should be completed and forwarded to SPS. When the tax debtor is the defendant in the case, only forward a BOE-708 to SPS if a cross-complaint is filed.

When preparing Form BOE–708, Item 1 {DAG}(Deputy Attorney General), should be left blank. Items 2 through 10, listed below, must be accurately completed:

Item 2:	Court.
Item 3	Case name (always give complete title of case per court records).
Item 4	Case number.
Item 5	Taxpayer (complete name or names).
Item 6, 7, & 8	Total unpaid amount and interest information.
Item 9	Parties to serve (include the name and address of the attorneys for all parties. If no attorneys are known, give the

name and address of the party to which notice may be given. If substitute attorneys are listed in court records, show their names and addresses).

Item 10 Nature of suit and cross complaint.

Since the Attorney General must give notice of the state's lien to all parties in the action, these matters must be promptly reported to SPS.

COLLECTION ACTION TO CONTINUE 757.150

Creating a lien on a cause of action should be considered as one of the cumulative remedies to be used while other collection actions continue. The fact that a taxpayer who has filed a civil action is also making installment payments to the Board of Equalization, or has promised to make full payment at some future date, should not be reason to refrain from attempting to create a lien on the cause of action.

REPORTS TO THE DISTRICT OFFICE 757.160

After the Attorney General has completed his/her action and notification has been received by SPS on the results of the Attorney General's efforts, the information will be passed on to the district office or Special Taxes division. Regardless of whether the Attorney General was successful or not, other efforts to collect should continue.

ACTION WHEN FULL PAYMENT RECEIVED 757.170

If full payment is received in the district office or Special Taxes division on a case referred to the Attorney General, whether before or after a lien has been granted, a report of the collection will be forwarded promptly to SPS so the information can be conveyed to the Attorney General.

DISTRICT OFFICE FOLLOW-UP 757.180

As frequently as deemed necessary, district office or Special Taxes personnel should follow-up on these cases. Court records should be checked or the attorneys should be contacted. Any significant changes in the case should be promptly reported to SPS. Keeping abreast of the current status of a case is important since the action of the Attorney General consists only of obtaining the lien and not of maintaining a follow-up or further collection action.

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RELEASES, PARTIAL RELEASES AND SUBORDINATION OF LIENS 761.000

GENERAL 761.010

At any time and under any of the laws it administers, the Board of Equalization may release part or all of a taxpayer's real property from the effect of a lien or liens it filed on the taxpayer's property. The Board of Equalization may also subordinate its lien or liens to other liens or encumbrances if:

1. It is determined the amount due is sufficiently secured by a lien or other property.
2. Collection of the amount due will not be jeopardized by subordinating the lien.

Full lien releases are furnished to taxpayers only after full payment has been made or, if amounts are still due, they may be furnished to escrow agents or title companies along with a statement of payment and conditional release requirements which must be met prior to the use of the release. All full releases are prepared and mailed by SPS. Lien releases may also be issued if it is in the best interest of the state or to facilitate payment.

ROUTINE RELEASES OF LIENS 761.020

Government Code section 7174(c)(2) states:

> "In the case of the Controller or the State Board of Equalization, the agency shall, not later than 40 days after the liability is satisfied, do one of the following:
>
> 1. Record a certificate of release in the office of the county recorder where the notice of state tax lien is recorded.
> 2. Deposit in the mail or otherwise deliver to the taxpayer a certificate of release.

Therefore, in compliance with section 7174(c)(2), liens automatically enter the "Lien Release" state in ACMS after 40 days from the date of payment.

Staff should be requesting lien releases on a regular basis when it is determined that the liability secured by a lien has been paid in full. In all cases where it is determined that the liability was paid in full or abated prior to the lien recording, a "free" release of lien will be requested. A free release of lien allows the taxpayer to have the lien removed from official records without paying a fee.

REQUESTS FOR RELEASES OF LIENS 761.030

When a taxpayer requests a release of lien, proof of payment such as copies of canceled checks (both sides) must be provided for payments made by personal check within the last 30 days. If the lien recording information is not available in ACMS, the taxpayer should be advised that a release cannot be issued until the recording date becomes available. If a release is required sooner, LexisNexis can be used to obtain the recording information. If the recording information is not available through LexisNexis, the taxpayer should be advised that they can obtain a copy of the recorded lien from their respective county recorder (this is more applicable in larger counties

where it takes longer for the Board of Equalization to receive the recorded lien.)

REQUESTS FOR RELEASES OF LIENS (CONT.) 761.030

Requests for releases to be mailed to escrow agents, title companies, or the taxpayer to enable the conveyance of property, will be handled as expeditiously as possible. If the request is received by a district office, it will be forwarded to SPS within one day. When requests are received in SPS, whether from a district office or directly from the taxpayer or its agent, the release should be mailed within one day.

If the release mailed to an escrow agent or title company requires payment be made prior to its use, SPS will maintain a proper follow-up to ensure payment is received or the unused release is returned. When the liability is paid, a lien release is sent directly to the county recorder. Title companies and escrow agents who record releases without making payment in violation of the Board of Equalization's written instructions become liable for the amount they fail to pay.

PAYMENTS BY PERSONAL CHECK - RELEASE OF LIEN 761.040

Upon payment of a liability by personal check, the 40-day period required by Government Code section 7174(c)(2) in which to issue a lien release through ACMS will be observed. This period allows time for the personal check to be processed through the banking system and prevents a lien release from being issued if the taxpayer's account does not have sufficient funds. In instances where the taxpayer is requesting a release prior to the 40-day period expiring, he or she should be advised that a lien release will not be furnished unless the taxpayer can present for examination the cancelled check used in making the payment. If the release is to be delivered to the taxpayer at the time payment is made, the payment must be tendered in cash, money order, certified check or cashier's check. Company checks of escrow agents or title companies are also acceptable.

RELEASE OF LIENS ACQUIRED THROUGH ERRONEOUS RECORDINGS 761.050

The release of liens acquired through erroneous recording of certificates or abstracts is the duty of the Board. An example of a certificate or abstract recorded in error is where the recordation took place after full payment had been made. In these cases, SPS will prepare a release clearly showing that the document was recorded in error and the release will be forwarded to the county recorder to be recorded without fee.

SUBORDINATION OF LIENS 761.060

Subordination of real property liens are usually requested for the purpose of:

- Acquiring property on which a trust deed is to be executed, which is to become a first lien.
- For the purpose of placing a new encumbrance on property that already stands in the taxpayer's name.

Subordination should not be issued merely as a convenience to the taxpayer or without proper investigation to determine the merits of the request. In most cases, the position of the state will not be worsened by issuing a subordination since property is to be acquired or presently owned property will be retained.

In cases of refinancing currently owned property, the taxpayer will have money coming to them at the close of escrow. In these cases, a subordination will not be given unless there are extenuating circumstances or unless the taxpayer has agreed to have the surplus funds remitted directly to the Board of Equalization.

In all cases where a subordination is requested, the district office will make a written recommendation including supporting reasons to SPS, accompanied by the taxpayer's written request stating the reason the subordination is desired. Also forwarded will be the following:

- The date and amount of the deed of trust to be executed.
- The names of the parties executing the deed of trust as those names will appear on the instrument.
- The name of the trustee.
- The name of the party in whose favor (beneficiary) the deed of trust will be executed.
- Copy of the preliminary title report.
- The legal description of the property as it will appear on the deed of trust (required only if this description is different than the description contained in the preliminary title report).
- Schedule of proposed disbursement of funds by the escrow holder.
- Printout of a real property search report (FARES, etc).
- Lender's appraisal report or statement of property value.

Every such request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the taxpayer has the ability to pay, no subordination will be issued.

PARTIAL RELEASES OF LIENS 761.070

A partial release of lien, when recorded, has the effect of removing a lien from only the particular real property described in the partial release, while allowing the liens effect on other real property in which the taxpayer has an interest to remain undisturbed. Partial releases are given at the discretion of the Board of Equalization and their issuance is not mandatory. Releases of this type are usually requested in those cases where the taxpayer does not have available funds to pay the amount due, but does own more than one parcel of real estate, and is selling at least one, but not all parcels of property owned.

PARTIAL RELEASES OF LIENS (CONT.) 761.070

Also, a partial release of lien might be requested when the taxpayer is selling his or her only parcel of real property and the surplus funds are insufficient to pay the entire tax liability. In this case, the taxpayer must agree to have the surplus money from the sale remitted directly to the Board of Equalization in exchange for issuing a partial release of lien.

Partial releases are given only when such action will not jeopardize collection of the remainder of the account or where the lien on other property provides adequate security. When a partial release of lien is issued, all amounts that would normally be paid to the taxpayer in excess of the amounts due prior lien holders plus the costs of the sale will be paid directly to the Board of Equalization.

All requests for partial releases shall be transmitted to SPS. In order for SPS in conjunction with the legal staff, to consider the request properly, the following is required:

1. Cover memo including recommendation and reasons in support of recommendation.
2. Taxpayer's or escrow's written request stating the reason the partial release is desired.
3. Lender's appraisal report or statement of market value.
4. Copy of preliminary title report.
5. Schedule of proposed disbursement of funds by the escrow agent.
6. Printout of real property search report (FARES, Lexis Nexis, Accurint.)

Every request for a partial release of lien requires thorough investigation. In every case where the taxpayer has the ability to pay in full, no partial release will be issued.

RELEASES OF LIENS WHEN BOARD RECORDS ARE DESTROYED 761.080

It is not unusual for the Board of Equalization to receive requests for a release of lien in cases where records have been destroyed. If, when a request is received, the district office finds its records are destroyed, the Taxpayer Records Unit should be contacted to determine if they have the necessary records. If the Taxpayer Records Unit's records have also been destroyed, district offices should secure either from the escrow agent, title company, or from the office of the county recorder, all of the data necessary for the preparation of the release. This information should then be promptly forwarded to SPS along with the request for the release. The required information is as follows:

Certificate number.
Name of person or persons against whom recorded, including dba, if any.
Amount of certificate.
County in which recorded.
Date, book and page of recording.

In every case where a request for a release is received and records have been destroyed, it must definitely be ascertained that the certificate for which a release is requested was recorded by the Board of Equalization. Failure to do so will result in unnecessary work, as well as delay for the taxpayer, if it is later discovered that the certificate was recorded by another agency.

LIENS AFFECTING PERSONS OTHER THAN TAXPAYERS 761.090

On occasion, a person with the same or very similar name as a Board of Equalization taxpayer may be affected by a Board of Equalization lien. The person generally becomes aware of the lien when it appears on a credit report or title report. Such persons will likely contact the Board of Equalization to request assistance in resolving the problem.

When this situation arises, staff should first verify the person is not, in fact, the taxpayer being sought. To verify that the person contacting the Board of Equalization is not the taxpayer in question, request the person to appear in one of the Board of Equalization's field offices. The following information is required for proper identification:

His or her driver license or verifiable picture ID, such as from a place of employment.
Social security card
Copies of other documents that show the social security number (e.g., payroll documents, income tax returns).

If the above documents do not conclusively demonstrate that the person is not the taxpayer in question, other evidence must be submitted. District office staff has the latitude and responsibility to work with the person to determine the acceptable documentation verifying that he or she is not our taxpayer.

Once the above documentation is obtained, staff should photocopy the documents and prepare a cover memo and recommendation that includes:

The person's name.
The person's mailing address.
The person's telephone number.
A brief description of how the person discovered the error (e.g., credit report, title report).
Any other supporting documents.

The memo and the photocopies of the documents should then be sent to SPS where staff will prepare a notarized letter ("wrong person" letter) stating the indicated person is not our taxpayer. A cover letter is sent to the person with this notarized letter suggesting that the person provide the notarized letter to credit reporting companies and others who may question the lien. The letter should mitigate any future concerns or issues regarding the lien.

DETERMINATIONS AND ALTER EGO 764.000

DEFICIENCY DETERMINATIONS 764.010

RTC section 6481, and similar sections of other tax laws, provide that "If the board is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made for the amount due for one or for more than one period."

The amount of the determination, exclusive of penalties, shall bear interest at the "modified adjusted rate per month." The modified adjusted rate per month is calculated based on the modified adjusted rate per annum divided by 12. Therefore, the interest is not pro-rated for fractions of a month.

Deficiency determination penalties are described in the Revenue and Taxation Code as follows:

Section 6484	10 percent penalty for negligence or intentional disregard of this part or authorized rules or regulations.
Section 6485	25 percent penalty for fraud or intent to evade this part or authorized rules and regulations.
Section 6485.1	50 percent penalty for purchasing and registering a vehicle, vessel or aircraft outside the State of California for the purpose of evading the payment of taxes due under this part.
Section 6597	40 percent penalty for collecting but not timely remitting sales tax reimbursement or use tax.

The Board of Equalization shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination. The *Notice of Determination*, is sent via U.S. mail to the person's address as it appears in the records of the Board of Equalization. Service of the notice is complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason.

In lieu of mailing, a *Notice of Determination* may be served personally by delivering it to the person to be served and notice is complete at the time of delivery. Personal service to a corporation may be made by delivery of a *Notice of Determination* to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

Any person against whom a determination is made under RTC sections 6481 or 6511 or any person directly interested may petition for redetermination within 30 days after the Board of Equalization notifies the person of the liability. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of that period. All determinations made under the above sections are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be applied to the determined amount.

JEOPARDY DETERMINATIONS 764.020

A notice of jeopardy determination looks identical to a deficiency determination notice except that printed on the face of the document is a statement that it is a jeopardy determination. A jeopardy determination is issued when collection of the amount due is jeopardized by delay. The request for a jeopardy determination must receive approval and signature by an administrator or any person delegated this authority.

A jeopardy determination may be issued:

1. For either self-declared or self-assessed liabilities.
2. For the same liability included in a non-final determination, even if the non-final determination is in petition status.

The recommendation for a jeopardy determination must set forth the reason or reasons why delay will result in jeopardizing collection, and should also include:

1. Information as to the county or counties where a Notice of State Tax Lien is to be filed.
2. Whether or not a lien is to be recorded with the Secretary of State.
3. Whether or not a warrant is required at time of issuance of the jeopardy determination. If a warrant is required, it must include:

    a. The person or persons to whom the warrant is to be directed.
    b. The asset or assets to be levied upon.
    c. The amount of advance fees that may be required.

For sales and use tax, the original request for a jeopardy determination is routed to the Tax Policy Division (TPD) Chief, with a copy sent to SPS. If the request for a jeopardy determination is approved, the TPD Chief will notify SPS to proceed. Routing for special taxes accounts is made in accordance with Special Taxes Department policy.

As a guide in determining whether to request a jeopardy determination, the following are some examples of instances where a jeopardy determination is warranted:

1. Taxpayer is obviously dissipating his/her assets.
2. Taxpayer is placing assets in the names of other persons for purposes of concealment.
3. Taxpayer's assets are being attached by creditors, or are in imminent danger of attachment.
4. There is a pending sale of property which represents the last remaining assets and, without the funds from such sale, collection is doubtful.
5. There is evidence the taxpayer intends to file a petition in bankruptcy or make an assignment for benefit of creditors.
6. There is evidence creditors intend to file an involuntary petition in bankruptcy against the taxpayer.

Determinations of this type are:

1. Due and payable immediately.
2. Exempt from the following provisions of the Taxpayers' Bill of Rights:

    a. RTC section 7094, *Release of Levy*.
    b. RTC section 7097(a), *Prior Notice of Liens*.

3. Subject to the use of all collection remedies as of the date they are served, either personally or by mail.

Similar to deficiency determinations, any person against whom a jeopardy determination is issued has the right to petition for redetermination. However, in the case of a jeopardy determination the petition for redetermination must be filed within 10 days following the issuance of the *Notice of Jeopardy Determination*. Within the same 10-day period, the person must post such security as may be deemed necessary by the Board of Equalization (see CPPM 445.000 et seq.). If the jeopardy determination remains unpaid 10 days from the date of issuance and a petition for redetermination has not been filed, an additional 10 percent penalty must be added.

A jeopardy determination is, in itself, an indication that collection will be jeopardized by delay. Therefore, district offices must give priority to their collection efforts, making full and prompt use of appropriate collection remedies, which may include the seizure of a taxpayer's personal property. If personal property is seized, the sale of the property must be delayed until an administrative hearing is either granted or denied. If the taxpayer does not request an administrative hearing, a 30-day period must elapse between the date of service of the jeopardy determination and the date of sale of seized assets.

DUAL DETERMINATIONS - GENERAL 764.030

A dual determination is a determination made against a person for a tax liability that is already the obligation of another person. Dual determinations may be based upon the full amount of tax owed by the other person or for a portion thereof, depending on the specific circumstances. The liability may be based upon either self-assessed or Board-assessed tax.

Dual determinations are issued when there is doubt as to the true ownership of a business or when the true ownership cannot be established. Determinations for the same liability are made against each of the entities that investigation discloses could have operated the business and incurred the liability. Dual determinations are also used whenever a person holding a permit or license sells the business or otherwise changes the ownership without notification to the Board of Equalization, allowing the succeeding entity to continue the business using the permit or license issued to the original operator. In certain circumstances, a dual determination may be issued against a responsible person or persons who controlled, or supervised, the filing and/or paying of corporate or Limited Liability Company (LLC) taxes (see CPPM 764.090).

Regardless of how many additional individuals have been issued a dual determination for the original liability, the liability is posted to the accounts receivable only one time.

For sales and use tax accounts, the Special Procedures Section (SPS) or Audit Determinations and Refunds Section (ADRS) will review the information provided by staff and determine whether a dual determination should be issued. Each district office, or Special Taxes division, or the Centralized Collection Section, however, has the responsibility for fully substantiating such cases and bringing them to the attention of the appropriate section so dual determinations may be issued.

DUAL DETERMINATIONS - STATUTORY PROVISIONS 764.040

Dual determinations may be issued for any periods that are not outlawed under the provisions of RTC section 6487 or similar sections of other tax laws.

When a billing or lien results in an extension of the statute of limitations for a corporation, the statute is not extended for issuing a dual determination against a corporate officer or any other person in control of filing and paying the sales tax returns for the corporation. Accordingly, separate waivers of the statute of limitations can be obtained from those individuals the Board of Equalization determines to be responsible for tax liability in accordance with RTC section 6488. If waivers cannot be obtained from the individuals, separate determinations can be issued for the expiring quarters against those individuals.

DUAL DETERMINATIONS - FINALITY PENALTY 764.050

When issuing dual determinations against dualees (secondary accounts), all applicable amounts are assessed against the dualee as are assessed against the primary account, i.e., the amount assessed against the dualee includes the finality penalty assessed against the primary account, if any. Therefore, if the dualed liability is paid after the finality date, the dual determination does not accrue an additional finality penalty.

DUAL DETERMINATION AGAINST CORPORATE OFFICERS
SUSPENDED CORPORATION **764.060**

Sales and Use Tax Regulation 1702.6 provides for the personal liability of:

1. A corporate officer or shareholder with control over operations or management of a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended.
2. Any responsible person who fails to pay or to cause to be paid any taxes due from a closely held corporation during a time in which the corporation's powers, rights, and privileges are suspended.

Personal liability shall extend to the unpaid tax, interest and penalties regardless of the basis for the suspension of the corporation's powers, rights, and privileges. However, personal liability under this regulation applies only when the Board of Equalization establishes that, during the period of suspension, the corporation:

1. Sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due, or
2. Collected use tax and failed to report and pay the tax, or
3. Consumed tangible personal property and failed to pay the applicable tax to the seller or the Board of Equalization.

When the evidence shows that tax reimbursement was the normal operating procedure of the corporation, a dual determination may be issued against the corporate officers of a suspended corporation. However, any liability determined against the corporate officer(s) must have been incurred by the corporation during the period during which it was suspended. Photocopies of evidence examined (if available) substantiating such procedures must be attached to the request to issue a dual determination.

Certain audit liabilities are subject to corporate suspension duals, depending on the basis for the audit. If the basis is underreported sales, and it is the normal operating procedure of the corporation to collect sales tax, then it can be inferred that the corporation reimbursed itself for the audited taxable measure. If the basis for the audit is disallowed sales for resale or disallowed sales in interstate commerce, it cannot be assumed that the corporation received reimbursement for the audited taxable measure. In this case, the audit measure may need to be separated into liabilities which are subject to dual determination and liabilities which are not.

A suspended corporation remains liable for the unpaid tax, interest, and penalties incurred during the period in which its corporate powers, rights, and privileges were suspended, without regard to any personal liability determined against corporate officers or shareholders.

DUAL DETERMINATION AGAINST CORPORATE OFFICERS
SUSPENDED CORPORATION (CONT.) 764.060

"Responsible Person" means any officer or shareholder who is charged with the responsibility for filing returns or payment of tax or who has a duty to act for the closely held corporation in complying with any provision of the Sales and Use Tax Law and who derives a direct financial benefit from the failure to pay the tax liability.

"Closely held" corporation means one in which ownership is concentrated in one individual, one family, or a small number of individuals and the majority stockholders manage the business.

"Control over operations and management" means the power to manage or affect day-to-day operations of the business.

PROCEDURES TO ESTABLISH A
CORPORATE SUSPENSION DUAL DETERMINATION 764.070

A corporate suspension dual may be established even if the seller's permit is still active. Complete each of the following steps before submitting a request for a dual determination to ADRS:

1. Establish that the corporation has been/was suspended by accessing Secretary of State corporate information via ACMS. Relevant information that can be obtained through the Secretary of State includes FTB filing history, the Federal Employer Identification Number (FEIN), the Corporate Number, the date of incorporation, the date of suspension (if any) and the filing and payment history for the corporation's income taxes.
2. Establish that the statute of limitations has not expired for the liability in question.
3. Establish that the liability to be assessed against the corporate officers was incurred by the corporation during the suspension period.
4. Establish that the corporation is a closely held corporation by showing that:

    a. The ownership is concentrated in one person, a family, or a small group of individuals.
    b. The majority stockholders also managed the business.
    c. The corporate minutes are inadequate.

5. Establish that the corporation received tax reimbursement. This can be determined in a number of ways:

    a. Review previous sales tax returns for line 9 entries (sales tax included on line 1). Copies of prior tax returns can be ordered from the Taxpayer Records Unit if necessary, or the information can be printed from REV FZ in IRIS.
    b. Review the audit comments on previous audits, including Form BOE-1296, *Account Update Information*.
    c. Send a Form BOE-1508, *Dual Determination Information Request (Offier)* (available in ACMS) to each of the former corporate officers. A current statement of corporate officers can be obtained from the Secretary of State.
    d. Send Form BOE-1509, *Dual Determination Information Request (Employee)*, (available in ACMS) to a few ex-employees of the corporation.

A list of employees can be obtained from an external access request for payroll tax return data reported to EDD.

e. Send a Form BOE-1510, *Dual Determination – Customer Affidavit*, (available in ACMS) to any previous customers of the corporation. Customers can be found from previous audits, bankruptcy mailing matrices or contact with ex-employees.

If investigation does not reveal whether or not sales tax reimbursement was collected on the transaction for which the tax was due, a dual determination may be issued against the corporate officers only if there is evidence showing that the corporation's normal operating procedure was to include or add sales tax reimbursement. If it is known, or there is a strong presumption as in the case of disallowed deductions, that sales tax reimbursement was not collected, we should not include such sales in the dual determination. Transactions included under the "normal operating procedure" rationale that are later discovered not to include tax reimbursement must be deleted from the determination.

6. Ascertain the responsible individual who is charged with the filing and paying of taxes and other liabilities, or supervision of such employees, by:

   a. Reviewing the information in the file and in collection notes.
   b. Contacting ex-employees of the corporation and asking them to complete a Form BOE-1509.
   c. Contacting responsible corporate officers and other corporate officers and asking them to voluntarily complete a Form BOE-1508.
   d. Checking audit comments for any mention of responsible corporate officers, including form BOE-1296.
   e. Checking previous sales tax returns and ordering corporate income tax returns.
   f. Checking copies of previous checks used to pay sales tax returns for signatures.
   g. If the corporation filed bankruptcy, checking the bankruptcy court file for a "*Statement of Financial Affairs*." This statement can provide a wealth of information including willfulness and responsibility. It will include references to payments to corporate officers and major creditors in the period prior to the bankruptcy petition, and it is signed under penalty of perjury by the responsible officer.
   h. Considering a subpoena of bank records to determine who signed checks. This tool is effective, but it is costly and time consuming. Given the added expense of a subpoena, other elements of the dual should be verified first.

7. Prepare an interoffice memorandum requesting a corporate officer dual determination and send it to ADRS along with documentation of the above items.

DUAL DETERMINATIONS UNDER RTC SECTION 6829 764.080

RTC section 6829 provides the Board of Equalization with an avenue to issue dual determinations against any responsible officer, member, manager or partner (hereinafter called "responsible person") who willfully failed to pay the taxes which were collected for a corporation, limited liability partnership or a limited liability company (hereinafter called "entity".) To establish a dual determination under section 6829, the following elements must be satisfied:

1. The entity must be terminated, dissolved or abandoned. "Termination" also includes the discontinuance or cessation of business activities. If a sub-location of a consolidated account closes out, has a liability, and the entity does not clear the liability, the responsible individuals(s) of the sub-location or the continuing entity may be billed.
2. The person(s) being held liable for the unpaid taxes must have had the control or supervision of, or be charged with the responsibility to file returns, pay the sales and use taxes or the duty to act for the entity in complying with any requirement of this section.
3. A parent corporation may have the control, responsibility, etc for filing sales and use tax returns for a subsidiary or subsidiaries. In this case, the parent corporation is billed rather than the officers of the parent corporation.
4. The liability to be determined against any responsible person must have been incurred by the entity during the period that person was actually supervising or in control of filing tax returns and/or making payment for the entity.
5. It must be established that sales tax reimbursement was included in or added to the selling price of the tangible personal property sold or that the entity consumed tangible personal property and failed to pay the use tax. (See CPPM 764.060).
6. The responsible person(s) will be regarded to have willfully failed to pay or caused to pay any sales and use taxes due from the entity when the failure was the result of an intentional, conscious and voluntary course of action (see CPPM 764.100). The term "intentional, conscious, and voluntary course of action" may include any of the following:

    a. Cases in which there are frequent errors in computing and reporting tax. Note: Intentional, conscious and voluntary acts do not include infrequent or minor clerical errors in reporting the tax or mere negligence as opposed to gross negligence.
    b. Cases where the responsible persons have been notified of correct procedures or requirements for reporting and paying tax, but have subsequently failed to correct the reporting procedures.
    c. Assessments involving errors where negligence or evasive penalties have been applied.
    d. Situations where a prudent business person would have reported and paid the tax.

A dual determination cannot be issued against a corporate officer simply because he or she was the holder of a corporate office. As an example, even though a president of a corporation generally possesses overall or primary responsibility for the operation of the corporation, the holding of that office does not preclude a delegation of duties and the power to perform those duties so that another individual could be the responsible person. Section 6829 does not impose liability on persons who have control over the corporate affairs in general, but imposes liability only on those persons who had control, supervision, responsibility or the duty to act for the corporation in sales and use tax matters.

Consequently, it must be determined who the person(s) were that possessed actual operational control over the corporation's finances or, more specifically, tax matters. This person may be the one who owns the controlling interest in the corporation. More often than not, this person, if he or she is actively involved in the business, would have had a great deal of say as to who was or was not paid.

Tax money collected, but not remitted, may have been used to benefit the responsible party or other corporate shareholders or officers. However, having an ownership interest in the corporation and/or gaining any direct financial benefit from failing to pay the corporation's taxes is not the entire key to personal liability under RTC section 6829. The key to asserting personal liability under RTC section 6829 lies in determining who had the actual duty and responsibility to report and pay the sales and use taxes within the day-to-day operation of the corporation. This could be a "chief financial officer", "general manager", or any other similarly titled person hired for this purpose, given the authority to so act, and who may have assured the officers and the Board of Directors of the corporation that the taxes were current.

Corporate minutes, by-laws, books and records, Secretary of State records (statement of officers and articles of incorporation), Department of Corporations records (applications for permit to issue stock, notification of stock issuance, and principal stockholders), bank records, U.C.C. financing statements, corporate income tax returns, prior audits and field investigation reports are just some of the sources of information available to assist in determining who was actually responsible for the corporation's failure to pay its taxes. These records, however, may not be conclusive in and of themselves and this is why an in-depth investigation should include a personal interview with at least one person knowledgeable about the day-to-day operations of the corporation. Nothing precludes discussing the documentation available with a potentially responsible person to be dualed and gaining his or her input. Any feedback obtained from the person will tend to indicate the point or points of disagreement and the area that needs to have the strongest evidence available.

These guidelines are to be considered when a final determination issued against a corporate officer is being worked for collection. If, in the opinion of the district office staff, the facts of the particular case did not warrant issuing a dual determination, the supervisor of ADRS is to be notified to cancel the liability.

PROCEDURES FOR ESTABLISHING A
DUAL DETERMINATION UNDER RTC SECTION 6829 **764.090**

Audit Determination and Refund Section (ADRS) is responsible for reviewing and approving all requests to issue dual determinations against responsible persons pursuant to RTC section 6829. Section 6829 dual determination requests and all supporting documentation are sent to the ADRS Billing Group, MIC:39. Once approved, ADRS is responsible for issuing the related *Notice(s) of Determination*. SPS will process all other requests for dual determinations unrelated to RTC section 6829.

This section further defines the guidelines, minimum criteria and suggested methods for issuing a dual determination under section 6829. Complete each of the following items before submitting a 6829 Dual Request memo to ADRS:

1. Establish that the statute of limitations has not expired for the liability in question. A person cannot be held responsible for the liability of a corporation, LLP, or LLC until the entity terminates, dissolves or is abandoned. The applicable statute of limitations for issuing a *Notice of Determination* is as follows:

Decision Table for Statute of Limitations for Section 6829

CONDITION					
Return filed for the liability by the corporation, limited liability partnership or limited liability company.	Y				
Return filed for the liability by the "responsible person" under their own name.		Y			
No return filed.			Y		
The Board of Equalization obtains actual knowledge of the termination, dissolution, or abandonment of the business of the entity.				Y	
An entity or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Board of Equalization.					Y
ACTION					
NOD must be mailed within three years after the quarterly due date of the period in which the entity terminated, dissolved, or was abandoned or three years after the return is filed, whichever is later.		X		X	
NOD must be mailed within eight years after the quarterly due date of the period in which the entity terminated, dissolved, or was abandoned.	X		X		X

Note: The statute of limitations for issuing a *Notice of Determination* pursuant to RTC section 6829 is not affected by a responsible person filing returns under an unrelated permit number. Beginning January 1, 2009, the law specifies a three-year statute of limitations on dual determinations under RTC section 6829.

2. Determine the responsible person(s) that was in charge of filing and paying taxes and other liabilities, or who supervised employees that did so.

   a. Review the information in file and in collection notes.

b. Contact ex-employees of the entity and ask them to complete a Form BOE-1509.
c. Contact responsible corporate officers and other persons such as managers and ask them to voluntarily complete a Form BOE-1508.
d. Check audit comments for any mention of responsible persons, including Form BOE-1296, *Account Update Information*.
e. Check previous sales tax returns and income tax returns.
f. Check copies of previous checks used to pay sales tax returns for signatures.

g. Check the bankruptcy court file for a "Statement of Financial Affairs," if the entity filed bankruptcy. This statement can provide a wealth of information, including willfulness and responsibility. It may include references of payments to corporate officers and major creditors in the period prior to the bankruptcy petition, and it is signed under penalty of perjury by the responsible officer or person.

h. Consider a subpoena of bank records to determine who signed checks. Obtaining a subpoena is effective since it can cover willfulness also, but it can be costly and time consuming. Given the added expense of obtaining a subpoena, other elements of the dual should be verified first.

3. Establish that the individual willfully failed to report and pay the tax. Willfulness can be ascertained if the officer paid other creditors (landlord, employees, suppliers), but did not prorate available moneys to the taxes due for the same period. Bankruptcy, or foreclosure by a financing company, does not necessarily preclude the issuance of a dual.

4. Verify willfulness by:

a. Contacting previous creditors, suppliers and landlords of the entity, and asking them to complete a Form BOE-1511, *Dual Determination-Creditor/Supplier/Landlord* (available on ACMS, also see Exhibit D). The landlord can be located by ordering a real property title search for the physical address, or reviewing the Board of Equalization's files. Suppliers and creditors can be located easily if the entity has filed bankruptcy by obtaining a creditor matrix from the bankruptcy court.

b. Contacting ex-employees of the entity via EDD for completion of a Form BOE-1509, *Dual Determination Information Request (Employee)*.

c. Ordering FTB and EDD information for the corporation to see if these taxes were paid. Income tax returns can also be used to show that tax-deductible expenses were paid for the year of filing.

d. Contacting all corporate officers for completion of a Form BOE-1508, *Dual Determination Information Request (Officer)*.

e. Requesting a subpoena of bank records for the months in question may provide proof that other creditors were paid.

Attach documentation of the above items to an interoffice memo requesting a dual determination under RTC section 6829 and send to ADRS.

DEFINITION OF WILLFULNESS **764.100**

Under RTC section 6829(d), "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious and voluntary course of action. Willfulness depends upon the facts and circumstances of each case. Rarely, if ever, will the facts and circumstances of a particular case be ascertained from a mere review of the file. Generally, an in-depth investigation must be made. During this investigation, a personal interview with at least one person having direct, personal knowledge of the inner-workings of the entity is strongly recommended. Only in those rare cases in which an earlier audit or other in-depth investigation has already supplied the necessary facts and circumstances will the preceding not be needed.

An interoffice memorandum summarizing the facts and circumstances in existence upon conclusion of the investigation into willfulness must be completed and sent to ADRS. The following list contains six techniques to aid staff in the identification of willfulness but since willfulness may be established in a variety of ways, the list is not exhaustive.

1. The holding of a corporate office, in and of itself, is not grounds for holding a corporate officer personally liable. Whether or not this guideline overlaps into the responsibility or responsible person issue is important to consider here. RTC section 6829 is meant to cut through the organizational form of the corporation or other type of entity and impose liability upon those persons actually responsible for the entity's failure to pay its taxes. This requires looking through the mechanical functions of the various corporate officers or other persons to determine the person(s) having the actual power to control the decision making process by which the entity allocated funds to other creditors in preference to its tax obligations. The mechanical duties of signing checks and preparing tax returns are not determinative.
2. A showing of fraud or an intent to evade the taxes is not necessary in order to establish the element of willfulness. Nor does a finding of willfulness entail a showing of evil motive, bad purpose, or calculated malevolence. Rather, the focus of the investigation should be on the intentional nature of the individual's election not to pay over the taxes and the conditions under which the election was made, i.e., the facts and circumstances.
3. Mere negligence is not sufficient for willfulness. This is particularly true when the negligence occurs as to the application of the sales tax to specific transactions. The old adage "everyone is presumed to know the law" cannot be used to find willfulness. Willful, as a voluntary act, is to do a thing knowingly, after indulging in a mental process, as opposed to oversight, simple neglect, or inadvertence. Accordingly, infrequent or minor clerical errors in reporting or paying the tax will not support willfulness.
4. At some point, however, mere negligence could overlap into gross negligence or a reckless disregard of an obvious and known risk that taxes might not be properly remitted, thereby sustaining willfulness. This could occur where the responsible persons have been notified of correct procedures or requirements for reporting and paying tax but have subsequently failed to correct the reporting procedures.
5. There must be an element of personal fault of the responsible person after considering all of the facts and circumstances. If the responsible person acted in good faith as to taxes, no personal liability attaches. The fact is there are constantly cases of business failures in which taxes are not paid through no fault of the person(s) responsible for the entity's taxes. RTC section 6829 does not make the corporate officers or other responsible persons the guarantors of the entity's

taxes nor does it impose an absolute duty to pay the entity's taxes on responsible persons.

6. The investigation must show evidence of the availability of funds from which the tax payment could have been made but was not. In other words, the entity must be shown to have had money before one could say the responsible person willfully failed to pay. On the other hand, an entity, which has had cash and other liquid assets seized or levied upon by creditors, cannot be said to have had available funds. Further, we cannot assume, simply because there is evidence of sales tax reimbursement, the moneys were available when the taxes became due and payable.

CORPORATION AS ALTER EGO 764.110

When the shareholders are merely the "alter ego" (other self) of the corporation, the courts can treat the body of shareholders and the corporation as synonymous rather than as separate entities and hold the individual shareholders personally liable for the corporate obligations as a matter of equity. Collection via the alter ego approach is pursued by court action against the "alter ego" of the corporation (rather than by a dual determination process) in those cases involving "closely-held" corporations and statutory "close" corporations having no shareholder's agreement or acting contrary to such agreement. Since the burden of proof rests with the Board of Equalization to prove the alter ego theory, thorough investigations are necessary to uncover the required evidence.

If collection from a closely held corporation appears unlikely and the liability is $5,000 or more, the alter ego approach may be used to pursue collection from individuals through court action. Due to the expense of the court system and the difficulty in proving that alter ego exists, this action is employed as a last resort.

The control of the corporation by an individual, group or other person for the purpose of working a fraud on the creditors is an important element necessary to establish the alter ego theory. When attempting to establish alter ego, the following factors are essential before the corporation can be disregarded and others held liable:

1. Inadequate financing of the corporation.
2. Lack of corporate records.
3. Commingling of funds and collection of corporate funds to be used for the purposes of those controlling the corporation.

Examples of information to be secured are:

1. Has the corporation been suspended for nonpayment of franchise taxes?
2. Has a full set of records been set up and followed for the corporation, including records showing the issuance of stock? The corporate records to be considered are its records on issuance of capital stock, correspondence, bank accounts, payrolls, licenses, sales and purchase orders.
3. Has there been a commingling of corporate and personal funds? If the principals have commingled the corporate funds with their own funds, this is an indication the corporate officers are disregarding the corporate entity.
4. What is the capitalization of the corporation? Inadequate capitalization may be considered as a factor determining whether the corporate entity should be disregarded.

5. Have the minute books been maintained and are the corporate meetings being held with reasonable regularity?

In all cases where the possibility of asserting the alter ego theory exists, district office or Special Taxes division staff will forward comprehensive reports to SPS for review and decision as to further action.

ALTER EGO AND DUAL DETERMINATIONS - FIELD PROCEDURES 764.120

If a corporation appears to be having financial problems, alternate methods of collection may be considered as described in the following five steps:

STEP ONE

Ensure that the following conditions are met:

1. Collection from the corporation appears unlikely or is in jeopardy.
2. The liability to be assessed is $5,000 or more for alter ego and $500 or more for other collection alternatives (can be a lesser amount, if a reasonable possibility of collection from persons associated with the corporation exists and approval is obtained from the district administrator).

STEP TWO

If the conditions in step one are met, information obtained from the Secretary of State's office must be examined to determine the following:

1. Is the entity actually incorporated or registered as a foreign corporation with the California Secretary of State?
2. Is the corporation now, or was it during the period of liability, suspended by the Franchise Tax Board or Secretary of State?
3. Are the currently listed corporate officer(s) of record the same one(s) as those during the period for which a dual determination is contemplated? If they are the same persons, a dual determination may be issued against the corporate officers, provided the conditions listed in CPPM 764.070 are met. One exception exists for this requirement. If, at the time the audit determination became final the corporation was intact and had more than sufficient funds available but chose to pay other creditors instead of paying the audit liability, the responsible person may be held liable, even though he or she was not a responsible person during the audit period.
4. Who controlled the corporation when the business terminated and when the liabilities were incurred? If the other conditions in CPPM 764.090 are met, and the individuals were associated with the corporation and responsible for tax matters during the period to be dualed, then a dual determination may be issued against the corporation and the responsible individuals.
5. Was the corporation active when an alter ego situation was suspected? In the case of an alter ego situation, both qualifying elements must be documented (unity of interest and fraud or inequity).

If the entity is not incorporated in California or elsewhere, then the liability falls on the person(s) who operated the business.

STEP THREE

If none of the above collection alternatives mentioned in step two can be pursued, proceed as follows to determine whether any of the remaining noted collection alternatives can be pursued:

1. When a tax liability is determined against the successor, ascertain whether the predecessor failed to notify the Board of a change in ownership. If notification was not made, a dual determination should be issued against the predecessor, as indicated in CPPM 734.000 et seq.
2. Determine from reviewing the records whether any other alternative methods of collection of corporate liability against individuals can be used including fraudulent conveyances (CPPM 753.095), unpaid loans (CPPM 730.045), or unlawful distributions (CPPM 726.000). If any of these collection methods are viable, obtain complete documentation for the appropriate action.

STEP FOUR

If the liability to be included in the dual consists of self-declared tax and/or prior audit determination:

1. For suspended corporations, complete an interoffice memo requesting a dual determination and send it with supporting documentation to SPS.
2. For duals under RTC section 6829 or court actions for alter ego, complete an interoffice memo requesting a dual determination and send it to ADRS along with any information on the individual's involvement in the business. ADRS will review for self-declared tax and include any that falls within the allowable billing period. Attach a copy of BOE-414-1A, *Summary of Tax Return Changes*, if applicable.

STEP FIVE

If the liability to be included in the dual is a combination of self-declared tax and/or prior audit determination and liability from an audit in process:

1. Follow STEP FOUR (1) and (2) above.
2. ADRS will process the duals for the liability resulting from the current audit and SPS will process the duals resulting from self-declared and/or prior audit determination.

All requests must be approved by the District Principal Compliance Supervisor or District Principal Auditor prior to sending them to Headquarters. The supervisors of SPS and ADRS will review for approval all requests that will be billed by their respective section. Incomplete requests, or rejected requests, will be returned to the requester, giving the reason for return or rejection.

ALCOHOLIC BEVERAGE LICENSE SUSPENSIONS AND TRANSFERS 765.000

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE FOR FAILURE TO FILE OR PAY SALES & USE TAXES 765.005

Under Business & Professions Code section 24205, a taxpayer's alcoholic beverage license may be suspended when:

1. The taxpayer is three or more calendar months delinquent in the payment of sales or use taxes.
2. The alcoholic beverage license is directly related to a delinquent seller's permit.

Taxpayers who have entered into an approved installment payment agreement and are actively making payments in accordance with that agreement should not be considered as candidates for suspension of their alcoholic beverage license.

ACMS contains two warning letters for use in cases where the potential to request suspension of an alcoholic beverage license exists. The first letter, Form BOE-1495, *ABC Suspension — Preliminary Notice, Delinquency*, is designed to be used once an account is roughly 2 1/2 months delinquent in the filing or payment of a return (calculated from the due date of the return/prepayment). This letter warns the taxpayer of the potential consequences for not filing and paying the delinquent return/prepayment or paying the delinquent account receivable. In the case of return delinquencies, a blurb is attached to the delinquency citation notice that warns of the possibility that the taxpayer's alcoholic beverage license may be suspended.

The second letter, Form BOE-1497, *ABC Suspension — Final Notice, Delinquency*, must be sent prior to suspending the alcoholic beverage license. The taxpayer must be delinquent in the filing or payment of a return for three full calendar months (calculated from the due date of the return/prepayment) before the BOE-1497 can be mailed. This letter should always be mailed to the mailing address of record prior to suspension of the alcoholic beverage license. This final letter affords the taxpayer 14 calendar days to comply before suspension occurs.

Once the 14-day period has expired, and the taxpayer has not paid the liability or commenced with a satisfactory payment plan, a Form BOE-200, *Special Procedures Action Request*, should be completed and forwarded to the Special Procedures Section (SPS) for processing. SPS will verify that:

1. Forms BOE-1495 and BOE-1497 have been sent to the taxpayer.
2. 14 days have elapsed.
3. The taxpayer has not provided a valid surety bond or paid their delinquent taxes and penalties.

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE
FOR FAILURE TO FILE OR PAY SALES & USE TAXES (CONT.) 765.005

SPS will forward a memo, Form BOE-1499, *ABC Suspension Request*, to the Department of Alcoholic Beverage Control (ABC), requesting that the alcoholic beverage license be suspended until further notice. (NOTE: If the taxpayer complies before SPS issues the BOE-1499, notify SPS immediately.) Once the memo is received, ABC will conduct a field call, confiscate the liquor license, and notify SPS when the suspension of the alcoholic beverage license is complete.

Business and Professions section 24205 provides that reinstatement of the liquor license should only be allowed when the taxpayer is current in filing all sales and use tax returns. Once the seller has filed and paid all delinquent and current sales and use tax returns, the responsible collector will send Form BOE-1500, *ABC Suspension Release*, to ABC notifying it that the taxpayer's liquor license should be reinstated. An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed any applicable surety bond, and is making payments on an approved IPA against an audit liability.

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE
FOR FAILURE TO RENEW A SURETY BOND 765.006

Additionally, Business and Professions Code section 24205 provides that the liquor license of a taxpayer shall be automatically suspended upon cancellation of its sales and use tax bond, or if that bond becomes void or unenforceable for any reason.

However, this procedure is not to be used when the Board of Equalization is making an initial demand for security. ACMS contains two warning letters for use when requesting an alcoholic beverage license suspension for the above reasons. Form BOE–1496, *ABC Suspension — Preliminary Notice, Security*, should be used when the taxpayer has not replaced a bond that was cancelled, became void or unenforceable, or when the taxpayer is delinquent in renewing or replacing the bond for approximately 2 1/2 months. This letter warns of the potential consequences of an automatic suspension of its alcoholic beverage license for not providing a valid surety bond.

Form BOE–1498, *ABC Suspension — Final Notice, Security*, should be mailed to the taxpayer approximately two weeks after the first letter or when a taxpayer is delinquent in renewing or replacing the surety bond for three full calendar months. A BOE–1498 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14 days has expired, and the taxpayer has not provided a valid surety bond replacement or commenced with a satisfactory payment plan to replace the bond, Form BOE–200-A, *Special Procedures Action Request*, should be completed and forwarded to SPS for processing. SPS will verify that:

1. Forms BOE-1496 and BOE-1498 have been sent to the taxpayer.
2. 14 days have lapsed.
3. The taxpayer is currently three full calendar months delinquent in the renewal or replacement of the surety bond.

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE
FOR FAILURE TO RENEW A SURETY BOND (CONT.) 765.006

SPS will forward a memo (BOE-1499, *ABC Suspension Request*) to ABC, requesting that the ABC license be suspended until further notice. (NOTE: If the taxpayer complies prior to issuance of the BOE–1499, notify SPS immediately). ABC will conduct a field call, confiscate the liquor license, and notify SPS when the license is suspended.

Business and Professions Code section 24205 expressly provides the license shall be automatically reinstated if the taxpayer files a valid bond, or pays his or her delinquent taxes or penalties, as the case may be. Once the seller has provided a valid surety bond and has paid all delinquent taxes or penalties, a release memo (BOE–1500, *ABC Suspension Release*) should be sent by the responsible collector to ABC. This memo will notify ABC that the taxpayer's liquor license should be reinstated. An exception may be allowed if the taxpayer is current on self-declared taxes, has a valid surety bond, and is making payments on an approved installment payment agreement.

WITHHOLD OF TRANSFER — ALCOHOLIC BEVERAGE LICENSE 765.010

Business and Professions Code section 24049 provides that the transfer of any alcoholic beverage license may be refused if the applicant is delinquent in the payment of any taxes due under:

1. The Alcoholic Beverage Tax Law.
2. The Sales and Use Tax Law.
3. The Personal Income Tax Law.
4. The Bank and Corporation Law.
5. RTC section 134, defining unsecured property, when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license.
6. The Unemployment Insurance Code, when such liability arises out of the conduct of a business licensed by the Department of Alcoholic Beverage Control.

This allows the Board of Equalization, through an arrangement with ABC, to request placement of a withhold against a liquor license transfer when the applicant is delinquent under any of the laws mentioned above. For the purpose of these withholds and in cases of transfers, the applicant is deemed to be either the transferor or the transferee.

TYPES OF LIQUOR LICENSES SUBJECT TO WITHHOLDS 765.020

Limited liquor licenses are those licenses that are restricted. This type of license is issued based on the population of the county in which the business premises are located. Those that lend themselves to withhold procedures are listed by the following ABC Tax Control Codes:

20 Off-Sale Beer and Wine (affected by the moratorium, see listing in section 767.110).
21 Off-Sale General
47 On-Sale General Eating Place
48 On-Sale General Public Premises
49 On-Sale General Seasonal
58 Caterer's Permit
75 Brewpub-Restaurant

TYPES OF LIQUOR LICENSES SUBJECT TO WITHHOLDS (CONT.) 765.020

In transferring a limited liquor license for a purchase price or consideration, an escrow must be established, with the following exceptions:

1. Any transfer of a liquor license made by an executor, administrator, guardian, conservator, trustee, receiver, assignor, or fiduciary who has been approved or authorized by ABC is considered to be the same as an escrow agent for the purpose of receiving withholds and release letters. Escrows are not required on premise transfers when ownership of the license remains the same.

2. Four types of licenses are excluded from the withhold procedure because there is no requirement that escrow information be furnished to ABC. These license codes are:

   20 Off-Sale Beer and Wine (not affected by the moratorium).
   40 On-Sale Beer.
   41 On-Sale Beer and Wine.
   51 Club (worth a maximum of $350).

FORM LETTERS USED IN THE WITHHOLD PROCESS 765.030

Form BOE-871, *Request For Transfer Of Liquor License To Be Withheld*, is sent to ABC by SPS to request a withhold on the transfer of a liquor license. This form is prepared in sets of five to provide copies to all offices concerned.

Form BOE-872, *Release of Hold Against ABC License*, is used by the district offices to notify ABC to release a withhold placed against the transfer of a liquor license.

Form BOE-872-A, *Release of Withhold on Liquor License Transfer*, is used to inform the escrow agent of requirements that need to be met prior to the transfer of the liquor license. If a demand has been made to the escrow agent because of a liability against an account, generally both Form BOE-872 and Form BOE-872-A are sent to the escrow holder. After all liabilities against an account have been cleared, the escrow agent will forward Form BOE-872 to ABC so the liquor license may be transferred. If ABC does not approve the transfer, the release will be returned with a brief explanation.

TRANSFER WITHHOLDS 765.040

District offices and SPS share responsibility with respect to placing holds against the transfer of certain types of liquor licenses. The knowledge that a license transfer application has been made will come, for the most part, from daily information sent to SPS by ABC. Each of the ABC district offices sends daily notices of license transfer applications to ABC Headquarters who, in turn, transmits the information to SPS on a rush basis.

SPS will locate account numbers for the indicated liquor licenses and check for reporting delinquencies and final liabilities. A liquor license withhold may be requested if:

1. There is a reporting delinquency.
2. A final liability exists.
3. If the license being transferred has a non-final liability.

When SPS determines that a withhold should be placed on a liquor license, Form BOE-871, *Request For Transfer Of Liquor License To Be Withheld*, will immediately be sent to ABC headquarters, Sacramento, with a copy to the responsible district office. Where no reporting delinquency or final liability exists, SPS will send notification of the license application transfer to the responsible district office for any action deemed necessary, e.g., close out of the permit, etc.

When there is a pending liquor license transfer and the Board of Equalization has a withhold on the license, the district will notify, by letter, all interested parties and inform them that a tax liability exists that must be cleared prior to the withhold being removed and the license being transferred.

DEMAND AND RELEASE PROCEDURE FOR ALCOHOLIC BEVERAGE LICENSE WITHHOLDS 765.050

Upon receipt of Form BOE-871, ABC will send SPS two copies of the application to transfer the license and SPS will forward this information to the responsible district office. Since a liquor license can transfer no earlier than 30 days from date of application to transfer, the district office must make every effort to:

1. Clear all delinquent periods.
2. Search for related accounts that may be involved.
3. If a final liability is determined, send Form BOE-872, *Release of Hold Against ABC License*, and Form BOE-872-A, *Release of Withhold on Liquor License Transfer*, to the escrow holder. In cases where the escrow is not being handled by an escrow company, bank, etc., only Form BOE-872-A, should be presented to the escrow holder. Form BOE-872 should be held pending payment of the demand.

If demand is not sent to the escrow holder within 30 days, ABC may allow the license to transfer without payment.

When the escrow holder is in a position to disburse funds, payment will be made to the Board of Equalization pursuant to the Form BOE-872-A instructions and the escrow holder, except as noted above, will simultaneously forward the Form BOE-872, *Release of Hold Against ABC License*, to ABC, Sacramento. ABC will then remove the withhold on the transfer of the liquor license.

DISTRICT OFFICE RESPONSIBILITY 765.060

When district office staff determines that a withhold needs to be placed on the transfer of a liquor license, the district will notify SPS either by telephone (if an escrow is pending) or by Form BOE-200-A, *Special Procedures Action Request*. If notification is made by telephone, follow up with a Form BOE-200-A to ensure the request is documented in ACMS. The taxpayer's name, account number, liquor license number, and reason for requesting a withhold must be given in the request.

Each district office is responsible to follow up on their own liquor license withholds. If an audit is recommended, compliance staff will notify the district audit staff immediately so that an audit will be initiated promptly or an audit waiver will be obtained.

Under RTC section 6813, the Board of Equalization may require the posting of a security deposit in order to issue a Certificate of Tax Clearance that will allow the escrow to proceed with the transfer of the business and the liquor license. When a license withhold cannot be placed because no delinquencies exist with respect to reporting, or the account does not have a final or non-final liability at the time the application for transfer is made, the provisions of RTC section 6813 should be considered in order to ensure payment of any anticipated liability. If additional liabilities are found within the allotted time, or before all the escrow funds are disbursed, an amended demand should be made on the escrow agent.

MISCELLANEOUS INFORMATION - LIQUOR LICENSE WITHHOLD 765.070

Business and Professions Code section 23959 states, "If an application is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars ($100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes then due from the applicant under Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code or the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant.

From time to time, it may be necessary to expedite the release of a liquor license withhold by making a telephone call to ABC headquarters in Sacramento. District office staff, after ensuring that a rush release is necessary, will contact SPS and an authorized person from SPS will call ABC to have the license released.

REMINDER TO THE DISTRICT OFFICES - LIQUOR LICENSE WITHHOLDS 765.080

The following information is included as guidelines for district office staff when considering placement of a withhold against a liquor license:

1. Unless the account has a reporting delinquency, a non-final liability, or a final liability, a withhold on the transfer of a license will not be placed.
2. Withholds are not placed against renewals of liquor licenses.
3. After considering all factors, including application of cash deposits, a withhold is not to be requested on balances less than $100.
4. A withhold should not be requested unless all or part of the liability or delinquency arose from the operation of a business requiring the holding of a liquor license.
5. No "rush" withhold on the transfer of a liquor license will be made unless there is an application for the transfer on the license.

BANKRUPTCIES INVOLVING LIQUOR LICENSES 765.090

Normally, penalty and post-bankruptcy interest are charges that are not allowable in bankruptcy claims. However, if the bankrupt was the holder of a liquor license that has been sold by the bankruptcy trustee, a withhold will be placed against the license transfer and will not be removed until the total liability, including all penalty and interest to the date of payment, has been paid, regardless of the amount included in any bankruptcy priority claim previously filed. If the amount realized from the sale of the license is inadequate to pay the total amount due, release of the withhold must be given on the basis of the sales price of the license, rather than the amount of the tax liability. See 11 U.S.C. 326(a) to verify that the proper procedures for reasonable compensation of the bankruptcy trustee were followed.

ESCROWS 765.100

Under the withhold procedure, a claim is made directly upon funds held in escrow pending transfer of the liquor license. Demand and release instructions (Forms BOE-872-A, *Release of Withhold on Liquor License Transfer*, and BOE-872, *Release of Hold Against ABC License*) are sent directly to the escrow agent who, upon payment of the demand, will send the BOE-872, *Release of Hold Against ABC License*, to ABC Headquarters in Sacramento.

If escrow funds are inadequate to pay in full the claims of all agencies that have withholds against the license transfer, SPS will be contacted to arrange a pro-rate of available funds. The information required includes the total selling price of the license, amount of escrow fee, the name of any other agencies having claims in the escrow, and the name and address of the escrow company.

INSTALLMENT PAYMENT AGREEMENTS - LIQUOR LICENSE WITHHOLDS 765.110

Under no circumstances should an installment payment agreement be accepted when the debtor is the transferor. The transferor is receiving a consideration for the sale of the license and the liability should be paid out of the proceeds.

If the delinquent taxpayer is the transferee and an investigation discloses an inability to pay the obligation, even though acquiring a license, a report and recommendation should be forwarded to SPS. In certain unusual situations of this kind, the acceptance of a proposal for payment will be in order since the license represents an asset that might, at a later date, be helpful in clearing the account. In such cases, a withhold will not be removed unless a substantial initial payment is received.

PAYMENT FOR RELEASE OF WITHHOLD — LIQUOR LICENSE 765.120

Payment by personal check should not be accepted to release a liquor license withhold. An escrow check or a check from a source representing funds held in trust is acceptable.

INTERNAL REVENUE SERVICE SEIZURE AND SALE — LIQUOR LICENSE 765.130

The Internal Revenue Service (IRS) can seize and sell the liquor license of any person who is delinquent in the payment of federal taxes. To transfer the license once the license has been sold, the IRS and the buyer must open an escrow account with a bona fide escrow holder. The transfer of the license must be processed through ABC. The buyer and the details of the transfer must meet the same requirements as in any other liquor license transfer. District offices will be notified by Form BOE-871, *Request For Transfer Of Liquor License To Be Withheld*, of these pending transfers in the same manner as the transfer of other licenses.

When a district becomes aware of the fact the IRS has seized the license, a withhold on the transfer of the license will be requested when application for transfer is made, providing a reporting delinquency or delinquent liability exists. After the responsible district office receives notification of the pending transfer, Forms BOE–872 and BOE–872–A (the demand and release forms) are sent to the escrow holder. A demand and release are never deposited with the IRS, even though they may be requested.

ABC DAILY TRANSMITTALS 765.140

Each day, all ABC district and branch offices type a transmittal that shows new liquor license requests, transfer applications (including name and address of transferor and transferee) and temporary applications. This information is sent to ABC Headquarters in Sacramento for immediate forwarding to SPS. Some Board of Equalization district offices formerly received copies of the transmittals directly from their neighboring ABC district office. This no longer officially occurs since SPS forwards copies of the transmittals to district offices when they are received from ABC Headquarters.

ABC district/branch offices are at the following locations:

NORTHERN CALIFORNIA	SOUTHERN CALIFORNIA
Fresno	Bakersfield
Oakland	El Monte
Sacramento	Inglewood
San Francisco	Long Beach
San Jose	Los Angeles/Wilshire
Salinas	Rancho Mirage
Santa Rosa	San Bernardino
Eureka	Indio
Stockton	San Diego
Yuba City	Santa Ana
Redding	Santa Barbara
	San Luis Obispo
	Van Nuys

~~COLLECTION FROM SURETIES 766.000~~

~~EFFECTIVE PERIODS AND LIABILITY 766.010~~

~~A surety can be held liable for an amount that its principal failed to pay only if the liability results from transactions that occurred during the effective period of the bond. Each bond shows an effective date and remains in force from that date until 30 days after receipt, by the Board, of a notice of termination from the surety. It is the period between these two dates that constitutes the effective period.~~

~~The liability of the surety extends to tax, penalty and interest regardless of the location or locations at that the liability was incurred.~~

~~NOTIFICATION TO SURETIES 766.020~~

~~When a demand for payment is issued against a taxpayer whose security is in the form of a surety bond, notification of the delinquency is generally sent by the Headquarters Special Procedures Section to the surety.~~

~~In order to keep sureties informed of the status of the accounts of their principals, they are also notified when the Headquarters Special Procedures Section files claims in bankruptcies, assignments, or probates, and in certain cases, when installment proposals are accepted.~~

~~DEMANDS ON SURETIES, DISTRICT RECOMMENDATIONS 766.030~~

~~If the liability exceeds $50 and investigation discloses payment from the taxpayer cannot be expected, there is no corporate officer personal liability, and there are no assets upon which to levy, the district's responsibility is to recommend demand on the surety. The recommendation should be made as soon as it is apparent payment cannot be expected.~~

~~DEMANDS ON SURETIES, CORPORATE ACCOUNTS 766.035~~

~~Section 2845, Civil Code, states, "A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power that the surety cannot pursue, and that would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced". The Board must therefore exhaust all collection avenues and investigate all other remedies available prior to making demand upon a surety bond unless the surety has similar remedies. If a bond is indemnified by the corporate officer(s) who would also be the individual(s) billed by the Board, similar remedies exist.~~

~~In view of the above, the following procedures will be followed when a surety bond secures liability on a corporate account.~~

1. ~~If collection cannot be made from the corporation, the corporate officers become the indemnifier of the bond and the liability for the secured bond does not exceed the penal sum of the bond plus $500 (normal minimum amount of liability required to issue dual determination), a request for demand on the bond is in order.~~
2. ~~If the liability for the secured period exceeds the penal sum of the bond by more than $500, corporate officer/employee liability must be explored. If the review for individual liability is negative, a request for demand on the bond is in order. If the review is positive, the individuals should be billed, and demand on the bond deferred, until the potential for collection from the individual(s) has been thoroughly explored.~~

~~INTEREST CHARGES ON DEMANDS 766.040~~

~~If the amount of liability for that demand is made is less than the penal sum of the bond, the demand will provide for prevailing interest on the tax at the rate established pursuant to the Revenue and Taxation Code. If the liability exceeds the penal sum of the bond, the demand will~~

~~provide for additional legal interest at the prevailing per annum rate on the full penal sum of the bond.~~

~~APPLICATION OF PAYMENTS FROM SURETIES 766.050~~

~~Except as authorized by the Supervisor of Special Proceduress, any payment received from a surety will be applied to the liability that was incurred during the effective period of the bond in this order: (1) to tax, (2) to interest, and (3) to penalty.~~

~~LIMITATION PERIODS FOR DEMANDS 766.070~~

~~The legal staff of the Board is of the opinion the limitation period for a surety bond or guaranty is within ten years from the date a tax liability becomes due, or within ten years from the effective date of termination by the surety or guarantor, whichever is earlier. It is the responsibility of the Headquarters Special Procedures Section to take appropriate action prior to the expiration of the limitation period. The Headquarters Special Procedures Section will make demand sufficiently in advance of the expiration of the limitation period to allow for the filing of a suit, if necessary, or obtain a waiver of the limitation period.~~

~~If the surety will not furnish a waiver and has not made its payment, the Headquarters Special Procedures Section will refer the matter to the Attorney General for suit if the amount of liability warrants. To prevent the running of the statute of limitations, suit must be filed against the surety or guarantor prior to the expiration of the limitation period.~~

~~DEMANDS INVOLVING MORE THAN ONE SURETY 766.080~~

~~If there is more than one surety on an account, demands will be made on each surety for the amount of liability incurred during the effective periods to the extent of the penal sum of each bond. If there is an overlap of the effective periods, the liability due for the overlap period will be prorated between the sureties. Each surety, in cases of overlap, however, is liable for the full amount incurred during the overlap period.~~

~~COLLECTION FROM GUARANTORS 766.090~~

~~The provisions applying to collection from guarantors in relation to effective periods, limitation of liability, notification, demands, interest charges, application of payments due, and limitation periods for demands are the same as those applying to sureties.~~

SEIZURE AND SALE 767.000

GENERAL 767.010

As discussed in CPPM 753.000, whenever a warrant is used, the possibility that the action may result in an eventual sale of the taxpayer's property must be considered. Although in most cases seizure and sale of a taxpayer's property is not necessary, this collection technique is commonly employed when a liquor license is involved.

SEIZURE AND SALE OF LIQUOR LICENSE 767.020

The Board of Equalization may seize and sell the liquor license of any off-sale or on-sale[4] general licensee, or off-sale beer and wine licensee who, upon termination of business, is delinquent in the payment of any taxes due under the Sales and Use Tax Law. Seizure and sale of off-sale beer and wine licenses will be restricted to those licenses issued for locations in moratorium[5] counties and cities (see CPPM 767.110). In order to seize and sell a liquor license, the licensee shall have either surrendered the license to the Department of Alcoholic Beverage Control (ABC) or failed to pay the annual renewal fee to the department.

Business and Professions Code section 23000, et seq., provides that a license may be surrendered for a period of up to one year. Any license voluntarily surrendered shall be revoked if, within one year, it is not:

1. Transferred to another person.
2. Transferred for use at another location.
3. The licensed activity is not resumed.

For good cause, ABC may extend the surrender period. The reason for the surrender, and the expiration of the surrender period, are determined by ABC on a case-by-case basis.

No license is to be seized unless the intent is to immediately take the seized license to sale. Generally, a license should not be seized until 15 to 20 days prior to the expiration of the surrender period or the permanent revocation date because of nonpayment of the renewal fees. If the taxpayer is in bankruptcy, the liquor license may not be seized until the trustee abandons the license. Staff should send a letter to the trustee requesting to file a motion to abandon the license and copies of the letter to SPS and ABC.

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[4] As opposed to "on-sale" licenses, "off-sale" licenses do not permit consumption of alcoholic beverages on the business premises.

[5] Section 23817.5 of the Business and Professions Code, effective January 1, 1995, places a moratorium on the issuance of original off-sale beer and wine licenses (type 20) in counties and/or cities where the ratio of type 20 licenses exceeds one for each 2,500 population.

REVOCATION OF GENERAL ON-SALE AND OFF-SALE LICENSES OR OFF-SALE BEER AND WINE - FAILURE TO PAY RENEWAL FEE 767.030

With the exception of a temporary license or a daily on-sale general license, Business and Professions Code section 24048(d) provides that "Unless otherwise terminated, or unless renewed pursuant to subdivision (b) or (c) [of section 24048], a license that is in effect on the month posted on the license continues in effect through 2 a.m. of the 60th day following the month posted on the license, at which time it is automatically canceled." Licenses canceled under section 24048(d) that are not reinstated during the 30 days immediately following the cancellation date are automatically revoked on the 31st day. A permanently revoked license cannot be revived. When this happens, the potential for selling the license and obtaining full or partial payment to satisfy the taxpayer's liability is lost.

The Special Procedures Section (SPS) will identify for the district offices those licensees who have failed to renew their license. The district offices will follow these non-renewals by checking with ABC district offices up to the 15th day before the permanent revocation date of the license, at which point seizure of the liquor license may be requested.

APPROVAL FOR SEIZURE AND SALE OF LIQUOR LICENSE 767.040

Approval for seizure of a liquor license rests with the district administrator who will, once the license is seized, appoint someone to conduct the sale (normally a Business Taxes Compliance Specialist). The forms necessary to seize and sell a liquor license are all accessed through ACMS. These forms are:

Form BOE-21 *Liquor License – Notice of Sale.*
Form BOE-22 *Liquor License – Notice of Seizure.*
Form BOE-23 *Liquor License – Successful Bidder.*
Form BOE-264 *Declaration of Service by Mail.*

To seize a liquor license, the license need not be physically seized; however, to the extent possible, the license should be taken if the licensee willingly gives up possession. Form BOE-22 informs the licensee that the license will be offered for sale and the proceeds of sale applied as payment of delinquent taxes.

The licensee is served the first copy of Form BOE-22, which is sent to the person's last known residence or business address in this state by United States mail, first-class postage prepaid. The second copy is mailed to the local ABC district office.

The licensee may redeem the license at any time prior to the date of sale of the license by the Board of Equalization or the appropriate deadline, whichever occurs first, by paying the renewal fee and penalty. If the owner redeems the license, either by paying the fees to ABC or reimbursing the Board of Equalization for fees advanced, the sale is canceled and the license seizure released. If the licensee redeems the license and finds a buyer, the Board of Equalization will be paid through escrow. A forced sale by the Board of Equalization may result in receiving less revenue for the license than a voluntary sale would yield.

RENEWAL FEES - LIQUOR LICENSE 767.050

After seizing the liquor license, district office staff will request an advance with which to pay the renewal fee and penalty and prevent the permanent revocation of the liquor license. The request for an advance is routed to SPS who will deliver the payment warrant to ABC Headquarters for that purpose. The district office is responsible for ensuring that Form ABC-292, *Application for Reinstatement*, is completed (at the ABC district office) after payment of the renewal fees. Staff should check the ABC web site for current annual renewal fees and penalty amounts.

Form BOE-21, *Liquor License – Notice of Sale*, giving the time and place of sale, must be fully completed and served on the licensee and given to interested bidders. Form BOE-21 shall be sent in an envelope addressed to the person at his or her last known residence or place of business in this state by United States mail, first-class postage prepaid, at least 25 days (30 days for licensees residing out of state) before the date set for the sale. (RTC section 6797 and Code of Civil Procedure section 1013) The notice contains:

1. A description of the license.
2. A statement saying unless the renewal fees are paid on or before the date fixed in the *Liquor License – Notice of Sale*, the license will be sold in accordance with law and the notice.
3. The amount due (including interest, penalties, and costs).
4. The name of the delinquent licensee.
5. The conditions of sale.
6. The minimum acceptable bid.

A Form BOE-264, *Declaration of Service By Mail*, shall be executed upon the completion of mailing by the person actually placing the notice in the mail. The declaration will be attached to each copy of the *Notice of Sale* and become a part of the sale file.

The *Liquor License – Notice of Sale* shall be published in a newspaper of general circulation published in the city in which the property is located, if in a city, or if not, in the judicial district, or if none, in the county. A copy of the notice must be in the hands of the newspaper in time to permit the newspaper to make the initial publication not less than twenty days before the date set for sale. The notice must be printed once a week for three weeks and with at least five days between each printing.

The newspaper billing will be sent to the Financial Management Division, in triplicate, together with two copies of the notice and one copy of the affidavit of publication prepared by the newspaper. The office holding the sale must ask the newspaper to prepare the affidavit although, as a general rule, this is done as a matter of course. Publication costs should be accumulated and reimbursed to the Financial Management Division from the proceeds of sale. The original affidavit of publication becomes a part of the sale file.

A notice to the general public of the time and place of sale shall also be made by posting the notice in two public places in the county at least twenty days before the date of sale. The outside or the public corridor of a building is considered a public place. The inside of a plate glass window or a private corridor of a public building is not a public place. As a safety factor, the notice should be posted in four or five places, including the location of the ABC office that has jurisdiction over the license.

A declaration of the posting of notice will be executed by the person actually posting the notice. The places of posting will be part of the declaration. This declaration will become a part of the sale file.

Upon completion of the license transfer, a copy of all *Liquor License – Notices of Sale*, newspaper announcements and bids should be compiled and sent to the Taxpayer Records Section for storage.

ADDITIONAL ADVERTISING 767.070

Districts located in counties where it has been difficult to sell licenses should consider other sources of letting potential bidders know of the pending sale. This might include sending a copy of the Form BOE-21 to those local businesses that might want to upgrade their liquor license. For Off-Sale General licenses, this would include those businesses coded as a Grocery Store with Beer and Wine. For On-Sale General licenses, this would include Bars with only a Beer and Wine license. Mailing labels for these establishments by business code can be obtained by sending a request to the Technology Services Division.

SALE OF LIQUOR LICENSE 767.080

The individual selected to conduct the sale will choose the site for the sale. In choosing the site, consideration should be given to weather conditions, anticipated attendance, ease of access, etc. Some typical locations would be the lobby of a state building, the front steps of the City Hall, a state garage, the parking lot of a district or branch office, or on the sidewalk in front of the office. Some state buildings may have conference or court rooms available at specified times.

The district office responsible for the city or county area where the liquor license is seized is responsible for conducting the sale. The provisions of CPPM 135.020 pertaining to conflict of interest issues will apply to the sale of the liquor license. For future district office reference, the person responsible for the sale should prepare a list of names and addresses of all persons expressing an interest in the sale.

A record should be kept of all costs attributable to the sale, such as long distance calls, postage, notice of publication, renewal fees, etc. The individual additional expense items may be listed on the Form BOE-21, if the district desires. As noted before, the Form BOE-21 shall contain the minimum bid acceptable. The minimum bid will be based on the going value of that type license in the county where issued and should not be less than 80% of the market value.

The sale at public auction will be made at the precise time and place indicated in the notice. The person conducting the sale will commence proceedings either by reading the *Liquor License – Notice of Sale* in full or by otherwise indicating the purpose of the sale. In the latter alternative, the person conducting the sale shall state that the sale is for unpaid sales and use taxes and mention the following:

1. Total amount owed, including all incidental expenses.
2. Name of the licensee.
3. Type of liquor license being sold.
4. County in which the license was issued.
5. Minimum bid acceptable.

An announcement should be made that the sale is at public auction to the highest bidder for cash in lawful money of the United States, the full bid price to be deposited with an escrow holder within 48 hours, excluding weekends and holidays. After opening escrow, the buyer is required to make application for transfer and pay transfer fees to the department. The buyer is also required to pay all escrow fees.

Transfer of the license is contingent upon approval of the applicant by ABC. If, after opening escrow and making application for license transfer, ABC finds the applicant to be unacceptable as a license holder, the process to sell the license will start over, with prior costs included in the *Liquor License – Notice of Sale*. ABC in Sacramento and its appropriate district office will receive

copies of all actions taken pursuant to Business and Professions Code section 24049.5, i.e., notices, letters, declarations, etc.

CONCLUSION OF SALE AND ESCROW - LIQUOR LICENSE 767.090

The buyer will be given written confirmation (Form BOE-23, *Notice of Sale – Successful Bidder*), of the successful bid and notified (within 30 days) to file an application for license transfer, and (within 48 hours) deposit with escrow an amount representing the full bid price of the license. The buyer is responsible for notifying the Board of Equalization when escrow is opened. The district office will then complete the escrow instructions.

If there are other holds on the license, the proceeds of sale, less advances, must be prorated with agencies authorized to place holds on the license. Otherwise, surplus funds, if any, will be paid in the order of priority set forth in Business and Professions Code section 24074. For this reason, it is imperative to establish a proper minimum acceptable bid.

Questions about the seizure and sale of liquor licenses should be referred to SPS.

The law specifies that a license may not be transferred for one year following its initial issuance. After one year, the license may be transferred and there is no restriction as to the sales price of the license. These provisions apply to licenses which have paid fees pursuant to Business and Professions Code section 23954.5.

Original issue on-sale or off-sale liquor licenses that have not paid fees pursuant to section 23954.5, cannot be transferred for two years following initial issuance. These types of licenses, when they are more than two years old but less than five years old, may not be sold for more than six thousand dollars ($6,000) plus the costs associated with the sale (Business and Professions Code section 24070, et. seq.) When these types of licenses are seized, the Board of Equalization cannot accept bids at public auction that exceed the maximum allowable amount. In these instances, the Board of Equalization may hold a public drawing in lieu of a public auction. The forms necessary to conduct a public drawing for this purpose are not available as standard forms. Sample letters follow this section. The *Notice of Sale by Public Drawing* shall be advertised by following the procedures in CPPM 767.060.

The *Notice of Sale and Entry Letter* may be mailed to known interested participants, liquor license brokers, and unsuccessful bidders of prior ABC drawings. Only one entry form should be accepted from each corporation or each family unit (husband-wife, parent-child).

The lower portion of the *Notice of Sale and Entry Letter* should be severed, folded, and placed in a container large enough to allow room for mixing or shaking before the drawing. Two Board of Equalization employees should conduct the drawing. All entries should be drawn. The ranking or order of drawing (i.e., 1, 2, 3, etc.) should be placed on the entry form and letter as the control number.

The participant whose name is first drawn, if not present at the drawing, should be notified by telephone and sent a confirmation letter. If the first drawing participant fails to open escrow or complete the license transfer, the license should be offered to the next ranking participant(s) until the sale is completed.

Sample Notice of Sale by Public Drawing letter

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
Notice of Sale by Public Drawing

Notice is hereby given that, pursuant to the authority of Section 24049.5 of the Business and Professions Code, the State Board of Equalization will sell the following described liquor license, by public drawing on _____19__, at 10:00 A.M., at the State Board of Equalization, _____.

Liquor License No. :
County in which issued:
Type of License:

Said liquor license was seized by the State Board of Equalization to recover delinquent sales and use taxes, interest and penalties incurred by _____, a seller within the meaning of the Sales and Use Tax law, to wit:

Tax $
Interest $ to
Penalty $
Costs $
TOTAL$

The license will be offered for sale for $_____ plus applicable costs to the person whose name will be drawn at random from the names of all interested parties. Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, effect of the sale, and the liability of defaulting bidders. Names for the drawing will be accepted in the name of the applicant(s) only and cannot be in the name of a nominee. Drawing Entry forms are available from the above Board of Equalization office. Transfer of said license is contingent upon approval of the applicant by the Department of Alcoholic Beverage Control in accordance with the laws, rules, and regulations administered by that department. Within 48 hours of the sale, excluding weekends and holidays, the successful buyer must open an escrow account with an escrow holder approved by the Board of Equalization. The buyer will deposit in lawful money of the United States an amount representing the full sale price of the license. Within 30 days of the opening of the escrow, the buyer must apply for transfer of the license and pay transfer fees to the Department of Alcoholic Beverage Control. Applicant must receive Department of Alcoholic Beverage Control approval of transfer within 75 days from the date of application, and the escrow must close within 120 days of opening, otherwise the sale may be canceled. Buyer is to pay all escrow fees.

SALE PRICE OF LICENSE $
LICENSE SALE COSTS $
TOTAL SELLING PRICE $

The licensee may redeem the license at any time prior to the date of sale by conforming to the requirements for reinstatement of a license pursuant to Sections 24048.1 or 24048.3, Business and Professions Code.

DATED: _____, 19_____ STATE BOARD OF EQUALIZATION
Account No. _____ BY:

cc: ABC District Office,
ABC Headquarters, 2927 Lennane Drive, Suite 100, Sacramento, CA 95834
Special Procedures Section

Sample Notice of Sale and Entry letter

NOTE: Use standard Board letterhead for this letter.

_____ Control No.

The State Board of Equalization will offer for sale, by public drawing, to be held at 10:00 a.m. _____ at _____ the following liquor license.

Liquor License No. _____
Issued in _____
Type of License _____

The license will be offered for sale to the first participant whose name is drawn, at random, from the names of all people interested in purchasing the license. If that participant declines to purchase, or otherwise fails to comply with the conditions set forth in the enclosed Notice of Sale, the license will then be offered to the next name drawn until sold.

To be eligible for the drawing complete the entry form below. Please note only one entry will be accepted per corporation or family unit.

_____ Sincerely,

- -

_____ Entry for Liquor License Drawing

Name of Buyer(s): _____
_____ (No Nominee Accepted)

Address: _____

City: _____ CA Zip Code _____

Daytime Telephone No: (_____) _____

Control No.

Sample Confirmation to Successful Drawing Entrant Sale of Liquor License letter

NOTE: Use standard Board letterhead for this letter.

CONFIRMATION TO SUCCESSFUL DRAWING
ENTRANT SALE OF LIQUOR LICENSE

RE: Public Sale of Liquor License

No:

Please accept this letter as confirmation your name was drawn to purchase liquor license _____ offered for sale by public drawing on _____, 19 . The liquor license transfer, as stated in the Notice of Sale, is contingent on approval by the Department of Alcoholic Beverage Control.

You are to open escrow with a Board approved escrow company within 48 hours, excluding weekends and holidays, and to deposit with escrow, as stated in the notice, the full purchase price of the license, $_____. You are also required to make application for transfer to the Department of Alcoholic Beverage Control, _____, _____, California.

You are responsible for payment of all escrow fees and to see that the escrow holder notifies this office of the opening of the escrow.

Sincerely,

cc: ABC District Office
ABC Headquarters, 3927 Lennane Drive, Suite 100, Sacramento CA 95834
Special Procedures Section
District
Branch (if applicable)

Attachment: Notice of Sale

The number of off-sale beer and wine licenses is limited to one for each 2,500 people in a city or county, and the number of beer and wine licenses that can be issued in a city or county *in combination with* off-sale general licenses is limited to one for each 1,250 people. (Business and Professions Code section 23817.5). The following lists are updated every five years by the Department of Alcoholic Beverage Control.

MORATORIUM - COUNTIES
Effective January 1, 2005

COUNTY	MORATORIUM	COUNTY	MORATORIUM
Alameda	NO	Orange	NO
Alpine	**YES**	Placer	**YES**
Amador	**YES**	Plumas	**YES**
Butte	**YES**	Riverside	NO
Calaveras	**YES**	Sacramento	NO
Colusa	**YES**	San Benito	**YES**
Contra Costa	NO	San Bernardino	NO
Del Norte	**YES**	San Diego	NO
El Dorado	**YES**	San Francisco	**YES**
Fresno	**YES**	San Joaquin	**YES**
Glenn	**YES**	San Luis Obispo	**YES**
Humboldt	**YES**	San Mateo	NO
Imperial	**YES**	Santa Barbara	**YES**
Inyo	**YES**	Santa Clara	NO
Kern	**YES**	Santa Cruz	**YES**
Kings	**YES**	Shasta	**YES**
Lake	**YES**	Sierra	**YES**
Lassen	**YES**	Siskiyou	**YES**
Los Angeles	NO	Solano	NO
Madera	**YES**	Sonoma	**YES**
Marin	**YES**	Stanislaus	**YES**
Mariposa	**YES**	Sutter	**YES**
Mendocino	**YES**	Tehama	**YES**
Merced	**YES**	Trinity	**YES**
Modoc	**YES**	Tulare	**YES**
Mono	**YES**	Tuolumne	**YES**
Monterey	**YES**	Ventura	NO
Napa	**YES**	Yolo	**YES**
Nevada	**YES**	Yuba	**YES**

MORATORIUM - CITIES
Effective January 1, 2005

ALAMEDA COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Alameda	NO	Livermore	**YES**
Albany	**YES**	Newark	NO
Berkeley	**YES**	Oakland	NO
Dublin	NO	Piedmont	NO
Emeryville	**YES**	Pleasanton	NO
Fremont	NO	San Leandro	NO
Hayward	NO	Union City	NO

CONTRA COSTA COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Antioch	NO	Moraga	NO
Brentwood	**YES**	Orinda	NO
Clayton	NO	Pinole	NO
Concord	NO	Pittsburg	**YES**
Danville	NO	Pleasant Hill	**YES**
El Cerrito	NO	Richmond	NO
Hercules	NO	San Pablo	**YES**
Lafayette	NO	San Ramon	NO
Martinez	NO	Walnut Creek	NO

LOS ANGELES COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Agoura Hills	NO	Compton	NO
Alhambra	NO	Covina	NO
Arcadia	NO	Cudahy	**YES**
Artesia	NO	Culver City	NO
Avalon	**YES**	Diamond Bar	NO
Azusa	**YES**	Downey	NO
Baldwin Park	NO	Duarte	**YES**
Bell	**YES**	El Monte	NO
Bellflower	NO	El Segundo	**YES**
Bell Gardens	**YES**	Gardena	NO
Beverly Hills	NO	Glendale	NO
Bradbury	NO	Glendora	NO
Burbank	NO	Hawaiian Gardens	**YES**
Calabasas	NO	Hawthorne	NO
Carson	NO	Hermosa Beach	**YES**
Cerritos	NO	Hidden Hills	**YES**
Claremont	NO	Huntington Park	**YES**
Commerce	**YES**	Industry	**YES**

MORATORIUM - CITIES
Effective January 1, 2005

LOS ANGELES COUNTY (Cont.)

CITY	MORATORIUM	CITY	MORATORIUM
Inglewood	**YES**	Pomona	NO
Irwindale	**YES**	Rancho Palos Verdes	NO
La Canada-Flintridge	NO	Redondo Beach	NO
La Habra Heights	NO	Rolling Hills	NO
Lakewood	NO	Rolling Hill Estates	NO
La Mirada	NO	Rosemead	NO
Lancaster	NO	San Dimas	NO
La Puente	NO	San Fernando	**YES**
La Verne	NO	San Gabriel	NO
Lawndale	**YES**	San Marino	NO
Lomita	NO	Santa Clarita	NO
Long Beach	NO	Santa Fe Springs	**YES**
Los Angeles	NO	Santa Monica	NO
Lynwood	NO	Sierra Madre	NO
Malibu	**YES**	Signal Hill	**YES**
Manhattan Beach	NO	South El Monte	**YES**
Maywood	**YES**	South Gate	**YES**
Monrovia	NO	South Pasadena	NO
Montebello	NO	Temple City	NO
Monterey Park	NO	Torrance	NO
Norwalk	NO	Vernon	**YES**
Palmdale	NO	Walnut	NO
Palos Verdes Estates	NO	West Covina	NO
Paramount	**YES**	West Hollywood	NO
Pasadena	NO	Westlake Village	NO
Pico Rivera	**YES**	Whittier	NO

MARIN COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Bevedere	NO	Novato	NO
Corte Madera	NO	Ross	NO
Fairfax	**YES**	San Anselmo	**YES**
Larkspur	NO	San Rafael	**YES**
Mill Valley	NO	Sausalito	**YES**
		Tiburon	NO

MORATORIUM - CITIES
Effective January 1, 2005

ORANGE COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Aliso Viejo	NO	Lake Forest	NO
Anaheim	NO	La Palma	NO
Brea	NO	Los Alamitos	NO
Buena Park	NO	Mission Viejo	NO
Costa Mesa	**YES**	Newport Beach	NO
Cypress	NO	Orange	NO
Dana Point	NO	Placentia	NO
Fountain Valley	NO	Rancho Santa Margarita	NO
Fullerton	**YES**	San Clemente	NO
Garden Grove	NO	San Juan Capistrano	NO
Huntington Beach	NO	Santa Ana	NO
Irvine	NO	Seal Beach	NO
Laguna Beach	NO	Stanton	**YES**
Laguna Hills	NO	Tustin	NO
Laguna Niguel	NO	Villa Park	NO
Laguna Woods	NO	Westminster	NO
La Habra	NO	Yorba Linda	NO

RIVERSIDE COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Banning	**YES**	Lake Elsinore	**YES**
Beaumont	**YES**	La Quinta	NO
Blythe	**YES**	Moreno Valley	NO
Calimesa	**YES**	Murrieta	NO
Canyon Lake	NO	Norco	**YES**
Cathedral City	**YES**	Palm Desert	**YES**
Coachella	**YES**	Palm Springs	NO
Corona	NO	Perris	NO
Desert Hot Springs	**YES**	Rancho Mirage	NO
Hemet	**YES**	Riverside	NO
Indian Wells	NO	San Jacinto	**YES**
Indio	**YES**	Temecula	NO

SACRAMENTO COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Citrus Heights	NO	Isleton	**YES**
Elk Grove	NO	Rancho Cordova	NO
Folsom	NO	Sacramento	**YES**
Galt	**YES**		

MORATORIUM - CITIES
Effective January 1, 2005

SAN BERNARDINO COUNTY

Adelanto	NO	Montclair	**YES**
Apple Valley	NO	Needles	**YES**
Barstow	**YES**	Ontario	**YES**
Big Bear Lake	**YES**	Rancho Cucamonga	NO
Chino	**YES**	Redlands	NO
Chino Hills	NO	Rialto	NO
Colton	**YES**	San Bernardino	**YES**
Fontana	NO	Twentynine Palms	NO
Grand Terrace	**YES**	Upland	NO
Hesperia	NO	Victorville	**YES**
Highland	NO	Yucaipa	NO
Loma Linda	NO	Yucca Valley	**YES**

SAN DIEGO COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Carlsbad	NO	Lemon Grove	NO
Chula Vista	NO	National City	NO
Coronado	NO	Oceanside	NO
Del Mar	NO	Poway	NO
El Cajon	**YES**	San Diego	NO
Encinitas	NO	San Marcos	NO
Escondido	**YES**	Santee	NO
Imperial Beach	NO	Solana Beach	NO
La Mesa	**YES**	Vista	NO

SAN MATEO COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Atherton	NO	Menlo Park	**YES**
Belmont	NO	Millbrae	NO
Brisbane	**YES**	Pacifica	NO
Burlingame	NO	Portola Valley	NO
Colma	**YES**	Redwood City	NO
Daly City	NO	San Bruno	NO
East Palo Alto	NO	San Carlos	NO
Foster City	NO	San Mateo	NO
Half Moon Bay	**YES**	South San Francisco	NO
Hillsborough	NO	Woodside	NO

MORATORIUM - CITIES
Effective January 1, 2005

SANTA CLARA COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Campbell	**YES**	Morgan Hill	**YES**
Cupertino	NO	Mountain View	NO
Gilroy	**YES**	Palo Alto	NO
Los Altos	NO	San Jose	NO
Los Altos Hills	NO	Santa Clara	NO
Los Gatos	**YES**	Saratoga	NO
Milpitas	NO	Sunnyvale	NO
Monte Sereno	NO		

SOLANO COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Benicia	**YES**	Suisun City	NO
Dixon	**YES**	Vacaville	NO
Fairfield	NO	Vallejo	NO
Rio Vista	**YES**		

VENTURA COUNTY

CITY	MORATORIUM	CITY	MORATORIUM
Camarillo	NO	Port Hueneme	NO
Fillmore	**YES**	Santa Paula	**YES**
Moorpark	NO	Simi Valley	NO
Ojai	**YES**	Thousand Oaks	NO
Oxnard	NO	Ventura	**YES**

SEIZURE AND SALE OF REAL PROPERTY 767.150

This is a step-by-step guide for the process of seizing and selling real property. A seizure and sale may be considered whenever the total liability owed is $5,000.00 or more.

STEP 1:

Using the Win2Data system or LexisNexis, obtain a property information print out of each parcel you are reviewing for potential seizure and sale. This document will provide you with the following information:

1. **Address:** This will be used on the warrant to describe the property to be seized and sold.

2. **APN (Assessor's Parcel Number) and County:** This number will also be used in the description of the property for the Court and the law enforcement department serving the warrant.

3. **How the Property is Deeded:** In the case of joint tenants or tenants in common, the Board of Equalization can only levy on the interest of the taxpayer per Code of Civil Procedure section 704.820. This means that the purchaser from the seizure and sale would become a joint owner with the joint tenant remaining on the property title. Also, please note that there are certain community property exemptions that might apply when the spouse is not on the seller's permit. The property is subject to community property law and title would be vested with the community property spouse. See Code of Civil Procedure section 703.110, Exemptions Applicable When Judgment Debtor Married.

4. **Date and Instrument Number of the Last Sale**: This information will be used to research liens.

5. **Land Use**: It is not the policy of the Board of Equalization to seize and sell property used as the primary residence of a taxpayer. Every warrant for a seizure and sale must specify whether or not a dwelling exists on the property. If a dwelling does exist, an application for "Order for Sale of a Dwelling" must be made with the Superior Court within twenty (20) days of the date of the seizure and sale warrant. A request for referral to the Attorney General to file the application must be sent to SPS with the warrant request. See Code of Civil Procedure sections:

   704.710 Dwelling Family Unit.
   704.720 Exemption of Homestead.
   704.730 Amount of Homestead.
   704.740 General Requirement for Sale of Dwelling.
   704.750 Application for Order for Sale of Dwelling.
   704.760 Contents of Application.

   In a forced sale, a homestead need not be recorded with the County Recorder's Office to be declared in effect. The judge decides the issue of homestead during the hearing process on the Order for Sale of a Dwelling.

6. **Original Mortgage Holder and Amount Financed**: This will help to determine how much money is owed on the property. This information may not always be available.

7. **Current State of Property Taxes and Year of Delinquency**: If the property is delinquent for property taxes, there may be a seizure and sale process already in motion. Check with the County Hall of Records to determine if a notice of sale has been issued. You may send a levy to the County Property Tax Assessor's Office for any excess funds from their seizure and sale procedure.

STEP 2

Verify the Board of Equalization has filed a lien and determine the date the lien was recorded. All liens recorded both before and after the Board of Equalization's lien must be reviewed to determine equity and the potential for sale. This is the time to order a property profile on the subject property. These reports are available from local title companies.

STEP 3

Through the property profile or via a field call to the local County Hall of Records, determine all liens and encumbrances both superior and inferior to the Board's lien(s). As you review the liens and encumbrances for the subject property, make a list of names and addresses of all mortgage holders and judgment lien holders. This information will be vital when attempting to determine equity.

STEP 4

Determine Fair Market Value (FMV). How do you determine FMV? If possible, make a field call to the subject property to determine the current state of repair (condition) of the property. Obtain prices of sales of similar property (comparables) in the area. This information can be obtained via the property profile or by Internet search. This will enable you to make an estimate of the FMV of the property. Another method for appraisal is to have a Board of Equalization property tax appraiser set the FMV. Make your request through SPS.

For an exact FMV, have the property appraised by a real estate appraiser. However, remember that there will be a cost for this service. To request funds for these costs, forward a memorandum to the Special Procedures Section and a copy to the Accounting Section.

STEP 5

Determine Equity of the Property. To determine the equity for the subject property, send a letter to each judgment creditor, lien holder, and mortgage holder requesting the pay-off balance (see sample letter at the end of this section). The courts require this information if the property being sold is a "dwelling." If the mortgage holder or lien holder will not respond, a subpoena duces tecum may be needed. Refer to CPPM section 744.000 for information on how to request a subpoena duces tecum. Remember that a separate subpoena will be needed for each lien holder that will not respond to your request for pay-off information.

STEP 6

Evaluate the information received. You should evaluate the information received at each step. However, from Step 7 there will be costs to the state and litigation may be required. Therefore, prior to going any further, meet with your supervisor and together evaluate the information received to determine if the seizure and sale is cost efficient.

STEP 7

Order Cost of Litigation Guarantee. What is a Cost of Litigation Guarantee? This is a title report, which in addition to the title report, includes an attached schedule C. The schedule C includes the name and address of each litigant required to be notified by the courts in the sale. If the sale is of a "dwelling," this is a required report [see Code of Civil Procedure section 704.760 (c)]. This report protects the state against lawsuit if a party to the litigation is overlooked. This report does not contain the pay-off amount for the liens. This report only records the original lien amount filed.

To determine the fee for a cost of litigation guarantee contact a local title company. For an estimate of cost, the title company will need to know the amount of the Board's lien(s). Once you have determined the cost, send your request via memorandum as follows: one copy to the Special Procedures Section and one copy to the Accounting Section. Once the payment is authorized, go forward with the Cost of Litigation Guarantee report.

STEP 8

Determine fees for seizure and sale. Contact your local law enforcement office to determine the amount of warrant fees needed to seize and conduct the sale. For total fees also include the cost of the litigation guarantee.

STEP 9

Complete BOE-200-W, *Special Procedures* ***Warrant*** *Request***, to obtain a seizure and sale warrant along with a request for Attorney General referral if the subject property is a "dwelling." The BOE-200-W must include a full legal description of the property to be seized. It must also include the present address of the owner of the property. This is required because the law enforcement officer must personally serve the owner of the property with notification that the property has been seized.**

STEP 10

The law enforcement department will notify you, as the Board of Equalization~~Board~~'s representative, that the property has been seized. If the property has a "dwelling," the law enforcement department will give you notice that you have twenty (20) days to obtain an "Order for Sale of Dwelling." It is at this time that the Attorney General process goes forward. Once the judge has issued the order, the court will notify the law enforcement department to proceed with the sale and any conditions for the sale, such as a homestead or minimum bid.

Step 10 (Continued)

If no dwelling issue exists, the law enforcement department will proceed with the sale process 120 days after the levy notice is served on the judgment debtor for the interest in the real property. For reference as to the process that the law enforcement department uses to sell the subject property, see the following Code of Civil Procedure sections:

701.510 Sale of property levied upon.
701.520 Collection; Sale of collectible property.
701.530 Notice of sale of personal property.
701.540 Notice of sale of real property.
701.545 Period that must elapse before giving notice of sale.
701.547 Notice to prospective bidders.
701.550 Notice of sale to persons requesting notice.
701.555 Advertising of sale by judgment creditor or judgment debtor.
701.560 Effect of sale without required notice.
701.570 Place, time, and manner of sale.
701.580 Postponement of sale.

After the warrant is sent to the law enforcement department for seizure and sale, see the following Code of Civil Procedure sections:

701.590 Manner of payment..
701.600 Defaulting bidder.
701.610 Persons ineligible to purchase.
701.620 Minimum bid.
701.630 Extinction of liens upon sale.
701.640 Interest acquired by purchaser.
701.650 Delivery of possession or of certificate of sale of personal property.
701.660 Deed of sale of real property.
701670 Contents of certificate or deed of sale.
701.680 Sale as absolute; Liability.
701.810 Distribution of proceeds of sale or collection.
701.820 Distribution of proceeds.
701.830 Procedure where conflicting claims to proceeds.

Once the warrant goes to the law enforcement department, the responsibility for the sale shifts to that agency. However, it is recommended that you remain knowledgeable of the law enforcement department's process.

Sample letter

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
District Office Address
City, CA Zip Code
TELEPHONE (XXX) XXX-XXXX
FAX (XXX) XXX-XXXX
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

BILL LEONARD
Second District, Ontario/Sacramento

MICHELLE STEEL
Third District, Rolling Hills Estates

JUDY CHU, Ph.D.
Fourth District, Los Angeles

JOHN CHIANG
State Controller

RAMON J. HIRSIG
Executive Director

Date

(Company name or person's name)
(address)
(City, State Zip)

Re: Lien recorded in ( ) County
Acct. No.: SR XX 99-999999
Taxpayer's Name

Dear :

The Board of Equalization is seeking information on the above referenced taxpayer. A search of the records for ( ) County disclosed lien number XX-XXXXX filed on (DATE) by you for a money judgment. A copy is attached for your reference.

Government Code Section 15618 states, "The board may examine, as a board, individually, or through its staff, the books, accounts, and papers of all persons required to report to it, or having knowledge of the affairs of those required so to report." The information requested below is required for tax administration purposes only and will not be used for any other purpose.

Please provide the following information in regard to the subject lien:

1. Has the above referenced lien been satisfied?

   a. If yes, what date was the debt paid in full?

   b. If no, what is the pay-off balance for this debt?

Thank you for your assistance in this matter. A postage-paid return envelope is enclosed for your convenience. If you have any questions, please call me at (XXX)-XXX-XXXX.

Sincerely,

[Working Title]

TAXES COLLECTED BY OTHER AGENCIES 768.000

VEHICLE, VESSEL, OR MOBILEHOME USE TAX COLLECTIONS 768.020

Among other things, the Board of Equalization is responsible for the collection of sales and use taxes. However, other agencies may act for the Board of Equalization and collect the use tax on its behalf for certain types of use tax transactions. This situation typically occurs when vehicles, undocumented vessels, and mobilehomes are purchased from persons who are not authorized dealers, manufacturers, dismantlers, or lessor-retailers.

Under Sales and Use Tax Regulation 1610, *Vehicles, Vessels and Aircraft*, certain exemptions from use tax may apply to purchases of vehicles and undocumented vessels. If the use tax is applicable, the Department of Motor Vehicles (DMV) collects the tax from the purchaser based on the purchase price of the vehicle or undocumented vessel.

With certain exceptions listed in Sales and Use Tax Regulation 1610.2, *Mobilehomes and Commercial Coaches*, purchasers of mobilehomes and commercial coaches required to be registered annually under the Health and Safety Code shall pay tax to the Department of Housing and Community Development (HCD) when making application for registration.

The Board of Equalization is responsible for collection of the use tax on purchases of other vessels and vehicles (as defined in the Vehicle Code) and mobilehomes (as defined in the Health and Safety Code) that are not registered or subject to identification with the DMV or HCD. (See CPPM chapter 8, *Consumer Use Tax*.)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT 768.030

Mobile Home Registration Information

HCD provides the ownership and registration information for mobilehomes not registered with DMV. Ownership information is filed by license, serial or decal number of the mobilehome, but is sometimes also available by name and address of the owner.

A formal title search may be requested by completing Form No. HCD-491.1, which is available from HCD's web site located at www.hcd.ca.gov. In addition to providing the title report, HCD will send notification of any title changes for the specified mobilehome that are filed during the subsequent 120 days.

MOBILEHOME DEALER REPORT OF SALE BOOKS 768.040

Mobilehome dealers are required to release their Report of Sale books to HCD upon closure of the business. The Board of Equalization and HCD have established an agreement allowing for mutual notification when a dealer terminates his or her business.

HCD will telephone the Board of Equalization office that has jurisdiction over the dealer's place of business when HCD finds that a mobilehome dealer is out of business or has not renewed his or her dealer's license. If the Board of Equalization does not require the Report of Sale books, HCD will destroy them. If the account is selected for audit, HCD will deliver them to the responsible Board of Equalization office. The Report of Sale books will be returned to HCD at the following address upon completion of the audit and after it is determined that there is no further need for the Report of Sale books.

Department of Housing and Community Development
Division of Codes and Standards
Occupational Licensing Section
PO Box 31
Sacramento CA 95812-0031

If HCD finds evidence of noncompliance when reviewing the dealer Report of Sale books, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board of Equalization office.

When the Board of Equalization closes the seller's permit of a mobilehome dealer, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323-9803. If Report of Sale books are required for examination or audit, they can be requested at this time. The Board of Equalization will also provide the location of books and records if known, and the close-out date. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board of Equalization, if requested, or destroy them.

To determine a dealer's financial stability and ensure subsequent public protection, the Board of Equalization will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts:

1. A mobilehome dealer has an outstanding liability that requires a field assignment.
2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:

    a. Based on the audit, it does not appear the business is properly financed to clear the probable liability.
    b. There is factual information produced through the audit that the business is in financial trouble.
    c. The district administrator approves the telephone call.

A notation that HCD has been contacted should be entered on the compliance or audit assignment.

INSTALLMENT PAYMENT AGREEMENTS 770.000

GENERAL 770.005

All collectors will collect amounts owed to the Board of Equalization in a fair, efficient, and timely manner. However, when payment in full is not feasible, accepting payments over time may be the best alternative. R&TC section 6832 provides the Board of Equalization discretionary authority to allow an Installment Payment Agreement (IPA) in cases of financial hardship. In such a case, using an IPA may accommodate a taxpayer's economic realities while allowing the taxpayer to meet its obligation to the Board of Equalization. Collectors will review the account history and the taxpayer's financial situation to determine the appropriate duration and payment amount of the IPA.

When it is not in the best interest of the state, the Board of Equalization is not required to offer, or to accept, a taxpayer's proposal for an IPA. Taking payments over time is not in the state's best interest if the taxpayer's financial information indicates an ability to pay the liability in full. The terms of all IPAs should provide for payments commensurate with the ability of the taxpayer to pay. Weekly or monthly installment payments are required, unless there are extenuating circumstances that make it advantageous to accept payments on a less frequent basis.

If the taxpayer owns assets that he/she can liquidate, refinance, or borrow upon in order to pay the liability in full or in part, the taxpayer should do so. If the taxpayer refuses, the collector should proceed with collection action. If borrowing is not an option, the taxpayer should seek to make arrangements with other creditors for a payment deferral to facilitate paying the delinquent tax liability in full or in larger installments than otherwise possible.

If the account is closed out and a comprehensive review of a taxpayer's financial situation shows that the taxpayer (other than corporations and Limited Liability Company accounts) currently has no disposable income available to liquidate the balance owed to the Board of Equalization, the account, subject to supervisory approval, can be suspended for a period of 180 days by using the ACMS *Wait 180 s*tate. This is advisable if the taxpayer or the taxpayer's spouse is looking for a new job, or if an expense such as a car loan is due to be paid in the near future. A separate follow-up can be set for an earlier date if necessary.

INSTALLMENT PAYMENT AGREEMENT GUIDELINES 770.010

The Board of Equalization uses two types of IPAs: Streamlined and Standard. Both types of IPAs have different criteria for documentation and acceptance. For all IPAs, a taxpayer with an active seller's permit is required to file and fully pay all tax returns that become due and payable during the period the IPA is in effect. All IPAs will be set up and recorded in ACMS to comply with the notice requirements in RTC section 6832.5.

Streamlined Installment Payment Agreement (SIPA)

Under a SIPA, the taxpayer is not required to provide any financial documentation. The minimum monthly payment should be $25.00. A SIPA may be offered to:

1. Taxpayers with active accounts where self-assessed liabilities or failure to file determinations, including the accruing interest on the tax balance, will be paid off within 12 months.
2. Taxpayers with either an active or closed out account if the liability is the result of a Board of Equalization-assessed determination and all of the liability, including the accruing interest on the tax balance, will be paid in full within 36 months. However, if the liability is the result of a determination for failure to file , the taxpayer is required to pay the liability in full within 12 months.

Collectors may consider offering a SIPA to a taxpayer if all of the following criteria are met:

1. The "final" liability is between $500 and $5000,
2. The taxpayer is not already subject to enforced collection action,
3. The taxpayer is not in bankruptcy or other legal status,
4. The taxpayer does not have a history of broken promises for failure to file or pay returns,
5. The taxpayer is not delinquent in filing tax returns, and
6. The taxpayer will make equal monthly installment payments that will fully pay the liability within the 12 or 36 month limits, as stated above.

Closed out accounts with self-assessed liabilities are not eligible for a SIPA but may be considered for a standard IPA.

Standard Installment Payment Agreements (IPA)

If the taxpayer does not meet the criteria for a SIPA, but requests to pay the liability in installments, the collector may consider the request under the requirements for a standard IPA. Documentation is required to determine the taxpayer's need for an IPA and the ability and willingness to meet its terms. The collector must review the taxpayer's past payment history, including the individual's history under any related accounts, e.g., as a partner, corporate officer, LLP manager, etc. If the review shows that a taxpayer's payment history is unsatisfactory, but an IPA is the only viable method for paying the liability, the district office or program area has discretion to make an exception and accept an IPA from the taxpayer.

When evaluating a taxpayer's financial situation, an individual may be required to submit information as listed on Form BOE–58, *Request for Installment Payment Agreement Documentation-Individual*. A corporation or other entity type may be required to submit information as listed on a Form BOE–60, *Request for Installment Payment Agreement Documentation-Non-Individual*. Such documentation can be a complete financial statement, Form BOE-403-E, *Statement of Financial Condition*, bank statements (both personal and business), income tax returns, accounts receivable listings (including names, addresses, phones numbers, and amounts owed), income and expense (or profit and loss) statements, balance sheets, and cash flow statements for review as well as other documentation relating to the taxpayer's finances. Additional information and verification may be required as deemed necessary by the collector. Weekly or monthly payments should not be forestalled while financial information is compiled by the taxpayer. The taxpayer should be required to utilize any available lines of credit, including credit cards, cash advances, or a bank loan, to pay the liability in part or in full.

The primary consideration in accepting a standard IPA is whether the plan is in the best interest of the state. Staff has full discretion to accept or deny an IPA, based on the taxpayer's past payment history, the merits of the proposal and the viability of the business. When reviewing past history, a taxpayer's record under related accounts as an individual, partner, or corporate officer should also be considered. Although a taxpayer's payment history may be unsatisfactory, the district office or program area has discretion to grant an exception. Staff must document the justification in ACMS notes.

If a standard IPA exceeds 2 months on an active account, the taxpayer should be required to make weekly or monthly payments against anticipated liabilities for the upcoming periods. This requirement will ensure that the taxpayer does not incur further debt with the Board of Equalization and does not accrue further penalty for failure to file, or to pay, a tax return timely.

Upon acceptance of a standard IPA, the taxpayer should complete, sign, and return a Form BOE–407A, *Installment Payment Agreement*. If a lien has not already been filed for the period(s) in question, a decision must be made by staff to either withhold the filing of a lien or to advise the taxpayer of the possibility of a lien filing. ACMS will prompt the user to include either a lien warning statement or a lien withhold statement on the Form BOE–407A. The taxpayer should be verbally advised during the IPA negotiation that a lien may be filed despite the IPA. Staff must document the decision in ACMS notes. Even if a taxpayer is likely to complete the IPA before returning the Form BOE– 407A, staff should send the BOE–407A to document the IPA proposal.

SIPA OFFER TO TAXPAYER

Using the "Send Letter" function in ACMS, a collector can send a taxpayer Form BOE-407-S, *Streamlined Installment Payment Agreement Invitation*, if the account qualifies for a SIPA. The BOE-407-S should be signed by the taxpayer and returned within 15 days. If a signed form is not received within that time, the taxpayer should be called in order to expedite its return. In general, if the form is not returned within 30 days after the taxpayer has been called, the SIPA is not accepted and the collector notes this result in ACMS.

However, situations may occur where the BOE-407-S form is not signed and returned, but the taxpayer begins making payments according to the terms of the SIPA as agreed to with the collector. If this occurs, the taxpayer and the Board of Equalization are considered to be bound to the terms of the SIPA. Should this happen and the taxpayer then defaults on his or her implied promise to pay, the requirements of Revenue and Taxation Code section 6832 relating to terminating an installment payment agreement must be completed. See CPPM section 770.025 for procedures to terminate an IPA.

STANDARD IPA

Although a SIPA may be offered to the taxpayer when a liability falls within established criteria, a standard IPA is a request that must come from a taxpayer. A collector should not solicit a request from the taxpayer to enter into an IPA in order to pay off the liability. If the taxpayer makes a request for an IPA during the collection process, the collector must evaluate the financial ability of the taxpayer in order to determine if the request is reasonable.

Before entering into a discussion of an IPA, the collector must first ascertain whether the taxpayer has assets or other sources of funds to pay the liability in full. Exhausting other means or sources of funds to pay off the existing liability relieves the Board of Equalization of the burden of financing the taxpayer's accrued tax debt. Before the collector considers allowing the taxpayer to enter into an IPA, the taxpayer should have explored the possibility of borrowing against all available sources of income. Although not an exhaustive list, some common sources of income are listed below:

1. Family members, relatives, and friends.
2. Lines of credit – secured and unsecured.
3. Life insurance policies or retirement funds.
4. Equity in real property interests.
5. Equity in vehicles, vessels or aircraft.
6. Credit card advances.
7. Stock certificates or bond holdings.
8. Interests in estates or trusts.

PROCESSING THE OFFER OR REQUEST (CONT.) 770.012

In order to determine the financial need for an IPA, and without making any commitment to its acceptance, the collector must first send the taxpayer Form BOE-403-E, *Individual Financial Statement*, to complete and return. As noted in the previous section, individuals and individual partners may be requested to provide the information listed on Form BOE-58. Corporations or other entities provide similar information using Form BOE-60. In addition to these forms, the collector may require the taxpayer to provide any information or documentation that is necessary for the evaluation of an IPA request, for example copies of:

1. Federal or state income tax returns with associated schedules filed in prior years.
2. Business or household utility bills.
3. Profit and loss statements.
4. Accounts receivable records.
5. Bank or credit union statements.

ANALYZING FINANCIAL INFORMATION 770.013

Unlike the SIPA, when analyzing the financial information submitted in support of a standard IPA, there are no set formulas that will allow calculation of a minimum or maximum payment. The taxpayer's documentation should indicate how much money the taxpayer is able to pay in order to pay the liability in full, including interest accruals, within the time frame specified. The taxpayer's income should be compared to his or her claimed expenses. If expenses exceed income, the taxpayer is required to provide an explanation.

The following sections explain and provide guidelines for a collector to use when analyzing the financial documentation submitted by a taxpayer.

DEFINITIONS OF ALLOWABLE EXPENSES 770.014

The two types of allowable expenses are segregated into "necessary" and "conditional" categories. Necessary expenses are those expenses that **must** be paid in order to support health, welfare, and production of income. Conditional expenses are expenses that the taxpayer **may** be allowed to continue paying if all of the taxpayer's liability, including interest accruals, can be paid during the stipulated time.

ANALYZING EXPENSES 770.015

When analyzing the necessary and conditional expense allocations of the taxpayer, collectors should use the *National Standards for Allowable Living Expenses* tables published by the Internal Revenue Service (IRS). These standards are based on the Federal Bureau of Labor Statistics, Consumer Expenditure Survey. The IRS updates the tables in January of each year.

The national standards serve as a guide for determining the average expense levels applicable to a taxpayer who is applying for an IPA. Whenever a taxpayer lists an amount lower than the standard, collectors should use the actual figure given in the table. Whenever the taxpayer lists an amount higher than the IRS standard and higher than local averages, the collector should question the amount and determine if the claimed amount is excessive.

Necessary Expenses

The tables on the IRS website are laid out with the *National Standards for Allowable Living Expenses* appearing first. The tables cover from one to four persons and the amounts indicated are based on gross monthly income. The fifth table contains the allowable living expense for more than four persons. The tables are categorized into the following necessary expenses:

1. Food.
2. Housekeeping supplies.
3. Apparel and services.
4. Personal care products and services.
5. Miscellaneous. An example of a miscellaneous necessary expense is a mandatory payment required by court order or by order of a state administrative agency. Alimony or child support payments (and other court ordered payments) are necessary expenses, but the collector should not credit such payments as an additional expense if an amount is already being deducted from the taxpayer's wages.

Below the *National Standards* tables are links to additional tables that cover allowable living expenses for housing and utilities and for transportation. The table for housing and utilities is organized by state and, once the collector clicks on the California link, by county. The transportation table has an allowance for car ownership (limited to two cars) and is then segregated into operating and public transportation costs by region and by census region.

Other expenses that do not appear in the IRS tables can be "necessary" if they meet the necessary expense test (health, welfare, or production of income), but the amount of the claimed expense must be reasonable. For example, childcare and dependent care services do not have standardized costs, and the cost for these services can vary greatly depending on a number of factors. The collector should analyze the cost for these types of expenses based on the prevailing living standards where the taxpayer is incurring the expense. In addition, the collector should use his or her best judgment and experience when determining if the amount of the claimed expense is necessary and reasonable. Adequate substantiation should be provided when an expense falls into this category and the amount is questionable. The taxpayer is responsible for determining the specific areas in its budget that can be modified or eliminated in order to pay the tax liability.

The following list describes some of the various types of expenses in the "other" category.

1. Accounting and legal fees are necessary only if they are for representation before the Board or they meet the necessary expense test. Other accounting expenses and legal fees are not necessary expenses. They are conditional expenses, but they may be allowed if the liability owed to the Board of Equalization can be paid in full, including projected interest and penalty accruals, within three years.
2. Charitable contributions include donations to tax exempt organizations such as civic groups, religious organizations, and medical services or associations. Contributions to religious organizations as a condition of membership (tithing and educational donations) should be allowed if the amount donated matches the amount required by the organization.
3. Childcare costs, such as baby-sitting, daycare, nursery school, and preschool, can vary greatly, and the collector must determine whether the cost appears reasonable in relation to the type of care provided. If a portion of a childcare expense seems excessive, the taxpayer should be required to provide an explanation or to submit documentation to support the claimed amount.
4. Dependent care expenses for the elderly, handicapped, or infirm are necessary if the taxpayer has no recourse except to pay the expense.

5. The cost of education is a necessary expense if it is required for a physically or mentally challenged child, and no public education providing a similar service is available. If childcare is provided by the educational institution and the cost for the childcare is included as part of the educational expense, it should not also be included by the taxpayer as an additional childcare expense. Where the charge for the childcare is segregated from the charge for the educational expense, the childcare expense should be claimed separately from the educational expense. The cost of education is also a necessary expense if it is required as a condition of employment. Current licensure is a requirement for many professionals in order for them to work. Therefore, continuing education units for professionals such as attorneys, accountants, teachers, healthcare workers, realtors, and other professions that are required to maintain a current license are necessary expenses.
6. The cost incurred in obtaining medical insurance when a separate premium is paid, or when the premium is taken as a deduction from the taxpayer's wages, qualifies as a necessary expense. Medical and dental services, prescription drugs and medical supplies, eyeglasses and contact lenses, and guide dogs for the visually impaired are also necessary expenses.
7. Involuntary deductions such as Medicare, mandatory union dues, and wage garnishments are necessary expenses. If the taxpayer has extra withholding taken from net wages to offset future income tax liability, this may be allowed if the liability owed to the Board of Equalization can be paid off within twelve months. Otherwise, the taxpayer must make other arrangements or adjustments to eliminate the extra tax withholding. The taxpayer must arrange for this increase in income to be paid to the Board of Equalization.
8. The payment of insurance premiums for a life insurance policy is a necessary expense. However, many insurance policies are also used as a vehicle for saving money and the taxpayer may be able to borrow against these funds. For a life insurance policy to be a necessary expense, the policy must be a term-life policy that is already in effect at the time of the Board of Equalization's billing to the taxpayer. Even for term-life policies, expensive premiums must be justified. The collector should determine if the payoff of the policy is high compared to the lifestyle of the beneficiaries. For whole-life policies, the taxpayer should be required to obtain a loan against the value, withdraw the cash value (if it can be done without penalty) or suspend payments while the IPA is in progress (if allowable by the insurance company). If policy premium payments cannot be suspended, the expense will be considered as conditional.
9. Payments to creditors may be necessary for secured or legally perfected debts. If the claimed debt meets the necessary expense test, then payments to these creditors will be allowed to continue, however, the taxpayer must substantiate that the payments are being made regularly.

10. Current federal and state taxes that are withheld from wages, including FICA withholding, are necessary expenses. Back taxes being paid voluntarily to federal, state, or local agencies should be allowed if the liability owed to the Board of Equalization can be paid in full within twelve months. Otherwise, the taxpayer must make arrangements or adjustments with the other agencies and pay the difference to the Board of Equalization.
11. Minimum payments to creditors for unsecured debts (such as money due for credit card purchases) will be allowed if the liability owed to the Board of Equalization, including projected penalty and interest accruals, will be paid in full within three years. With the exception of credit card minimum payments, payments on unsecured debts will not be allowed if omitting them would permit the taxpayer to pay the liability in full within 90 days.
12. Miscellaneous expenses are those that the taxpayer claims are necessary but that the Board staff considers questionable. Examples include extracurricular activities for children, monthly Christmas savings account deposits, and expenses for newspapers, magazines, and trade publications. Allowing or disallowing these expenses is left to the discretion of the collector or the collector's supervisor.

CONDITIONAL EXPENSES

Conditional expenses are those that do not meet the necessary expense test but may be allowable if the tax liability, penalty, and interest accruals are paid in full within the time periods listed below. Examples of conditional expenses are:

1. Accounting and legal services (other than for representation before the Board).
2. Transportation.
3. Educational expenses.
4. Certain housing costs.

Wage garnishments and child support payments (necessary expenses) as well as the above conditional expenses, may have an expiration date. The responsible collector should determine whether the expense will expire within the IPA period. If the expense does end within the IPA period, the collector should insure that the available extra funds are directed towards paying the Board's liability and not paid to other creditors.

The time limits for allowing conditional expenses follow:

1. *Three years*. For substantiated conditional and excessive expenses to be allowed, the debt must be paid in full within 3 years.
2. *One year*. This allows the taxpayer up to one year to modify or eliminate excessive necessary or non-allowable conditional expenses if the liability cannot be paid off within three years. This period may be adjusted from 1 to 12 months based on the nature of the expense.

3. *90 days.* Payments on unsecured debts, other than credit card debt, will not be allowed if omitting these payments would permit the taxpayer to pay its tax liability in full within 90 days. Minimum payments will be allowed on credit cards to preserve a taxpayer's credit rating.

Examples of Conditional Expenses

The following conditional expense items do not constitute an exhaustive list of all the expenses a taxpayer may have incurred. If a claimed expense is questionable, the collector should ask for an explanation or documentation as the case requires.

Accounting and legal fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health and welfare or production of income). Other accounting expenses and legal fees are conditional expenses.

An expense incurred for private education (unless it meets the criteria for a necessary expense, as previously stated) is considered to be a conditional expense.

Housing costs other than for the taxpayer's primary residence are conditional expenses. Expenses to maintain a secondary dwelling that are not necessary for the health, welfare, or production of income should be disallowed. If the taxpayer owns the secondary dwelling, and if sufficient value in the property exists, the taxpayer should attempt to borrow against the equity and pay off the liability. A lien subordination will generally be allowed in order to refinance a home, either to increase the payments offered in the IPA or for a lump-sum payment in full from the refinance.

Other expenses not associated with the maintenance of the primary residence are considered conditional expenses. For example, pool and gardening services are conditional expenses.

Transportation charges falling within the statewide standard limits in the IRS tables are generally allowable. Excess transportation charges and claimed expenses for more than one vehicle must pass the necessary expense test. Expenses claimed for items such as boats, motor homes, or extra vehicles must be substantiated. In addition:

1. In order to claim ownership costs as an allowable expense, the taxpayer must provide documentation of a lease or loan on his or her vehicle, vessel, or aircraft.
2. Transportation costs such as gasoline, maintenance and repairs, vehicle insurance, license and registration fees, towing charges, tolls, and automobile service clubs may also qualify as allowable expenses as long as they are necessary expenses.
3. Other transportation expenses such as fares for mass transit (buses, trains, ferry services, taxis, airlines, and private school buses) are allowable provided they can be documented as a requirement in the production of income, or they pass the necessary expense test.

ACCEPTING AN INSTALLMENT PAYMENT PROPOSAL 770.020

Accepting a SIPA proposal is conditional only to the extent that the liability owed to the Board of Equalization will be paid in full within the period of time stipulated in the agreement. An agreement exists between the taxpayer and the Board of Equalization regardless of whether the taxpayer actually completes and returns a signed copy of form BOE-407-S or merely begins making payments according to the verbal agreement discussed with the collector. See CPPM 770.010.

For a standard IPA, after the taxpayer's documentation has been analyzed and the amount and frequency of payments have been discussed and agreed to, the collector will finalize the agreement in writing by mailing to the taxpayer Form BOE-407, *Installment Payment Agreement*, and the cover letter, Form BOE-407-A. These forms are available through ACMS and must be completed for standard IPAs.

The collector should complete all applicable sections of these forms prior to mailing them to the taxpayer. The initial payment field on the form should be filled in with the amount the taxpayer agreed to pay in the IPA discussion with the collector. The collector must discuss all of the written terms of the agreement with the taxpayer and, in particular, explain the lien statement (RTC section 6757) on Form BOE-407, which reads:

> "Failure to comply with the terms of the agreement will cause it to be terminated. If the agreement is terminated, if any portion of the liability remains unpaid for more than 30 months from the original bill date, or if the Board determines that collection of the liability is in jeopardy, a certificate of lien will be recorded."

In addition to signing, dating, and returning the completed Form BOE-407, the taxpayer must indicate that they understand that a lien may be filed by initialing the space provided on the form.

An accepted SIPA or standard IPA is entered into ACMS and the case is then monitored by ACMS for appropriate taxpayer notifications and collector follow-ups. All IPAs consisting of three or more payments require supervisory approval and the approval must be noted in ACMS.

Before accepting any proposal for an IPA, the collector will have thoroughly investigated the financial condition of the taxpayer and made a determination that an IPA is the only method available to collect the amount due. If a taxpayer has cash equal to the tax liability, immediate payment should be demanded. The taxpayer can liquidate unencumbered assets, cash out interests in estates and trusts, or borrow against the equity in real property to pay all or part of the liability due. In addition, a taxpayer's ability to obtain an unsecured loan should be considered. If there are assets with value and a taxpayer is unwilling to raise money from them, enforcement action should be taken.

If there appears to be no borrowing ability, the taxpayer should be asked to defer payment of certain other debts if that would allow the liability to be paid in full or in larger installments than otherwise possible. A payment deferral should not be requested if doing so will cause the taxpayer to lose assets and thereby jeopardize our ability to collect the liability.

The terms of any proposal should provide for payments commensurate with the ability to pay. Installment payments should be paid on at least a monthly basis unless there are extenuating circumstances that make it advantageous to accept payments on a less frequent basis.

REJECTING A STANDARD INSTALLMENT PAYMENT AGREEMENT 770.023

A taxpayer's proposal to enter into an IPA may be rejected if the taxpayer's financial circumstances do not warrant the Board of Equalization accepting payments over time. Rejection of an IPA proposal may also occur for other reasons, such as the failure of the taxpayer to provide adequate documentation to support the need for an IPA. Collectors must be able to show that the reasons for rejecting a taxpayer's IPA proposal are justified.

The reason for rejecting a taxpayer's IPA proposal must be entered into ACMS notes. Currently, a form letter is not available for rejecting a proposal so the responsible collector should contact the taxpayer and verbally explain why the taxpayer's IPA proposal was not acceptable. This contact should be followed by mailing a letter to the taxpayer that summarizes the verbal explanation and declines the IPA proposal.

If a taxpayer's IPA proposal is declined, all of the documentation provided by the taxpayer should be returned or placed in a confidential destruction bin. If the taxpayer subsequently makes a new request for an IPA for the current liability, or for liabilities that may be incurred in the future, the taxpayer must submit a new Form BOE-407, *Installment Payment Agreement*, along with another Form BOE-403-E, *Individual Financial Statement*, and supporting financial documents.

TERMINATING A STANDARD INSTALLMENT PAYMENT AGREEMENT **770.025**

Under RTC section 6832, the Board of Equalization has authority to terminate an IPA upon default of the agreement by the taxpayer. It also allows the Board of Equalization to bypass the required notification process if it is determined and documented that collection of the liability is in jeopardy. Collectors seeking to terminate an IPA must fully document their reasons in ACMS and secure supervisory approval before initiating collection action. Although the provisions of RTC section 6832 apply to sales and use taxes, the same termination authority also applies to IPAs entered into for special taxes and fees programs.

While a taxpayer may terminate the IPA at any time, the Board may terminate an IPA only when the taxpayer defaults on the agreement and the provisions in the law for terminating an IPA have been met. A taxpayer defaults on an IPA when any or all of the terms in the agreement are not met. An IPA is considered to be in default for missed or late payments, delinquent or partial remittance returns, or failure to disclose assets or income on a financial statement. Failure to increase the payment amount when a financial review warrants an increase, or failure to comply with a required financial review, may likewise result in default of the agreement.

The collector must immediately mail form BOE-407-T, *Installment Payment Agreement – Notice of Termination,* when a taxpayer defaults on an IPA. The taxpayer then has 15 days from the mailing date of the BOE-407-T to file a written request for an administrative review during which time collection action will be suspended, except when collection of the liability is in jeopardy (RTC section 6832(d)). After the 15-day period has elapsed, collection action may begin even though an administrative review has been scheduled or is ongoing. A supervisor has discretion to extend the hearing period and withhold collection action if the taxpayer can provide a reasonable explanation as to why an administrative hearing cannot be set within the 15-day period.

As discussed in CPPM 770.012 above, situations can occur where a SIPA or an IPA is not formally established by the taxpayer's return of a completed Form BOE-407-S or BOE-407. To decide whether a Form BOE-407-T should be issued, the collector should first determine whether the actions taken have given the taxpayer a reasonable presumption to believe that they are in an IPA. Below are three examples of this type of situation:

1. The taxpayer proposes a monthly payment plan of $500 and the collector verbally accepts the offer. A Form BOE-407 is not issued or, if one is issued, the taxpayer did not sign and return it. Although there is no further contact between the collector and taxpayer, the taxpayer has paid some of the agreed upon payments. In this situation the taxpayer can reasonably presume the acceptance of the payment proposal since we have not indicated anything to the contrary and have been accepting its payments without contacting them. If the taxpayer defaults on the verbal agreement, the taxpayer should be contacted, and a Form BOE-407-T should be issued before initiating any new collection action.

2. The taxpayer proposes a monthly payment plan of $500, which is verbally agreed to pending receipt of supporting documentation. The taxpayer does not remit any payments and does not provide any supporting documentation (i.e. financial information). In this situation, the taxpayer has not made any effort towards compliance and cannot reasonably presume that an IPA is in effect. The collector does not need to issue a Form BOE-407-T in this situation, but an attempt to contact the taxpayer prior to initiating any new collection action should be made.
3. Same offer as #2 above, however, the taxpayer sends us the financial information and begins making voluntary payments while the financial information is being reviewed. The payments being remitted are not sufficient to pay off the liability in a reasonable amount of time, but they are accepted while we are reviewing the account. To ensure there is no misunderstanding, the taxpayer should be sent a letter stating that the voluntary payments are being accepted only until the financial information has been reviewed. Assuming the financial information is reviewed timely, sending the taxpayer a Form BOE-407-T is not required. The collector should contact the taxpayer once the review of the financial information is completed and provide the taxpayer with the appropriate payment proposal form to complete and return.

ADMINISTRATIVE REVIEW UPON TERMINATION 770.031

A taxpayer's request for an administrative review will be conducted at a time convenient for the taxpayer but within the 15-day period mentioned in section 770.025 above. The taxpayer may choose the district or branch office in which to hold the administrative review.

The review will be informal and the reviewing officer will be a Business Taxes Compliance Supervisor who, if at all possible, will not be the assigned collector's direct supervisor. The reviewing officer will verbally notify the taxpayer of the time and place of the administrative review when possible, and may also send Form BOE-407-AR, *Installment Payment Agreement, Administrative Review Notice*, to the taxpayer's address of record. The reviewing officer will document this action in ACMS.

The reviewing officer will advise the taxpayer that the issues subject to discussion are limited to the reasons for terminating the IPA. Any documentation presented at the review must relate to the reasons why the taxpayer defaulted on the IPA.

Within 5 calendar days following the administrative review, the reviewing officer must issue a written decision to the taxpayer and the district office indicating whether the agreement was:

1. Reinstated.
2. Referred back to the district for further evaluation.
3. Terminated.

If the reviewing officer determines that the original IPA terms should be modified, the termination will be reversed and the case sent back to the district office. The district will re-evaluate the circumstances and modify the agreement accordingly. Modification of an IPA cannot occur unilaterally, it can only occur with the mutual consent of the taxpayer and the reviewing officer. If the terms of the original agreement are modified, a new Form BOE-407, *Installment Payment Agreement*, must be completed.

ANNUAL REVIEWS **770.032**

All IPAs lasting more than a year must be reviewed every 12 months, at a minimum. The review will be recorded in ACMS notes. As part of the review, collectors must verify the taxpayer's current income by obtaining recent payroll stubs, copies of the taxpayer's current income tax returns, etc. Collectors should also review the original BOE-403-E, *Individual Financial Statement*, to see if any claimed expenses previously allowed have been paid off by the taxpayer. If the taxpayer has paid off some claimed expenses, the amount of payment previously directed to that debt is to be paid to the Board of Equalization. When performing a review of any existing IPA, staff will use the appropriate review letter in ACMS when requesting updated financial documentation from the taxpayer. The review letters are Form BOE-59, *Payment Proposal – Renewal*, and Form BOE-61, *Payment Proposal – Corp. Renewal*.

Accounts in the ACMS *Promise-to-Pay* state (XX05) for 365 days will automatically be routed to the *Promise Review* state (XX65). Accounts in the *Promise Review* state will be placed on the appropriate collector's work list. Collectors will review the agreement as discussed above and, when appropriate, route the account back to the *Promise-to-Pay* state. When ACMS routes the accounts into the *Promise Review* state, the IPA remains in effect and any promise reminder notices scheduled to be mailed to the taxpayer will continue to be mailed. Existing IPAs determined to still be in the State's best interest will be manually routed back into the ACMS *Promise-to-Pay* state by the collector.

If cancellation of an IPA is necessary, collectors will route the account to their supervisor. Accounts remaining on the *Promise Review* state for more than 15 days are automatically routed to the work list of the assigned collector's supervisor.

When performing an annual review of an IPA, staff must check to see if any liability periods will become 30 months old prior to the next annual review. Liability periods exceeding 30 months are subject to the Board of Equalization's policy regarding the filing of a lien or liens to protect the State's interest. Prior to requesting a lien, staff will mail Form BOE-407-L, *Notice of Intent to Lien*, to the taxpayer. If the taxpayer does not remit payment for the aged liability periods within 45 days of the Form BOE-407-L mailing date, staff will initiate the lien request through ACMS.

SUCCESSFUL COMPLETION – RELIEF FROM FINALITY PENALTY 770.035

Pursuant to RTC section 6832, the Board of Equalization will relieve finality penalties for taxpayers who satisfactorily complete installment payment proposals under certain conditions. To be eligible for relief, the taxpayer must initiate the installment payment proposal and the proposal must be accepted within 45 days of the finality date of the Notice of Determination or Redetermination.

Relief of finality penalties will not be granted when:

1. The determination includes a fraud penalty. Persons involved in fraudulent acts have acted with willful neglect and their failure to make payment was not due to circumstances beyond their control.
2. The taxpayer fails to complete the proposal as agreed. This does not include payments which are late due to circumstances beyond the taxpayer's control including, but not limited to, late U.S. Postal Service delivery of timely mailed payments and checks dishonored due to bank error.

Authority to relieve the finality penalty has been delegated to the Deputy Director, Sales and Use Tax Department, the Chiefs of the Field Operations Divisions, the supervisor of the Special Procedures Section, the Petitions Section Supervisor, the Deputy Director and Administrators of Property and Special Taxes Department, all District Administrators, and the Administrator of the Centralized Collections Section.

Upon completion of the prescribed payments, the appropriate administrator will notify the Petitions Section that the finality penalty is to be adjusted out of the taxpayer's liability. If, in the opinion of the administrator, relief should not be granted for reasonable cause, the administrator should set forth the facts of the case in a memo to the Petitions Section.

INTERAGENCY OFFSETS 771.000

GENERAL 771.010

The Government Code authorizes any state agency to request payment from any other state agency that owes money to a person or entity when that person or entity owes a liability to a state agency. This procedure is called "offsetting."

Government Code section 12419.4 provides that the state has a lien for any taxes due the State from any person or entity, upon any and all personal property belonging to such person or entity and held by the State or amount owed to such person or entity by the State. The lien shall apply to all such property held or such amount owed by an agency of the State while such person or entity owes any taxes to that agency or another agency of the State. This lien does not apply to salary or wages owing to officers or employees of the State.

In order to enforce the lien, the Board of Equalization must send written notification to the agency holding money for refund to the person, identify the amount due, and request that payment be sent to the Board of Equalization to be "offset" against the person's liability.

The "offset" procedure is used only as a "last resort" when all other collection avenues have been unsuccessful. When selecting accounts for referral to the Franchise Tax Board for offset, extreme care and good judgment must be exercised to avoid the possibility of collection in the field and, in addition, having the liability offset from the taxpayer's personal or corporate income tax refund.

FRANCHISE TAX BOARD (FTB) OFFSET REQUESTS 771.015

If a tax or fee payer owes a liability to the Board of Equalization, staff may request a Franchise Tax Board (FTB) offset on a personal or corporate income tax refund owed to a taxpayer against that liability. FTB handles offset requests on a first-come, first-serve basis. Other agencies may be competing for the same funds, therefore, the window of opportunity to request an offset is very short.

Personal Income Tax System (PITS)

The FTB offset request for individual or partnership accounts is made using the ACMS system. The account must have a valid social security number and a **final** liability of at least $50.00. The responsible collector working the account initiates an offset request using the "FTB Offset Request" Fast Path button in ACMS. The Fast Path button allows responsible collectors to update offset request information at anytime. The Special Procedures Section (SPS) notifies FTB of any changes (add/delete/change) to the offset request by submitting a diskette to FTB twice a month.

Business Entity Tax System (BETS)

The FTB offset request function for corporate and LLC accounts is not currently available in ACMS. However, district and headquarters collectors do not need to initiate action on these types of accounts because they are handled by SPS.

FTB provides SPS with a list of all Corporate and LLC accounts scheduled to receive FTB refunds. Upon receiving this list, SPS identifies each offset item by searching IRIS to locate all pertinent Board of Equalization account numbers and notifies the appropriate district or unit

regarding the offset. These requests are a priority, and the responsible collector must respond promptly with a recommendation to either accept or deny the offset when SPS directs an offset request to him or her. SPS faxes the offset request memo back to FTB either the same day or, at the latest, the following business day after receiving it from FTB.

SELECTION OF ACCOUNTS FOR FTB OFFSET 771.020

Accounts selected for offset must meet the following conditions:

1. Taxpayer is a sole proprietor or individual partner and the social security number is available.
2. Taxpayer is a corporation or LLC and the corporate/LLC number issued by the Secretary of State's office is available.
3. Billing is final and delinquent.
4. All other avenues of collection have been unsuccessful.
5. Balance exceeds $50.00.
6. Taxpayer is not on an installment payment arrangement or, if on a plan, is not performing as agreed, and the installment payment agreement termination letter has been sent.
7. Taxpayer is not in bankruptcy or has received a discharge. A petition in bankruptcy carries with it an automatic stay, so the offset of the liability is withheld until the debtor receives a discharge or the automatic stay is lifted. The refund to be offset must be for a tax period subsequent to the bankruptcy filing date.
8. The refund is community property or sole property of the individual. (Staff should look for the dissolution of a marriage or that the couple is not living apart. If the couple is living apart, the income of each spouse is separate property.)
9. The request for offset is made on the correct entity. (The person did not give another person's social security number; there was not an erroneous trace - father and son or person with same name; or the billing was made against the wrong person.) If an erroneous offset occurs, it is the Board of Equalization's responsibility to issue the refund. This is the reason why it is so important to withdraw an offset when the account is paid-in-full or it becomes apparent that it will be paid-in-full without the offset.

If an offset occurs, the taxpayer will receive a letter of notification and staff must be prepared to handle calls from the affected taxpayer. Taxpayers should be told to telephone the Franchise Tax Board only if the taxpayer has a tax problem involving the FTB. If the conditions for offset are no longer met, the FTB offset should be promptly removed.

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD) OFFSETS 771.030

The Employment Development Department (EDD) offset request for all entities is not available in ACMS. Offset requests for these entities are processed manually through SPS. EDD provides SPS with a list of all entities scheduled to receive EDD refunds. SPS identifies each item by searching IRIS to locate all pertinent Board of Equalization account numbers and notifies the appropriate district or unit regarding the offset. As in the case of FTB, EDD also handles the offset requests on a first-come, first-served basis; other agencies may be competing for the same funds; and the window of opportunity to request an offset is very short. Once SPS notifies the responsible collector in the district offices or Headquarters units, they must make the determination to accept or deny the offset. The responsible collector will respond to SPS as a priority in order to process the offset request and forward it to EDD. The offset request must be done on the same day or, at the latest, the following business day in order for the Board of Equalization to receive the offset funds.

ALCOHOLIC BEVERAGE CONTROL (ABC) OFFSET REQUESTS 771.040

Business and Professions Code section 23959 states, "if an application [for an alcoholic beverage license] is denied or withdrawn, one-fourth of the license fee paid, or not more than one hundred dollars ($100), shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761. The balance of this amount shall be credited on any taxes due from the applicant under …the Sales and Use Tax Law, and the remaining portion shall be returned to the applicant."

Alcoholic Beverage Control (ABC) periodically transmits a "Refund Schedule for Sales Tax" to the Board of Equalization that lists the applicant's name, address, and amount of funds available for offset. These transmittals from ABC do not arrive on any particular schedule, but they do have a deadline of 14 days from the date of the notice to request offset of the funds. These refunds typically occur because an ABC license applicant, after paying the fee for a license, has withdrawn their application and ABC is refunding the fee paid. SPS conducts the same search and process for ABC offset requests as for the other types of offset requests.

DEPARTMENT OF HEALTH SERVICES (DHS) OFFSET 771.050

The Department of Health Services (DHS), which administers the Medi-Cal program, annually distributes over $4 billion to California health providers. Among their clients are physicians, dentists, chiropractors, optometrists, pharmacies, hospitals, ambulance services, and retailers of hearing aids, prosthetic devices, wheel chairs, etc.

Confirmation of provider participation can be acquired from the DHS Provider Enrollment Section, at (916) 323-1945. Confirmation requires the provider's social security number or federal identification number, and most recent address.

Requests for offset are made via a memo to SPS who will request offset under the provisions of Government Code section 12419.5.

FUNDS DUE TAXPAYERS FROM OTHER STATE AGENCIES 771.070

Although SPS initiates the majority of offset requests, the district offices may find funds owed to a delinquent taxpayer by agencies that are not monitored by SPS, such as bonds subject to refund posted with Contractors State License Board or the Bureau of Automotive Repair. As noted previously, upon receipt of a written request from the district office, SPS staff may request an offset of funds from any state agency that owes a taxpayer a refund.

DISTRICT REQUESTS FOR OFFSET TO SPECIAL PROCEDURES SECTION 771.080

Notification from the district offices and Headquarters units to SPS requesting the offset of funds from another state agency are not required to be in any specific format but must contain complete information regarding the matter. At a minimum, the request must contain the:

1. Taxpayer's name, exactly as it appears in IRIS.
2. Taxpayer's address.
3. Amount of the taxpayer's liability.
4. Name and address of the agency that is holding funds available for offset.

SPECIAL PROCEDURES SECTION OFFSET NOTIFICATION TO DISTRICT OFFICE 771.090

For offset requests that are initiated by SPS, such as FTB BETS accounts, the district office(s) may be instructed by SPS to verify the identity of the person subject to the offset. SPS may request this verification by either phone or e-mail. If verification is requested by e-mail, the district office will receive an e-mail similar to the following:

> **Subject** ABC Fee Offset/Account Number
>
> There is an ABC fee offset in the amount of $(offset amount) on the above account. Please review the account and determine if the offset should be taken. An immediate response is necessary in order for the Board of Equalization to receive the funds. Failure to respond will result in the Board of Equalization forfeiting the offset funds. If you have any questions, please contact me at the phone number listed below.

Normally, SPS will also include ACMS comments similar to the following:

> "Special Procedures received notice regarding an ABC fee offset in the amount of $(offset amount). Sent notice via e-mail to (name of responsible collector) to determine if offset should be requested. (Name) replied via e-mail to accept/decline offset."

STATE CONTROLLER'S OFFICE – UNCLAIMED PROPERTY 771.095

The State Controller's Office publishes a list of unclaimed property on its website as a tool to the public to search for properties that may belong to them. This listing is the result of dormant properties being escheated by banking institutions to the State and held in trust.

Board of Equalization staff should not attempt to reach these properties in order to satisfy taxpayer's delinquencies. These escheated properties may only be claimed by the person(s) who had legal rights to the property prior to its escheat.

The procedures set forth in this section for offset of funds should be used for requesting funds from those state agencies where we have reciprocal agreements, but may not be used for unclaimed properties or other funds.

OFFERS IN COMPROMISE 772.000

GENERAL 772.010

The Offer in Compromise (OIC) program is available to all taxpayers and feepayers (hereafter taxpayers) that do not have the income, assets, or means to pay their liability within a reasonable period of time, in most cases within 5 to 7 years. Generally, if an OIC is accepted, the taxpayer's liability is eliminated and liens are released.

In order to participate in the OIC program, taxpayers must meet the following requirements:

1. The account is closed (not active) and the liability is final.
2. The taxpayer is not disputing the liability.
3. The person making the offer is not involved or associated with the same, or similar, type of business.
4. The liability is assessed by the Board of Equalization, is final, and there is no evidence of tax reimbursement.

If after reviewing an account, it appears the taxpayer is a good candidate for the OIC program, the responsible collector may invite the taxpayer to participate by sending Form BOE-908, *Offers in Compromise Program*, and/or an OIC application (Form BOE-490 or BOE-490-C). Form BOE-908 is available in ACMS through the Actions menu under Send Correspondence, and through the Send Letter fast path button at the account level.

FRAUD 772.020

An OIC will **not** be considered in situations where the taxpayer has been convicted of criminal (felony) fraud. However, taxpayers who have been assessed a civil fraud penalty may participate in the OIC program. In these cases, the Board of Equalization requires a **minimum** offer of the tax plus the fraud penalty. The minimum offer requirement may be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud. Usually, this situation occurs in partnership accounts where the intent to commit fraud can be clearly attributed to another partner.

PROCESSING AN OFFER IN COMPROMISE PROPOSAL 772.030

All OIC proposals must be filed with the OIC Section using Form BOE–490, *Offer in Compromise Application* (for individuals, sole proprietors, married couples and domestic partners), or Form BOE–490–C, *Offer in Compromise Application for Corporations, LLCs, Partnerships, etc.*

Individuals that have multiple tax liabilities with the Board of Equalization (BOE), Franchise Tax Board (FTB), or Employment Development Department (EDD) may use the *Multi-Agency Application*, Form DE-999CA. All three application forms are available to Board staff and the public via the Board's website at http://www.boe.ca.gov/pdf/de999ca.pdf.

The taxpayer is required to complete and sign the application and provide all the required supporting documentation (See Check List of Required Items on Page 2 of the OIC application.) The OIC package should be submitted to the district office responsible for the account.

The district office or headquarters division will examine the OIC package, ask the taxpayer to provide any missing information, and prepare a memorandum summarizing the account (instructions for completing the memo are detailed below, see bullet point 3). The district office or headquarters division may not reject, deny or negotiate an OIC based on its review of the application and will forward all OIC requests to the OIC Section within 30 days from receipt, regardless of the documentation provided to that point.

If there is an existing Installment Payment Agreement (IPA), the district office or headquarters division should advise the taxpayer to continue remitting its payments as promised. The OIC Section will notify the taxpayer to terminate the IPA, when appropriate. The district office or headquarters division is responsible for monitoring scheduled payments and must follow up manually once ACMS routes the account to the OIC Section. Existing Earnings Withholding Order (EWO) payments and offsets from other state agencies will also continue while the OIC Section is reviewing the OIC. In most cases, suspend collection actions if there is no existing IPA or EWO. Contact the OIC Section prior to taking any *new* collection action, or if delaying collection action will jeopardize the Board of Equalization's ability to collect.

Some OIC proposals may involve partnership accounts. If only one partner has requested an OIC, the district office or headquarters division should suspend collection actions only for the partner requesting the OIC.

Forward the following information to the OIC Section within 30 days:

1. The completed OIC application (BOE–490, BOE–490–C, or DE-999CA), which must indicate an offered amount and include the taxpayer's signature.
2. All of the supporting documentation provided by the taxpayer.
3. A memorandum summarizing the account status for each of the following points (please indicate "not applicable" or "not available" if the points do not apply):

    a. How was the liability assessed? If the liability resulted from a tax determination, what were the audit findings based upon? Was a fraud penalty involved?
    b. How old is the liability? What collection actions have been taken and what were the results? Has the account been written-off? Does the taxpayer have a related active business, or is the taxpayer involved in a similar business? Please include a detailed history that answers these questions.
    c. What is the source of the funds being offered? Is the taxpayer taking out a loan, borrowing from a family member, etc.?
    d. What is the present financial condition of the taxpayer and the possibility of his or her financial condition improving in the future? For example, future employment opportunities, inheritance, judgments, etc. If the taxpayer is currently on an installment payment agreement, what is the payment amount and what is the due date? If there is an EWO in place, what is the amount the Board is receiving from the employer, and how often? Does the taxpayer have any beneficial use of property in California?

a. Is the taxpayer still involved with the business that generated the liability? Did the taxpayer incorporate? Was property transferred to a spouse or a relative? Will a nominee lien be issued?
b. Is the taxpayer located inside or outside of the state? If the taxpayer is located outside the state, is the Board of Equalization receiving voluntary payments? If so, how much and what is the due date of the payment(s)?
c. What is the taxpayer's age, physical condition, and earning ability? Are there any special circumstances that may affect the taxpayer's financial situation over the next several years? Is the taxpayer eligible for retirement, social security, unemployment, or disability benefits? Does the taxpayer have any medical conditions or health problems? Does the taxpayer have any special skills or expertise? Provide any other information that could affect the taxpayer's finances and include the taxpayer's spouse, dependents or other relatives, if appropriate.
d. If a corporation requests an OIC, will a RTC section 6829 dual determination for personal liability of corporate officer(s) be issued? Is there a possibility of issuing a corporate suspension dual determination?
e. Did the taxpayer file bankruptcy? If so, what was the result of our claim? Did the taxpayer receive a discharge? Please include the chapter filed, petition date, case number, discharge or dismissal date, and the date of closing. In cases where there are multiple bankruptcy petitions, please provide information for each petition.
f. Was a security deposit or personal guarantee posted to the account? Provide the date, amount, and type of security posted. Was the security liquidated and applied to the account? Provide the date and amount applied. NOTE: All security posted to the account, whether a bond, personal guarantee, or a Time Certificate of Deposit, must be liquidated and applied to the balance before an OIC will be considered. A surety bond is a viable asset upon which the Board of Equalization can and should make claim as soon as it has been determined no other collection remedies exist. A demand will be placed on a surety bond prior to accepting an OIC.

OFFER IN COMPROMISE SECTION – PROCESSING APPLICATIONS 772.040

In accordance with Board of Equalization policy, all OIC applications sent to the OIC Section are acknowledged in writing, within 12 working days of receipt. The taxpayer receives an acknowledgement letter along with a copy of Form BOE-324-OIC, *Privacy Notice*. The OIC Section inputs comments in ACMS after the acknowledgement letter and privacy notice is mailed.

The OIC Section assumes control of the account in ACMS while the offer is under consideration, unless there are partners who are not involved in the offer.

SECURING THE OFFERED AMOUNT 772.050

The taxpayer is not required to post the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when it is appropriate to fund the offer. However, if funds are received by the district office, they should be processed as an "OIC deposit" (See CPPM 772.090 for detailed instructions..

In many instances, the offered funds are provided by relatives or friends not associated with the business entity. These deposits are processed as third-party deposits in accordance with CPPM 772.090.

If an OIC is not accepted, the deposited funds are either applied to the liability or returned to the taxpayer, based on the written direction of the taxpayer. If a third party posted the deposit, the written direction of the third party is needed. When the Board of Equalization retains an OIC deposit, it is applied to the taxpayer's liability using the date the funds were received as the effective date of payment.

PROCESSING ACCEPTED OFFERS 772.060

The OIC Section will evaluate all OIC requests to determine if they are consistent with statutory requirements and Board of Equalization policy. If the offer is formally accepted, the OIC Section will initiate the approval process.

Upon approval of the accepted offer, the OIC Section will apply the offered funds, adjust balances, release liens, remove offsets, and input IRIS/ACMS comments. The OIC Section will send the taxpayer an acceptance letter indicating the periods of liability that have been compromised along with copies of lien release documents and a statement of balance. In addition, a public records notice may be issued if the compromise exceeds $500.

If the compromise involves a partnership, the partner making the offer is relieved from debt upon acceptance of the offer. Any partner that was not included in the OIC request is responsible for the remaining balance due after the offered funds are applied to the liability. The OIC Section will make comments in IRIS/ACMS to indicate that a partner's offer has been accepted and will remove that partner from account records. However, that partner's name will remain in account history and comments.

PROCESSING REJECTED, DENIED, OR WITHDRAWN OFFERS 772.070

If an offer is not acceptable, the OIC section notifies the taxpayer in writing of the rejection, denial or withdrawal and provides an explanation for the decision. The OIC Section also adds comments to ACMS and routes the account back to the district office to proceed with collection action.

If the taxpayer posted the offered amount, the funds are applied to the account or returned, depending on the taxpayer's written instructions. Credit interest will not be granted on OIC deposits returned to the taxpayer. In addition, a refund will not be issued if the source of the deposited funds is an equity loan where a lien subordination or partial release of lien was issued by the Board of Equalization to accommodate the taxpayer. In these cases, lien subordinations and partial release of liens will be approved by the OIC Section Supervisor.

If the taxpayer posted the offered amount with the district office or headquarters division, the district office or headquarters division is responsible for issuing a refund. If the funds were submitted to the OIC Section and deposited through the Cashier, the Audit Determination and Refund Section will issue the refund. The OIC Section will send a request to the appropriate office and initiate the refund process.

APPEALS 772.080

A denied or rejected Offer is not subject to administrative appeal or judicial review.

PROCESSING OFFER IN COMPROMISE FUNDS RECEIVED AT THE DISTRICT OFFICE 772.090

Funds received as deposits pending acceptance of an OIC will continue to be processed as 2B Deposits. As such, the district office Security Tax Technician will post them to the Security Deposits system in the Security Posting (SEC PO) screen. Form BOE-487, with the words "Offer in Compromise Deposit" hand-written at the top will then be submitted to the district office cashier for processing. The cashier will process the deposit in the same manner as regular security, using the Entity's TIN and the S/D switch. Cashiers must add comments indicating that this is a 2B deposit pursuant to a pending compromise offer.

As an added requirement, if a third-party is posting the deposit on behalf of the taxpayer, the Security Tax Technician must so reflect it in the SEC PO screen and provide the PAYOR's TIN to the cashier. The cashier will enter the TIN in CSH RO on the PAYOR TIN field. This will serve to specifically identify the person making the deposit. The deposit will still be processed using the Entity's TIN and the S/D switch as previously instructed.

Disbursing & Applying Offer In Compromise Funds
Upon Acceptance of an Offer in Compromise

When the OIC Section notifies the district offices or headquarters division of the acceptance of an OIC, the Security Tax Technician will initiate the disbursement of the 2B deposit based on current procedures. *However, a separate check for the exact amount of the deposit must be issued*. Payment application information and effective date must be furnished to the cashier by the Security Tax Technician. The payment document furnished to the cashier, which in most cases will be a DIF DA screen print, must have the words "Offer in Compromise Payment" hand-written at the top. The effective date of payment should be the date the funds were presented for deposit.

OIC funds are not to be processed in the same manner as cashed out security. Upon presentation of the disbursement check by the Security Tax Technician, the cashier will process these remittances by entering CHK in the Remit Type and *will not* enter CSD in the Special Remit field in CSH RO. The cashier will process the remittance using the payment application information and the effective date provided by the Security Tax Technician. The cashier must add comments to indicate that this was a payment from a 2B deposit pursuant to an accepted OIC. The Security Tax Technician must notify the OIC Section that the funds have been applied via telephone at (916) 322-7931 or fax at (916) 322-7940.

Refunds of any OIC deposits must be made promptly after receiving directions to that effect from the OIC Section. The Security Tax Technician must add comments detailing the reason for the refund.

~~OFFERS IN COMPROMISE 772.000~~

~~GENERAL 772.010~~

~~An Offer in Compromise (OIC) is a proposal made by the taxpayer to the Board to pay less than the amount due to settle liabilities that they cannot pay in full. In order to participate in the Board's Offer in Compromise Program, the following conditions must be satisfied:~~

- ~~The liability to compromise must be a final liability and not in dispute.~~
- ~~The tax or fee account must be closed and the taxpayer must not be involved in the operation of the same business or same type of business that generated the tax or fee liability that is proposed to be compromised.~~
- ~~The taxpayer does not have the means to pay the liability in full within a reasonable period of time, in most cases between five and seven years.~~

~~As of January 1, 2003, the BOE has statutory authority to accept an OIC for Sales and Use Tax, Section 7093.6, for Use Fuel Tax Section 9278, and for the Underground Storage Tank Fee, Section 50156.18 of the Revenue and Taxation Code. Offers will be accepted when it can be clearly shown that accepting the offer is in the best interest of the state. Generally, an offer will be accepted if it represents the most that the Board can expect to collect within a reasonable period of time. To make this determination, an evaluation is made on the taxpayer's ability to pay (consideration is given for the potential for change in financial circumstances).~~

~~For all other tax and fee programs, the Board does not currently have the statutory authority to accept an OIC. To accomplish an OIC in these situations, a complaint must be filed with the Superior Court for the amount to be compromised. To resolve the complaint, a Stipulated Judgment is filed in which both parties, the taxpayer and the Board, agree that the offered amount will fully satisfy the liability.~~

~~FRAUD 772.020~~

~~Offers for liabilities with a fraud penalty will require a minimum offer of the tax and fraud penalty. The minimum offer can be waived if it can be shown that the taxpayer making the offer was not the person responsible for perpetrating the fraud. This situation applies to partnership accounts where the intent to commit fraud can be clearly attributed to another partner.~~

~~Offers will not be entertained in situations where the taxpayer has been convicted of criminal fraud for fraudulent behavior during the audit period.~~

~~PROCESSING OF OFFERS 772.030~~

~~For processing, all OIC proposals must be filed on Form BOE-490, *Offer in Compromise Application*, or BOE-490-C, *Offer in Compromise Application for Corporations, Limited Liability Companies, Partnerships, Trusts, and Unidentified Business Organizations*, and forwarded to the OIC Section for evaluation. The applications may be downloaded via the Internet at http://www.boe.ca.gov/sutax/staxforms.htm~~

~~The taxpayer is required to complete and sign the application. Supporting documentation must be provided to enable the Board to evaluate the merits of the offer. The taxpayer should mail the completed application to the local office that administers the account. The taxpayer's signature must be on the application when received by the Board.~~

~~The district office should review the application and request the taxpayer to provide any additional information required (as outlined on page 2 of the BOE-490) within 30 days. The district office should strive to gather all the supporting documentation necessary for the OIC to be evaluated. The district office should prepare a summary of the account status as outlined in number 3 below. OIC applications, supporting documentation and the summary should be forwarded to the OIC Section within 30 days after the offer is received in the district, whether or not the package is complete.~~

~~The taxpayer will need to continue making periodic payments as agreed upon in any existing installment payment agreement or any existing Earnings Withholding Order (EWO) payments while the OIC Section is reviewing the offer. The OIC Section will monitor the payments and inform the taxpayer when he/she can terminate the agreement if appropriate. In most cases, if there is no existing installment payment agreement or EWO, collection action should be suspended. Offsets from other state agencies will continue during the OIC process.~~

~~Some OIC proposals may involve a partnership. If only one partner has requested an OIC, the district office should suspend summary collection action for the partner who has requested the OIC. The name of the requesting partner should be removed from all summary collections other than offset.~~

~~If delaying collection activity jeopardizes the Board's ability to collect the tax, the district may proceed with collection efforts after notifying the OIC Section of their intentions to pursue collection.~~

~~The district office is required to forward all offers and is not authorized to reject an offer based on its review. Referral of an OIC to the Headquarters' Offers in Compromise Section should include:~~

1. ~~The completed Form BOE-490 or BOE-490-C, which must indicate an offered amount and include the taxpayer's signature.~~
2. ~~Documentation supporting the offer, which is outlined on the second page of the Form BOE-490 or BOE-490-C.~~
3. ~~A memo summarizing the account status for each of the following points below (please indicate "not applicable" or "not available" if the points do not apply)~~
   a. ~~How was the liability assessed? If the liability resulted from a tax determination, what were the audit findings based upon? Was a fraud penalty involved?~~
   b. ~~How old is the liability? What collection actions have been taken and what were the results? Has the account been written-off? Does the taxpayer have a related active business, or is the taxpayer involved in a similar business? Please include a detailed history which includes answers to these questions.~~
   c. ~~What is the source of the funds offered in compromise? Is the taxpayer taking out a loan, borrowing from a family member, etc.?~~
   d. ~~What is the present financial condition of the taxpayer and the possibility of his or her financial condition improving in the future? For example, future employment opportunities, inheritance, judgments, etc. If the taxpayer is currently on an installment payment agreement, what is the payment amount and what is the due date? If there is an Earnings Withholding Order in place, what is the amount the Board is receiving from the employer, and how often? Does the taxpayer have any beneficial use of property in California?~~

e. ~~Is the taxpayer still involved with the business that generated the liability? Did he incorporate? Did he transfer the property to a spouse or relative and is still involved with the operation of the business?~~

f. ~~Is the taxpayer located inside or outside of the state? If the taxpayer is located outside of the state, is the Board receiving voluntary payments? If so, how much and what is the due date of the payment?~~

g. ~~What is the taxpayer's age, physical condition, and earning ability?~~

h. ~~If the offer is from a corporation, has a dual determination under Revenue and Taxation Code Section 6829, Personal liability of corporate officer, been explored? Is there a possibility of a corporate suspension dual determination? Are there any personal guarantees?~~

i. ~~Did the taxpayer file bankruptcy? If so, what was the result of our claim? Did the taxpayer receive a discharge? Please include the chapter filed,; petition date, case number, discharge or dismissal date, and the date of closing. In cases where there are multiple bankruptcy petitions, please provide information for each petition.~~

~~PRROCESSING OF OIC APPLICATIONS BY THE OIC SECTION~~ ~~772.040~~

~~The OIC Section will send a written acknowledgement of all Offer in Compromise applications to the taxpayer within 12 working days of receipt in the OIC Section. The district of control will receive a copy of the acknowledgement letter and other correspondence that indicates the status of an offer. The OIC Section will assume control of the account in the Automated Compliance Management System (ACMS) while the offer is under consideration, unless there are partners not involved in the offer. If the account has been transferred to the OIC Section through ACMS, the district should have submitted adequate documentation of the due date of payments. If a payment is delinquent, the account may be referred back to the district of control if collection action is warranted. The average length of time to process an offer and make a recommendation is approximately 180 days from receipt of an OIC application package, when all of the supporting documentation is in the OIC Section.~~

~~SECURING THE OFFERED AMOUNT~~ ~~772.050~~

~~The taxpayer is not required to submit a deposit of the offered amount at the time the application is submitted. The OIC Section will notify the taxpayer when the funds should be submitted. However, if funds are received with the application, they should be processed as an "OIC deposit" (Refer to CHRD Bulletin #53). The district will continue to accept, apply, and refund "OIC deposits." In many instances, funds for the offered amount are provided by relatives or friends not associated with the business entity. These deposits should be processed as third party deposits. The deposit of the offered amount in most cases will be available for refund if the offer is denied. The deposit will not be refunded if the payment comes from an equity loan where a lien subordination or partial release of lien was issued by the Board to accommodate the taxpayer. In these cases, lien subordinations and partial release of liens will be approved by the OIC Section Supervisor.~~

~~PROCESSING ACCEPTED OFFERS~~ ~~772.060~~

~~All funds must be received prior to forwarding a recommendation to management for approval to accept the offer. Recommendations to accept offers will be forwarded to the Chief, Taxpayers' Rights and Equal Employment Opportunity Division, and then to the Legal Division for review. Offers over $50,000 require the review and signature of~~

~~the Executive Director. Offers that are $5,000 or more are then forwarded to the Attorney General's office for final approval.~~

~~Once an Acknowledgment of Satisfaction of Judgment is filed with the court, the OIC process is complete. Adjustments will be made to the taxpayer's accounts receivable and liens will be released. For partnership or husband and wife co-ownership accounts where only one party has their offer accepted, a single party release of lien will be issued.~~

~~Court filing fees are required with the offered amount. The court filing fee should be posted separately as an "OIC deposit" to be later applied as "costs of collection."~~

~~For offers of $5,000 or more, the Attorney General's office will request the court filing fees from the taxpayer.~~

~~For sales and use tax accounts, the OIC Section will make a comment on Taxable Activity Registration (TAR) System and ACMS to indicate when a partner's offer has been accepted. The OIC Section will also initiate the process to remove the claimant from the active account record as of a specific end date. The taxpayer name will be retained in account history and comments. The district should make adjustments when taking collection action by removing the relieved taxpayer's name from FTB offsets, lien requests, levies, warrants, and any other collection remedies that would adversely affect the relieved partner.~~

~~PROCESSING REJECTED, DENIED, OR WITHDRAWN OFFERS 772.070~~

~~If the offer is rejected, denied, or withdrawn, the taxpayer will receive a letter with a copy to the district office. Any deposit that was posted may be applied to the liability at the written request of the taxpayer. The effective date of the payment will be the date the funds were received. If a third party has posted the deposit, the OIC staff must get written permission from the third party to apply the deposit. No credit interest will be granted on returned deposits.~~

~~In some cases, the OIC Section makes a recommendation to the district for account resolution, typically, a payment arrangement. The recommendation is based on information pertaining to the taxpayer's financial status. To finalize the arrangement, the district must obtain a completed Form BOE-407 from the taxpayer. The OIC Section notifies the taxpayer that the district may re-evaluate the payment agreement in six months.~~

~~APPEALS 772.080~~

~~There is no formal appeal process for offers in compromise that have been rejected or denied. However, the taxpayer may informally appeal a denied offer in compromise with the OIC Section Supervisor and the Taxpayers' Rights Advocate.~~

~~Director. For offers of $7,500 or less in reduction of tax, the Executive Director and Chief Counsel, or their delegates may compromise the liability. For offers greater than $7,500 reduction in tax, the Board may compromise the liability. For certain tax and fee programs, it is no longer necessary to use the courts to effect an OIC~~

~~For tax and fee programs that do not have the compromising statutory authority for the Board, a complaint must be filed with the court and a Stipulated Judgment accepting the offered amount to compromise the total liability is subsequently filed.~~

INNOCENT SPOUSE AND EQUITABLE RELIEF 773.000

INNOCENT SPOUSE 773.010

When a husband and wife or registered domestic partnership (registered with the Secretary of State) owe a tax/fee to the Board of Equalization, both parties are individually and jointly liable for the amount due when the account is registered as a co-ownership or a partnership. (Hereinafter, a reference to "spouse" shall also refer to a registered domestic partner.) However, California law recognizes that it is not always reasonable or equitable to hold a spouse liable for the liability when certain conditions exist. Innocent Spouse (IS) claims usually occur when spouses divorce, separate, or no longer live with one another. Generally, the requesting spouse claims that he or she was not involved with the business when the liability was generated. The burden of proof for this claim rests with the requesting spouse.

To seek relief, the claiming spouse must submit a written request for IS relief to the Board of Equalization within the later of:

1. One year from the date the Board of Equalization first made contact about the tax owed.
2. Five years from the due date of the return filed without payment of tax.
3. Five years from the date the liability became final.

The written request must contain:

1. The account number.
2. The period for which IS relief is requested.
3. The basis for the IS request. This includes documentation that establishes that the requirements below have been met.

The claiming spouse may meet this requirement by completing Form BOE-682A, *Request for Innocent Spouse Relief*, which is located in Publication 57, Innocent Spouse Relief. Form BOE-682A is also available on the Board of Equalization website (www.boe.ca.gov) or in any Board of Equalization office.

Relief or partial relief of liability may be granted if all the following qualifying conditions are met:

1. A liability is incurred under the Sales and Use Tax Law or the Special Tax Law administered by the Board of Equalization.
2. The liability is attributable to the non-claiming spouse.
3. The spouse claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the claiming spouse's circumstances would not have had reason to know of, the liability.
4. It would be inequitable to hold the claiming spouse liable, taking into account whether the claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.
5. The claiming spouse makes a timely request for IS relief in writing to the Board of Equalization.
6. At the time the spouse makes a request for IS relief, the claiming spouse:
   a. Is no longer married to, or is legally separated from, the non-claiming spouse.
   b. The claiming spouse is no longer a member of the same household.

The written request for IS relief or a completed Form BOE-682A, along with the supporting documents, is sent to the Board of Equalization, Offers in Compromise (OIC) Section (MIC:52), P.O. Box 942879, Sacramento, CA 94279-0052. The non-claiming spouse is notified of the IS request and is given the opportunity to provide documentation to support or counter the claiming spouse's request.

When the outcome of the claimant's IS request is determined, both parties will be notified by letter. The letter will explain how relief will affect the liability period(s) and will also address lien issues.[1]

If the claiming spouse receives relief as an Innocent Spouse, he or she may be entitled to a full refund of monies collected either voluntarily or involuntarily. However, the claiming spouse's written request for refund must be submitted within the statute of limitations for claims for refund. Therefore, when making a payment(s) the claiming spouse should be provided with Publication 117, *Filing a Claim for Refund*, and informed to submit a Form BOE-101, *Claim for Refund or Credit*, if applicable.

EQUITABLE RELIEF 773.020

A claiming spouse whose request for IS relief is denied may still be eligible for "Equitable Relief." Instructions for filing an Equitable Relief (ER) claim as an innocent spouse are contained in the denial letter sent to the claimant by the OIC Section.

The claimant has 30 days from the date of the denial letter to file a request for ER. If the claiming spouse does not respond within 30 days, the Board of Equalization assumes that the claiming spouse is not interested in pursuing equitable relief and the OIC Section will close the case file.

If the claiming spouse responds within 30 days and would like to pursue an ER claim, the OIC Section will examine the following factors to determine if it is inequitable to hold the claimant liable for the existing liability:

1. Would the claimant suffer an economic hardship if relief is not granted?
2. How much knowledge did the claimant have regarding the understatement or non-payment of the liability?
3. Did the claimant receive a significant benefit because the liability was not paid?
4. Is the liability attributable to the claimant or the non-claiming spouse?
5. Does the claimant have the legal obligation under a divorce decree or agreement to pay the liability?
6. Did duress or abuse towards the claimant contribute to the understatement or nonpayment of liability?
7. Did the claimant comply with the Board of Equalization's laws during the period of liability or subsequent periods?
8. Does the non-claimant's spouse or registered domestic partner support the request for relief of liability?

[1] IS cases may result in partial relief being granted on a particular period of liability. In these cases, the claiming spouse's name is not removed from registration and the claiming spouse may not receive a single party release of lien. Although the claimant may receive real property through a divorce settlement, the property may have been transferred without a clear title (quit claim). A single party release of lien may not remove the effects of our tax lien for the non-claiming spouse's ownership interest or for the community property interests.

If the OIC Section approves the claimant's request for equitable relief, both the claiming spouse and non-claiming spouse are notified. Should the claimant's request for equitable relief be denied, the claimant may file a request for reconsideration with the OIC Section. Taxpayers who are denied ER are entitled to reconsideration by the Board of Equalization; see Publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*.

If the ER claim is approved, the claimant is relieved of the unpaid liability; however, he or she is **not** entitled to a refund of payments collected.

SUBPOENA DUCES TECUM 774.000

AUTHORITY AND USE 774.010

Government Code section 15613 authorizes the Board of Equalization to issue a subpoena duces tecum if, in the course of conducting an audit or investigation of a taxpayer's business, the Board of Equalization representative is denied access to business records necessary to carry out his or her official duties.

INFORMATION NEEDED 774.020

The district administrator or Special Taxes Division administrator must authorize, and the appropriate Chief of Field Operations or Special Taxes Division Chief must approve, all requests for the legal staff to draft a subpoena duces tecum. The request must include:

1. The purpose for which the records are needed.
2. The date, time of day, and place for the person to appear.
3. The name and position title of the Board of Equalization representative before whom the person must appear.
4. A list of the records sought and the period of time to which the records relate.
5. The name, nature, and location of the business to which the records relate and the name, address, and relationship to the business of the person who has custody and control of the records.
6. A statement indicating the specific reason, or reasons, why examination of the records sought is material and necessary to the audit or investigation.
7. A statement showing that demands have been made for the records and the response to such demands.
8. Any additional information that will disclose the full circumstances of the situation requiring the use of a subpoena duces tecum.

This information is necessary to ensure against infringements of the taxpayer's constitutional guarantees relating to unreasonable search and seizure and due process of law. The subpoena and the declaration of materiality (under penalty of perjury) supporting the issuance of the subpoena must clearly identify the particular records being requested and specify the reasons why their contents are necessary and material to the work of the Board of Equalization in carrying out its duties. A sample request for a subpoena duces tecum is included at the end of this chapter.

PREPARATION AND SERVICE OF SUBPOENA AND DECLARATION 774.030

All requests to issue a subpoena must provide the legal staff with the above information and allow ample time for drafting of the documents, their service in the field, and a reasonable time for the witness to appear. Upon receipt of the necessary factual information and approvals, the legal staff will draft the subpoena duces tecum and the accompanying declaration of materiality.

Service of the subpoena on the taxpayer occurs by personally showing the original subpoena duces tecum to the person required to appear and, at that time, providing him or her with a copy of the subpoena together with a copy of the declaration of materiality. At the time of service, the person serving the subpoena will also execute a proof of service, in the form of a declaration under penalty of perjury, and attach it to the original subpoena. After serving the subpoena, the original subpoena, declaration of materiality, and the proof of service are sent to the Taxpayer Records Section for filing in the taxpayer's master file.

The California Right to Financial Privacy Act has two additional requirements when staff serves a subpoena duces tecum on a financial institution (that is a bank, savings and loan association, trust company, industrial loan company, or credit union) for the production of a customer's records. In addition to the normal service on the financial institution, the California Right to Financial Privacy Act requires that (1) the customer affected is also served with a copy of the subpoena and (2) that the customer shall have a ten-day period in which to notify the financial institution of his or her intention to move to quash the subpoena. (See CPPM 135.073.)

~~PREDECESSOR'S LIABILITY FOR SUCCESSORS' TAX 775.000~~

~~GENERAL 775.010~~

~~It is unlawful for a transferee (successor) of a business to operate the business without a permit issued in his/her name. Upon discontinuing or transferring a business, a permit holder shall promptly notify the Board and deliver his/her permit to the Board for cancellation. To be acceptable, the notice of transfer must be received in one of the following ways:"~~

~~a. Oral or written statement to a Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the Board, if lost, destroyed, or is unavailable for some other acceptable reason.~~

~~b. Receipt of the transferee's (successor's) application for seller's permit.~~

~~Notice to another state agency of a transfer does not in itself constitute notice to the Board.~~

~~Unless a transferor of a business notifies the Board of the transfer, or delivers his/her permit to the Board for cancellation, he/she is liable for taxes, interest and penalties (excluding fraud penalties) incurred by his/her transferee who with the transferor's actual or constructive knowledge uses the transferor's permit in any way, e.g., by displaying transferor's permit in transferee's place of business, issuing resale certificates showing the number of the transferor's permit thereon, or filing returns in the name of the transferor and under the latter's permit number. The liability shall continue and shall include all liability incurred up to the time the Board receives notice of the transfer.~~

~~When it is evident that the predecessor did not notify the Board of the business transfer, a request for the issuance of a Notice of Determination in the name of the predecessor should be made to the Headquarters Special Procedures Section supported by an explanation of the circumstances involved. The Notice of Determination, when issued, is a formal notice informing the predecessor of his/her liability, and collection action can be taken upon its finality.~~

~~If the predecessor claims that the Board has received constructive notice of transfer to the successor, the information in support of such claimed notice should be referred to the Headquarters Special Procedures Section.~~

~~Initial collection efforts should be made against the successor. However, if it appears that delaying action against the predecessor will jeopardize the collection of the liability, full collection efforts should be instituted against the predecessor.~~

~~DUAL DETERMINATIONS AGAINST PREDECESSOR FOR SUCCESSOR'S LIABILITY775.015~~

~~We have encountered various collection problems due to the lapse of time between the determination of liability against the successor and the dualing of the predecessor. For example, since there has been no record of the liability established on the predecessor's account at the time of close-out, the predecessor's security deposit, if any, will most likely have been refunded prior to the issuance of the dual determination, thus precluding the application of security to the liability. In addition, collection activities may be further impeded since there is the possibility that the predecessor's file, along with possible collection leads, may have been destroyed prior to the issuance of the dual determination. Additionally, the predecessor is not immediately informed of a tax liability that he/she shares equally with the successor.~~

~~When a predecessor's liability is involved, three determinations may result. First, a separate determination should be issued against the predecessor for any period that he/she actually operated the business. A second determination should be issued against the successor for the period during which he/she has operated the business. Lastly, a dual determination should be issued against the predecessor concurrent with the issuance of a determination against the successor. The dual determination should be issued to the date on which the Board first had~~

~~knowledge of the change in ownership. Periods beyond this date may not be included as they would not be legally assessable against the predecessor.~~

~~This procedure will fully implement Regulation 1699(e) that asserts: "...Unless the permit holder who transfers the business notifies the Board of the transfer, or delivers the permit to the Board for cancellation, he/she will be liable for taxes, interest and penalties (excluding fraud penalties) incurred by his/her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way;...."~~

~~While three determinations may result, only two audit reports need to be prepared. One audit report should be prepared for the period the predecessor actually operated the business and the other for the period the successor operated the business. The audit report for the successor should include a request for a dual determination against the predecessor up to the date that the Board first had knowledge that the business ownership had changed.~~

~~The front of Form BOE–414–A or Form BOE–414–B prepared for the period involving the dual determination must include the following notation in the lower portion of the analysis of measure section: "Attention Audit Review — Dual Determination Requested." In addition, the auditor will comment on the back of Form BOE–414–A or Form BOE–414–B giving the reason for the dual determination: the name, address and permit number of the predecessor against whom the determination is to be made; and the period for which the dual determination is requested.~~

~~Example:~~

> ~~DUAL DETERMINATION — Predecessor's liability for the period April 1, 1974, to June 30, 1976. Predecessor is John Jones and Harold Smith; 3216 Langdon Blvd., Van Nuys, CA 91405. Permit number is SR AC 13–362185.~~

~~A copy of Form BOE–414–A1 should be transmitted to headquarters with the audit reports. In addition, the audit reports should be transmitted to headquarters together.~~

~~Current practices applying to dual determinations will be adhered to. The only exception would arise if a 25% fraud penalty is applied to the successor's tax liability. Regulation 1699(e) specifically states that the predecessor is not liable for any fraud penalties. In this instance, the fraud penalty will be replaced by a 10% negligence penalty on the dual determination issued against the predecessor.~~

~~FIELD COLLECTIONS — RECEIPTS 778.000~~

~~RECEIPTS, FORM GA–602 778.010~~

~~An official receipt, Form GA–602, will be issued for all payments in any form collected by any representative in the field.~~

~~Receipts are prepared in sets of three with the original (white) delivered to the taxpayer. The yellow and white copies are retained by the Board. Ball-point pens should be used to write the receipts with care taken that all copies are legible.~~

~~Each representative assigned a receipt book is personally responsible for the book and all the receipts therein until they are used or the book and the remaining receipts are surrendered. Each receipt must be used in numerical sequence. For details on the procedures to be followed when a receipt book is lost or stolen, see Subsection 778.050.~~

~~ENDORSEMENT OF CHECKS 778.020~~

~~Immediately on acceptance of checks, money orders, cashier's checks, etc., in the field by any Board representative, the instrument will be restrictively endorsed by writing on the back "For deposit only to State Board of Equalization".~~

~~RECEIPT PREPARATION 778.030~~

~~Refer to Section 810.000 et.seq.~~

~~OVERNIGHT RETENTION OF FUNDS — FIELD REPRESENTATIVE 778.040~~

~~Cash collection in excess of $500 should not be retained by field representatives overnight. The action taken should be in accordance with the availability of the following sources for disposition or protection of funds:~~

~~a. Turn the money in to the office.~~

~~b. Purchase a cashier's check payable to the Board. (In many instances, there will be no charge when purchased from a branch of the Bank of America.)~~

~~c. Purchase a money order payable to the Board. (The cost of the cashier's check or money order will not be deducted from either the cashier's check or money order but will be paid from the representative's own funds. The tax representative will then claim reimbursement on his/her travel expense claim.)~~

~~d. Deposit the cash in a night depository providing the deposit bag and the deposit are sealed in the presence of two Board employees who will sign the agency copy of the deposit slip indicating that they have verified the coin and currency (cash) portion of the deposit.~~

~~In any instance not covered by items a, b, c, d, the field representative will take whatever action necessary to protect the cash collected. Under all circumstances, the representative will be expected to exercise good judgment and use every precaution to prevent loss.~~

~~LOST OR STOLEN RECEIPT BOOKS 778.050~~

~~Lost or stolen receipt books should be reported immediately by the representative to his/her supervisor. The district administrator should then direct a memorandum to the Headquarters Cashier advising of the loss or theft, with copies for the Chief of Field Operations and Deputy Director, Administration, and the Chief, Internal Security and Audit Division. The memo should name the person to whom the book was issued, the date lost, the inclusive numbers of the unused receipts, a description of conditions leading to the missing book and a recommendation by the administrator on how future occurrences of this type could be avoided.~~

~~The Headquarters Cashier will then make this information known to the Board staff and ask them to be alert for receipts bearing the missing numbers.~~

~~MISCELLANEOUS 799.000~~

~~REWARD PROGRAM 799.005~~

~~Under the Tax Penalty Amnesty Legislation of 1984 (AB 3230, Chapter 1490, effective 9/14/84), the Board was granted authority to establish a reward program for information leading to the collection of unreported or underreported sales and use taxes. In 1984, the Board considered and deferred the matter of establishing a reward program. In 1987, the Board again considered this matter and the staff was directed to develop a package that would enable them to implement the program. The resultant package consisted of a proposed reward regulation, an application for the reward, and procedures for implementing the program. After reviewing this package, the Board again decided to defer establishing this program because of the lack of sufficient funds. The Board again discussed this issue in 1991 with no action taken to implement the program.~~

~~Assembly Bill 3665 (Chapter 671, Statutes of 1992) amended Section 7060 of the Revenue and Taxation Code, providing, in part, that rewards paid pursuant to this section shall be paid from amounts appropriated by the Legislature for that purpose. No funds have been appropriated to date.~~

~~If an individual indicates he or she has information that would enable the Board to recover sales tax revenues, they should be advised that while the statutes do provide for a reward program, it has not been funded by the Legislature. However, attempts to obtain the information should be made by appealing to that person's duty as a good citizen and equal treatment/payment of taxes for all.~~

~~Payment Application Documents 799.015~~

~~The following procedures are to be used when providing payment application information to the district office cashier:~~

~~A. USING PAY BD PRINTOUTS~~

1. ~~Type DIF DA and account number and press enter.~~
2. ~~Type "T" next to each difference where a payment will be applied and press Enter.~~
3. ~~Press F17 to Take.~~
4. ~~Confirm the effective date of payment.~~
5. ~~Input the remittance amount and payment amount(s).~~
6. ~~Press Enter.~~
7. ~~Print screen and submit to cashier.~~

~~This procedure can be utilized for as many differences as exist on an account. To accomplish this, the user places a "T" next to each difference and then presses enter. The selected differences will be highlighted and the "Differences Selected for Payment" field will display the total number of differences selected. Pressing F17 will take the user to the PAY BD screen and display all differences that were selected at the DIF DA screen.~~

~~This procedure should also be used when a Fixtures and Equipment Assessment has already been created and the difference exists on the system. A BOE–1043 should NOT be prepared and sent to HQ Cashiers.~~

~~B. USING DIF DA PRINTOUTS~~

1. ~~Print DIF DA screen.~~
2. ~~Write the Notice ID, Difference ID or FO ID on the lower half of the screen print.~~
3. ~~Give to the cashier.~~

~~C. USING NOTICES~~

1. ~~Write the effective date, and amount of payment in the appropriate boxes.~~

2. ~~Give the Notice to the cashier.~~

~~PAYMENT FROM SECURITY~~

~~If the payment is from security, print in large bold letters across any of the above Payment Application Documents "PAID FROM SECURITY".~~

~~PAYMENT INTENDED FOR SPECIFIC DIFFERENCE NOT YET CREATED~~

1. ~~Type DIF DA and account number and press Enter.~~
2. ~~Print screen.~~
3. ~~Write the remittance amount, effective date, and either the FO ID, if available, or the words "Apply to A/R" on the printout if no difference exists (this will be unapplied). If a difference does exist, a FO must be created to avoid application of payment to existing differences.~~

~~Payments applied at the FO level will have an automatic hold to avoid application to any existing differences. Payment will then be matched when the difference is created.~~

~~REINSTATEMENT AFTER REVOCATION~~

~~Prepare BOE–400–REIN and include the revocation period code (MMYY) at the top of the document, and give to the cashier.~~

~~ADVICE OF MISCELLANEOUS RECEIPTS~~

~~Prepare GA–904 and include Difference ID, if available, for collection costs at the top of the document. If the remittance amount is greater than the collection costs balance, include an additional transmittal document specifying the difference(s) to apply the remainder of the payment(s).~~

~~FORM BOE–424, ADVICE OF PAYMENT~~

~~Form BOE–424, Advice of Payment should be used only when the IRIS system is off-line for an extended period. If a Notice ID, or Difference ID is known, it should be written at the top of the form. If no ID is known, write "NO DOCUMENT" on the top of the form. Payments will be applied at the account level. If the ID becomes known before the end of the cash day, the BOE–424 should be replaced with the proper transmittal document shown above.~~

~~STANDARD RULE FOR APPLICATION OF PAYMENT 799.030~~

~~The standard rule for application of payment is in the following sequence:~~

1. ~~As directed by the taxpayer at the time of voluntary payment.~~
2. ~~The reimbursement of advance fees and collection costs - after being billed. In the case of warrants, advance fees will be on AR from inception, but won't be eligible to receive payments other than a warrant payment, until billed. The advance fees and collections costs won't be billed until we get the warrant back (and funds) from the sheriff.~~
3. ~~Self-assessed tax liabilities which have been established but are not yet due.~~
4. ~~Tax liabilities on non-final determinations which have not been dualed, excluding petitioned liabilities.~~
5. ~~Tax liabilities on non-final determinations which have been dualed, excluding petitioned liabilities.~~
6. ~~Most current delinquent tax liability (by billing date), which has not been dualed or successored.~~
7. ~~Delinquent tax liability, which has been dualed.~~
8. ~~Delinquent tax liability, which has been successored.~~
9. ~~Most current delinquent interest liability (by billing date) for which the taxpayer is primary.~~
10. ~~Delinquent interest liability, which has been dualed.~~
11. ~~Delinquent interest liability, which has been successored.~~

12. ~~Most current delinquent penalty liability (by billing date), for which the taxpayer is primary.~~
13. ~~Most current penalty liability, which has been dualed.~~
14. ~~Most current penalty liability, which has been successored.~~
15. ~~Non-final petitioned liabilities.~~
16. ~~As directed by the district.~~
17. ~~Headquarters Special Procedures Section may, in accordance with Board policy and Civil Code §1479, change the application as provided in numbers 2 through 15 above.~~

~~Security payments will be applied first to establish liabilities designated as "pending security". Any excess will be applied in accordance with the standard rule for application of payments.~~

~~APPLICATION OF PAYMENTS – PRIMARY AND SECONDARY ACCOUNTS. 799.035~~

~~A Primary account is where the Difference originates. The Secondary account(s) is based on the Difference from the Primary account. For example:~~

- ~~A Primary account is the corporate account and the Secondary account is the dual determination on the corporate officer. If more than one corporate officer is billed, then more than one Secondary account would exist.~~
- ~~A predecessor account is the Primary account. Any billed successor(s) would be the Secondary account(s).~~
- ~~A partnership account is the Primary account. Any partner(s) not named on the original application could be billed on Secondary account(s).~~

~~When a payment is received for a Difference where Primary and Secondary accounts exist, the payment should be applied to the taxpayer's account that made the payment. For example, if a payment is made by a successor (secondary account), the money should be applied to the successor's Difference, not to the Difference on the predecessor's (primary) account. Improper application of the money could result in the taxpayer not receiving proper credit.~~

~~REFUNDS OF EXCESS OR ERRONEOUS AMOUNTS RECEIVED 799.040~~

~~The Board may receive funds from an enforced collection action that are in excess of the liability due because the funds are determined to be remitted in error or otherwise not due. Such instances include, but are not limited to:~~

~~· Funds from an escrow for an account where the liability was paid but a release of lien had not been recorded.~~

~~· Amounts billed, such as a successor's or predecessor's liability, innocent partner or spouse, which are determined not to be due.~~

~~· Funds not subject to or exempt from levy, such as a vacation trust fund or amounts over the maximum allowed by law for a wage garnishment.~~

~~When a taxpayer files a claim for refund with the district office for funds that have been paid to the Board, both a recommendation from the Principal Compliance Supervisor for approval or denial and the taxpayer's written refund request must be sent to the Refund Section in Headquarters for processing.~~