

# Taxpayers' Rights Advocate's

*Annual Report 2008-2009*

## Property and Business Taxes

BOARD MEMBERS

**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

# TAXPAYERS' RIGHTS ADVOCATE OFFICE

State Board of Equalization  
450 N Street MIC: 70  
PO Box 942879  
Sacramento, CA 94279-0070  
Toll-free: 888-324-2798 • Fax: 916-323-3319  
[www.boe.ca.gov/tra/tra.htm](http://www.boe.ca.gov/tra/tra.htm)

## Todd C. Gilman, Advocate

916-324-2798

Laureen Simpson, Lead Technical Advisor

916-445-0218

Patricia Rochin, Tax Advocate Technician

888-324-2798

Carol Kearney, Office Assistant

888-324-2798

## Property Tax Technical Advisors

Mark Sutter

916-324-2797

Laura Bowman-Dirrim

916-445-8267

## Business Taxes Technical Advisors

Rhonda Krause

916-445-8321

Kenneth Barrow

916-324-2681

Brian Fikes

916-323-2103

Will Fikry

916-319-9756

Kathleen Silva [through January 2009]

## Tax Appeals Assistance Program

Craig Shaltes, Senior Tax Counsel

916-324-2216

Michael Larkin, Tax Counsel

916-324-8788

Richard Carpenter, Program Coordinator

916-319-9199

---

Copies of this publication may be ordered from the Taxpayers' Rights Advocate Office by calling 888-324-2798, by writing to the address above, or by downloading from the website shown above.

---

# LETTER TO THE EXECUTIVE DIRECTOR

January 2010

Mr. Ramon J. Hirsig  
Executive Director

Dear Mr. Hirsig:

I am pleased to present the Taxpayers' Rights Advocate's 2008-09 Property and Business Taxes Annual Report. This report:

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

As the economic conditions of California continue to change, we look forward to developing viable solutions to the challenging issues facing California taxpayers as we seek more creative ways to better serve our customers. We look forward to continuing to work with staff and the public to ensure the rights of individuals are protected while the interests of the state are served.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd C. Gilman". The signature is fluid and cursive, with a large initial "T" and "G".

Todd C. Gilman  
Taxpayers' Rights Advocate

---

## Letter to the Executive Director

## Taxpayers' Rights Advocate Office

Vision	3
Mission	3
Goals	3
Profile	4
Public Outreach	6
Contacts Received in 2008-09	7
Major Project in Process	8

## Property Tax Issues

Case Resolution	11
About the Property Tax Case Statistics—by County	11
About the Property Tax Case Statistics—by Case Type	11
Examples of Property Tax Cases	12
Other Activities	12

## Business Taxes Issues

Case Resolution	17
About the Business Taxes Case Statistics	17
Examples of Business Taxes Cases	19
Issue Resolution	21
Accomplishments—Changes Implemented, Concerns Resolved	22
Work in Process—Issues Identified	24

## Tax Appeals Assistance Program 31

## Appendixes

Appendix 1— Harris-Katz California Taxpayers' Bill of Rights	35
Appendix 2— Morgan Property Taxpayers' Bill of Rights	44
Appendix 3— Outcome of Business Taxes Cases	47
Appendix 4— Most Common Issues in Business Taxes Cases	48

---



**TAXPAYERS' RIGHTS  
ADVOCATE OFFICE**

## VISION

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

## MISSION

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

## GOALS

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

---

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

## PROFILE

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

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* (see Appendix 1) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. Approximately 857,000 taxpayers are currently provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax programs administered by the BOE, currently affecting approximately 235,000 taxpayers in 23 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

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

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

### Legal Responsibilities of the Taxpayers' Rights Advocate

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

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

### How Legal Responsibilities Are Fulfilled

The Taxpayers' Rights Advocate (TRA) Office fulfills its legal responsibilities by taking the following actions:

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

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there appear to be rights violations in either the audit or compliance areas. Taxpayers also call to convey their frustration or to seek assurance or confirmation that staff action is lawful and just. The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps to eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff. When a taxpayer or BOE employee alleges discrimination or harassment, TRA Office staff work with appropriate BOE management to resolve the complaint. The BOE is committed to a discrimination/harassment-

free environment and the Advocate ensures that BOE staff are properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment toward BOE staff is not tolerated and is appropriately addressed.

### ***Monitors programs and recommends policy or procedural changes***

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

### ***Ensures information and guidance provided is easy to understand***

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

### ***Coordinates Taxpayers' Bill of Rights hearings***

The TRA Office is responsible for making arrangements, in cooperation with the Board Proceedings Division, for yearly property tax and business taxes hearings in both Northern and Southern California, including publicizing the hearings. Immediately after the hearings, the TRA Office works with appropriate areas of the BOE or counties to address issues and concerns conveyed to the Board Members by presenters and provides follow-up reports to the Members when requested.

## **Cooperation with Advocates of Other Government Agencies**

The BOE's Advocate meets on a regular basis with the Advocates from the Employment Development Department, the Franchise Tax Board, and the Internal Revenue Service to discuss common problems and systemic issues facing California taxpayers. These meetings, along with the maintenance of close working relationships among the advocate offices, have allowed all the agencies serving California taxpayers to provide better customer service. California taxpayers benefit from the TRA Office's ongoing relationships with the other California advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the advocates.

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

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

### ***Business taxes***

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

### Property tax

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

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

## PUBLIC OUTREACH

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

### Publications and Standard Correspondence

- Information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights is contained in publication 70, *Understanding Your Rights as a California Taxpayer* (November 2005), which is available in all BOE offices and on the BOE's website.

- Publication 145, *California Taxpayer Advocates—We're Here for You* (April 2007), provides contact information for the Advocates from the Board of Equalization, Franchise Tax Board, Employment Development Department, and Internal Revenue Service. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center, [www.taxes.ca.gov](http://www.taxes.ca.gov).
- The TRA Office's toll-free number is printed on the BOE's permits and licenses.
- An article about the services provided by the TRA Office is published each year in the newsletters provided to taxpayers.
- Contact information for the TRA Office is included on some standard audit letters sent to taxpayers.

### Internet and Telephone Contacts

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

### Public Events

The public learns about the services of the TRA Office at the following types of events. Unfortunately, due to the statewide budget crisis, the TRA Office may be curtailing participation in such events in fiscal year 2009-10 as indicated below.

- **Board hearings:** The Advocate or TRA Office staff is present and available to answer questions or assist taxpayers arriving for their appeal hearings before the Board Members.

Publications 70 and 145 (described on page 6) are also available to those attending the Board hearings. Due to BOE budget constraints in FY 2009-10, rather than incurring the expense of traveling from Sacramento, the Advocate will be available to assist taxpayers at the Culver City Board hearings by phone, thanks to the cooperation of the Board Proceedings Division staff and the Culver City Office.

- **Board Member-sponsored events:** The Advocate or designee attends all of the Small Business Fairs and Nonprofit Seminars throughout the state. At these Board Member-sponsored events, the TRA Office interacts with business owners and charitable organization representatives, makes a presentation, and provides written material about the TRA Office. Due to BOE budget cuts, the Board Members canceled some events planned for FY 2009-10, and directed staff to develop and expand web-based outreach tools and techniques. However, taxpayers are advised to monitor the BOE's outreach calendar for possible upcoming events.
- **Non BOE-sponsored events:** Direct contacts with the public are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the Professional Business Women's Conference, the IRS Nationwide Tax Forum, and the California Small Business Day in Sacramento. The BOE Advocate also partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals. A recent example is a presentation at the American Payroll Association Conference. In FY 2009-10, the TRA Office intends to limit its participation in non BOE-sponsored events to reduce travel expenses.

## CONTACTS RECEIVED IN 2008-09

TRA Office cases totaled 1,001 in fiscal year 2008-09, a three percent increase from the 969 cases last fiscal year. This year's composition of cases changed, following last year's trend toward a higher percentage of property tax cases: Last year the TRA Office caseload was comprised of 72 percent business taxes cases and 28 percent property tax cases; this year the mix was 64 percent business taxes cases and 36 percent property tax cases.

Continuing the pattern of the past three years, the Internet and BOE publications accounted for the largest sources of referrals for all TRA cases. In fiscal year 2008-09, taxpayers indicated they learned about the TRA Office via the Internet in 28 percent of the business taxes cases and in 22 percent of the property tax cases. BOE publications were the sources of referrals in 14 percent of the business taxes cases and in 20 percent of the property tax cases. Other important means by which taxpayers learned about the TRA Office included staff of BOE Headquarters units (11 percent of business taxes cases) and county assessors (24 percent of property tax cases—up from 14 percent last year).

Telephone call volume increased again this year. The average number of telephone calls per month (not including calls that resulted in new cases) increased nearly 18 percent, from 669 calls per month in fiscal year 2007-08 to 787 calls per month in fiscal year 2008-09. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their disagreements with the BOE through normal channels. Some callers have questions or concerns that need to be handled by another state agency such as the Franchise Tax Board. TRA Office staff responds by directing the

caller to the appropriate BOE section, individual, or information resource such as the BOE website, or to the appropriate state agency.

## MAJOR PROJECT IN PROCESS

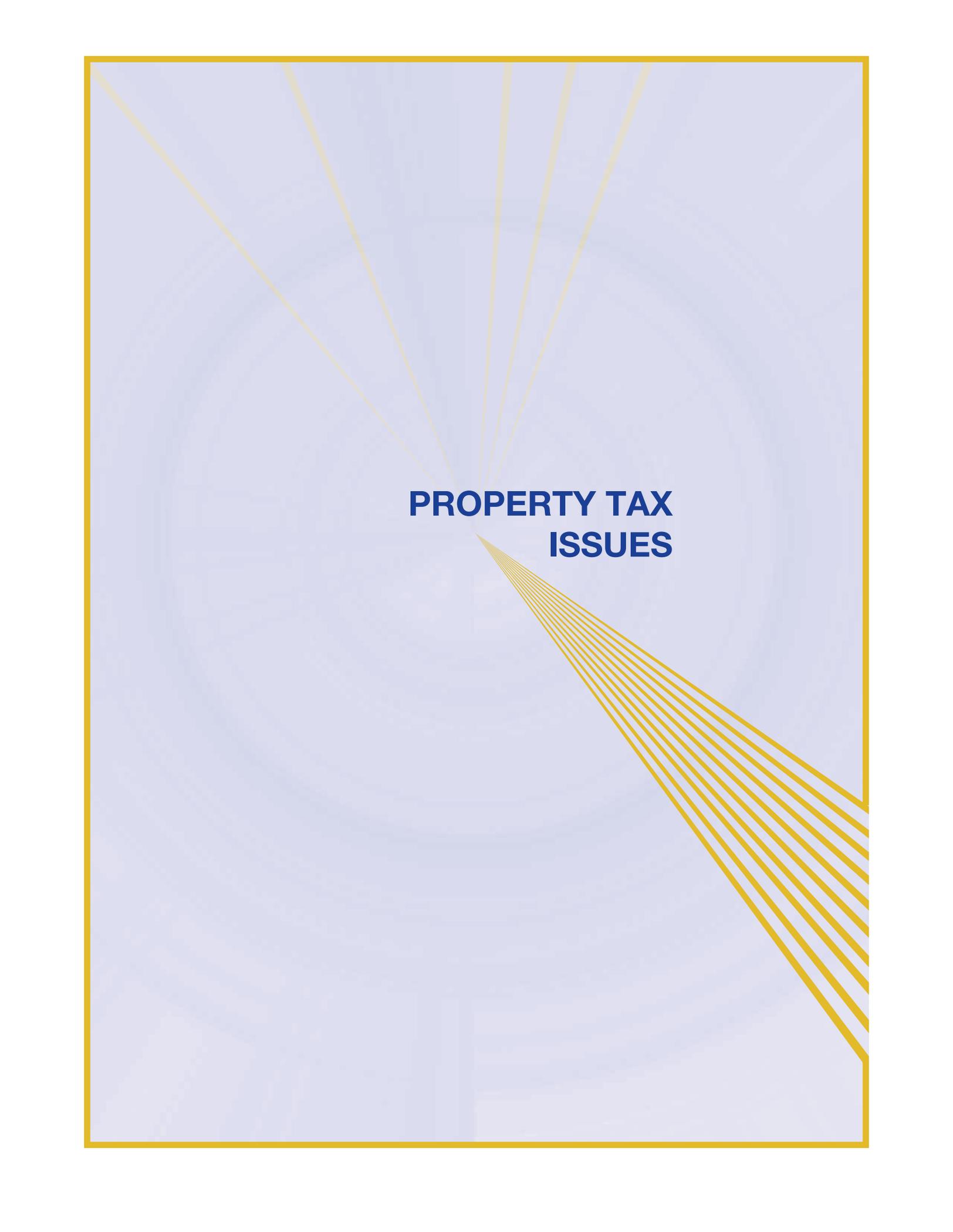
### Training BOE Staff on Safeguarding Taxpayers' Rights

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

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

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

In FY 2008-09, the TRA Office drafted a Power Point presentation to use in training sessions. This tool was used by the Advocate in August 2009 as he spoke to new BOE attorneys about the TRA Office's responsibilities. Unfortunately, due to BOE budget cuts connected to California's current economic challenges, it is not likely that the TRA Office's plans for providing statewide staff training will be carried out in FY 2009-10. However, the TRA Office intends to be prepared to begin training sessions as soon as economic conditions allow, and hopes to start the training program some time in FY 2010-11. In the meantime, the TRA Office is looking into the possibility of developing web-based training to enable BOE staff to view the presentation online.



**PROPERTY TAX  
ISSUES**

## CASE RESOLUTION

Property owners throughout the state contact the Taxpayers' Rights Advocate (TRA) Office for assistance and information. Although primary contact is with individual taxpayers, cases also originate from contact with attorneys, brokers, lenders, title and escrow companies, and government officials such as assessors, tax collectors, recorders, auditor-controllers, county supervisors, Board Members, and legislators.

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

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

The TRA Office worked 361 property tax cases in fiscal year 2008-09 compared to 272 cases last fiscal year, a 33 percent increase. The office tracked the number of cases by county of origin and found for the most part, the size of the county tends to determine the number of cases from each county.

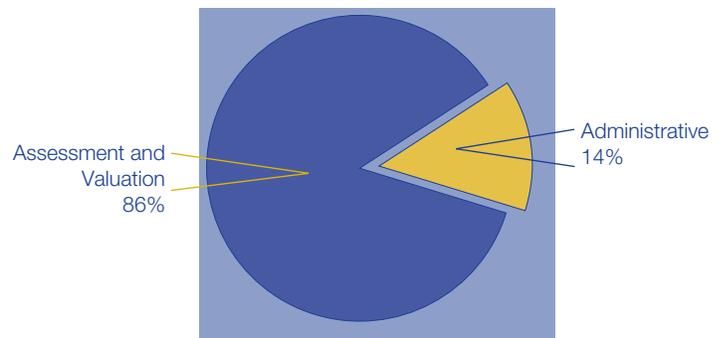
Ten counties represented 68 percent of the cases while those ten counties represent 70 percent of the state's population. Those counties were Alameda, Los Angeles, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, and Santa Clara. Most counties had at least one contact with the TRA Office.

The overwhelming majority of property tax cases are resolved in conjunction with local county assessors, tax collectors, and assessment appeals boards. The remaining cases are resolved through state agencies such as the BOE or State Controller's

Office. Often multiple offices are involved in the resolution of taxpayers' cases.

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

In fiscal year 2008-09, 86 percent of property tax cases were in the assessment and valuation category which includes topics such as value reductions, changes in ownership, appraisal methodology, exclusions, exemptions, assessment appeals, new construction, general property tax information and definitions, and actual enrollment of values. The administrative category, making up the remaining 14 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.



The TRA Office tracks specific issues in property tax cases. Issues related to the decline in the real estate market generated about 190 cases of the 361 total. This represented over 53 percent of the reasons taxpayers contacted this office.

Two specific change in ownership exclusion issues, base year value transfers between parents and children and base year value transfers for senior citizens (Revenue and Taxation Code sections 63.1 and 69.5 respectively) accounted for only 12 percent of the total cases in fiscal year 2008-09 compared to 22 percent of the total caseload last fiscal year. This reduction in percentage is due to the increase in the cases dealing with the declining real estate market.

## Examples of Property Tax Cases

The following cases illustrate how taxpayers' issues are resolved by the TRA Office staff and indicate the range of services provided by the property tax technical advisors.

### *Penalty for not filing a claim form that did not exist*

The owners of a college bookstore were penalized for not filing an exemption claim form that would exclude them from property tax. The county had insisted the taxpayer file a form though it was not the appropriate form for the exemption in question. Since the form was not applicable to their specific exemption, and no other claim form was available, the claim form was significantly modified by the owners and then timely filed. The county rejected the claim form and penalized the owner because the wrong form was filed.

The TRA Office was contacted and asked how a penalty could be levied for not filing a claim form that did not exist. The technical advisor contacted the county and discovered that, in fact, there was not a specific claim form for this taxpayer's purpose and the county reversed the penalty. A claim form was already being developed by the BOE but it was not yet available to the counties at that time.

### *Communication breaks down between taxpayer and assessor*

Sometimes communication between taxpayers and assessors' offices reach a point where neither side is able to make progress towards a solution. The TRA Office was contacted by a taxpayer and later by the assessor to see if this office could assist with the needed communication. The technical advisor was informed by the assessor that this taxpayer was upset with the assessor's staff. The taxpayer informed the technical advisor that the assessor's staff was not listening to his concerns. The technical advisor discussed the issue with the taxpayer and determined that his valuation concern was reasonable and that he needed to resolve it through the assessment appeal process.

The TRA Office assisted the taxpayer with the process of preparing for the assessment appeal hearing by explaining what information was needed and how it should be displayed for ease of understanding by the assessment appeals board. TRA Office participation assisted this taxpayer in receiving a fair hearing.

## OTHER ACTIVITIES

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

### **Completion of Instructional Video for Assessment Appeals**

This year the video entitled "Your Assessment Appeal" was completed and distributed to all 58 counties for use on their websites and the BOE's website. The purpose of this video is to assist taxpayers that are considering filing an assessment appeal. It covers the process from beginning to end and is designed to give the taxpayer enough information to be able to present his or her best case before the local board of equalization or assessment appeals board. The video stresses the need for continuous contact with the assessor's office before and during the appeal process.

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

## Development of Instructional Video for Property Tax Bills

With the success of the video on assessment appeals, the TRA Office began the process of developing a video that will explain property tax bills to the public. This video is being developed with input from all 58 counties, the Department of Real Estate, California Association of Realtors, State Controller's Office, and the California Treasurer Tax Collector Association. However, further production may be delayed due to the current budget constraints.

## In-Person Contact with County Officials

TRA Office staff attended California Assessors' Association (CAA) conferences this year to maintain contact with the 58 assessors and their key staff. The confidence and trust developed through these relationships allows the Advocate and his staff to more effectively assist all taxpayers with their local issues.

## Dissemination of Information

Real estate professionals need prompt information on various property tax issues. The TRA Office submitted articles to the quarterly newsletter of the Department of Real Estate, which is distributed to over 539,000 real estate professionals. These real estate professionals are involved in the majority of real estate transactions and if they have more knowledge of property taxation issues, taxpayers are better served. The TRA Office will continue to look for additional outreach opportunities in the future with other professional groups.

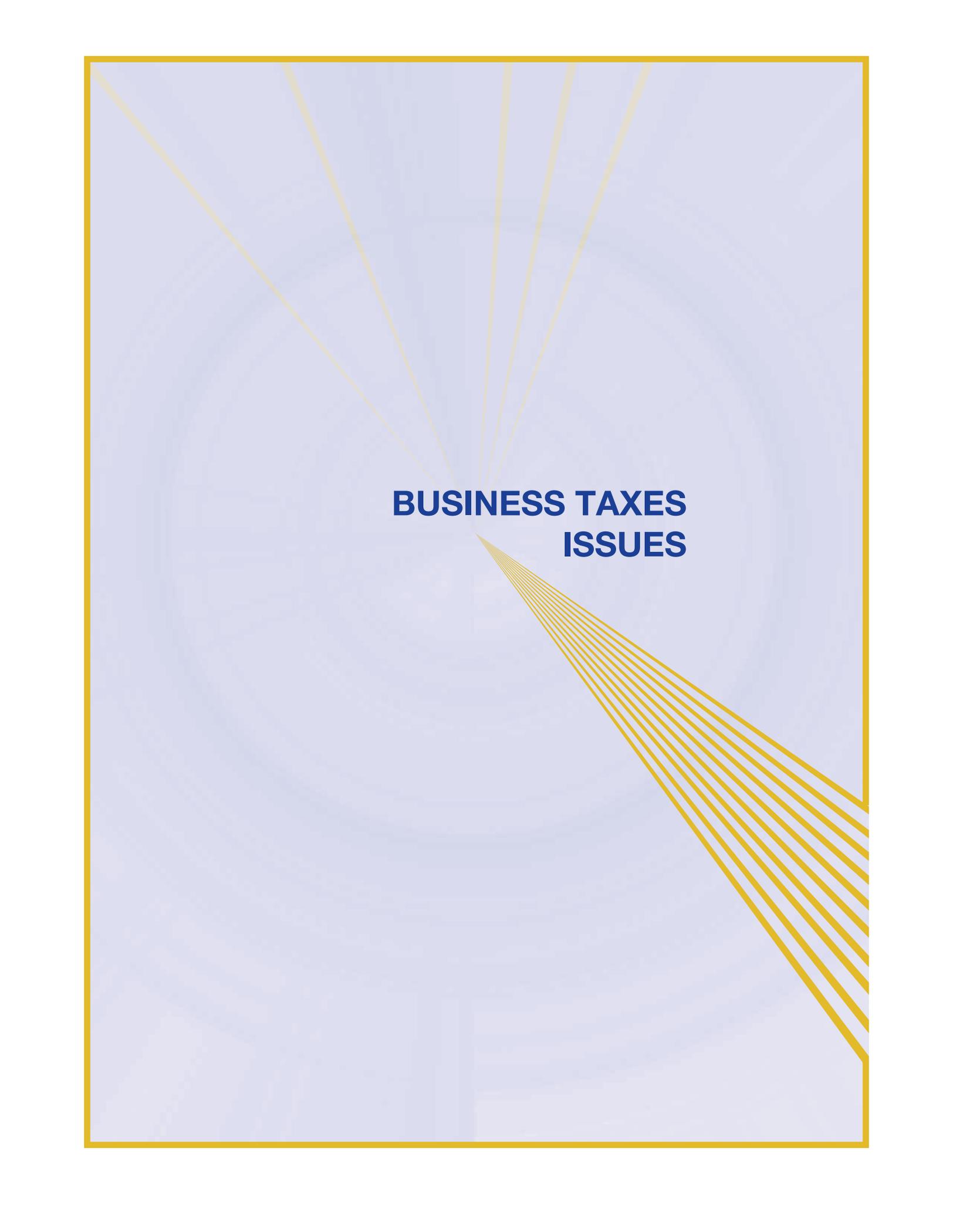
## Review of BOE-Prescribed Forms

The TRA Office participates in an annual review of BOE-prescribed forms used by all counties. As part of this process, TRA Office staff ascertain if taxpayers are having trouble with the various forms and, if so, can then make recommendations on improvements.

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

## Review of County Websites

The TRA Office continues to examine county websites for the breadth and depth of information that taxpayers need. Since laws and procedures are ever-changing, this office's review process is ongoing. By gaining knowledge of what information is available, the TRA Office is better able to direct taxpayers to the resource that will most efficiently satisfy their information needs. Most counties have websites, and we hope to see the remainder of the counties employ this indispensable tool for providing information in a manner that allows the assessors to make better use of their diminishing resources.



**BUSINESS TAXES  
ISSUES**

## CASE RESOLUTION

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

The Taxpayers' Rights Advocate and the TRA Office's business taxes technical advisors fulfill the TRA Office's most important role of bringing resolution to taxpayer problems. The Advocate and the advisors have a firm background in BOE programs, policies, and procedures. This background enables them to advise taxpayers of their rights and obligations, explain BOE policy, and seek out creative and appropriate solutions that are acceptable to taxpayers and BOE staff. The TRA Office's independent status allows the Advocate and the advisors to focus on assisting taxpayers within the framework of the law with the cooperation of BOE management and staff.

Following is information regarding the business taxes cases the TRA Office worked on this year and some examples of cases that illustrate the services this office offers its customers.

### About the Business Taxes Case Statistics

During fiscal year 2008-09, the TRA Office recorded 640 new business taxes cases, an eight percent decrease from last year.

#### Outcome of business taxes cases

Appendix 3 provides important information about the cases, categorized by office of origin. A specific

BOE field or Headquarters office or the Franchise Tax Board was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "TRA Office" was normally designated as the office of origin in cases where individuals wanted general information and guidance regarding a BOE process or procedure or if the case was a result of testimony at a Taxpayers' Bill of Rights hearing. The TRA Office tracked broad issue types (see below) and critical outcomes of the cases.

**Customer Service Concerns.** The TRA Office closely monitors the number and type of customer service concerns that taxpayers bring to its attention. The Advocate and TRA Office staff view the manner in which taxpayers are treated as an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers' Bill of Rights. Customer service concerns that are tracked include:

- *Communication:* providing misinformation, not acknowledging a taxpayer's concerns, not referring the taxpayer to a supervisor when requested, failing to answer specific taxpayer questions, or not providing information or a notice;
- *BOE Delay:* slow response to an inquiry, or delay in issuing a refund or resolving the taxpayer's case;
- *Staff Courtesy:* complaint about staff demeanor, manner of handling the taxpayer's case, or comments made by staff; and
- *Education:* lack of information provided regarding tax law, BOE policy, or BOE procedures; or staff training issues.

The number of customer service complaints increased this year but still remains relatively low (see Appendix 3). Seven percent of the total contacts in fiscal year 2008-09 expressed concerns

related to customer service, compared with five percent in fiscal year 2007-08 and two percent in 2006-07, which may indicate the need for staff training.

*Note:* The customer service statistics were captured based solely on the taxpayers’ statements or impressions of their situations. Therefore, these statistics do not necessarily indicate verified problems but reflect the taxpayers’ perception.

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

***Taxpayer inquiries cover a wide range of issues***

**Types of Cases.** Business taxes cases are sorted broadly into “compliance,” “audit,” or “other” categories. Of the 640 cases opened, 63 percent were compliance cases, 13 percent were audit cases, and 24 percent were categorized as “other,” such as consumer use tax exemptions, general information, and Franchise Tax Board matters.

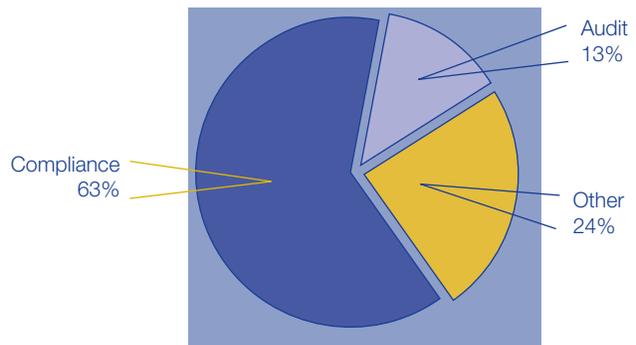
**Specific Issues Leading to TRA Office Contacts.** Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office.

The top three issues in each case were tracked and the 20 most common are displayed in Appendix 4.

Not surprisingly, many of the business taxes cases include the need for information and guidance as one of the issues. Taxpayers often seek information on a particular procedure or process or to determine if an action taken by BOE staff was appropriate and in compliance with the law and BOE policy. TRA Office staff provide guidance by recommending specific courses of action. The remaining most common issues in descending order were: Levy, TRA Intervention Requested, Questioning Liability, Payment Plan, Policy/Procedure, Ownership/Dual/Successor, Audit Procedures, Refund, Tax Collection, Lien, Bank Fee Reimbursement, Revocation, Returns, Penalty, Offers in Compromise, Appeals, Interest, Consumer Complaint, and Legal Issue.

***How taxpayers were referred to the advocate office***

In an effort to improve public service, the TRA Office attempts to identify the source of referrals. Repeating a familiar pattern, this year the Internet and BOE publications were the largest sources of referrals, with the Internet accounting for 28 percent of the business taxes cases, and BOE publications accounting for 14 percent. Other important sources of referral were BOE Headquarters staff (11 percent), field office staff (9 percent) and Board Members (6 percent).



## Examples of Business Taxes Cases

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

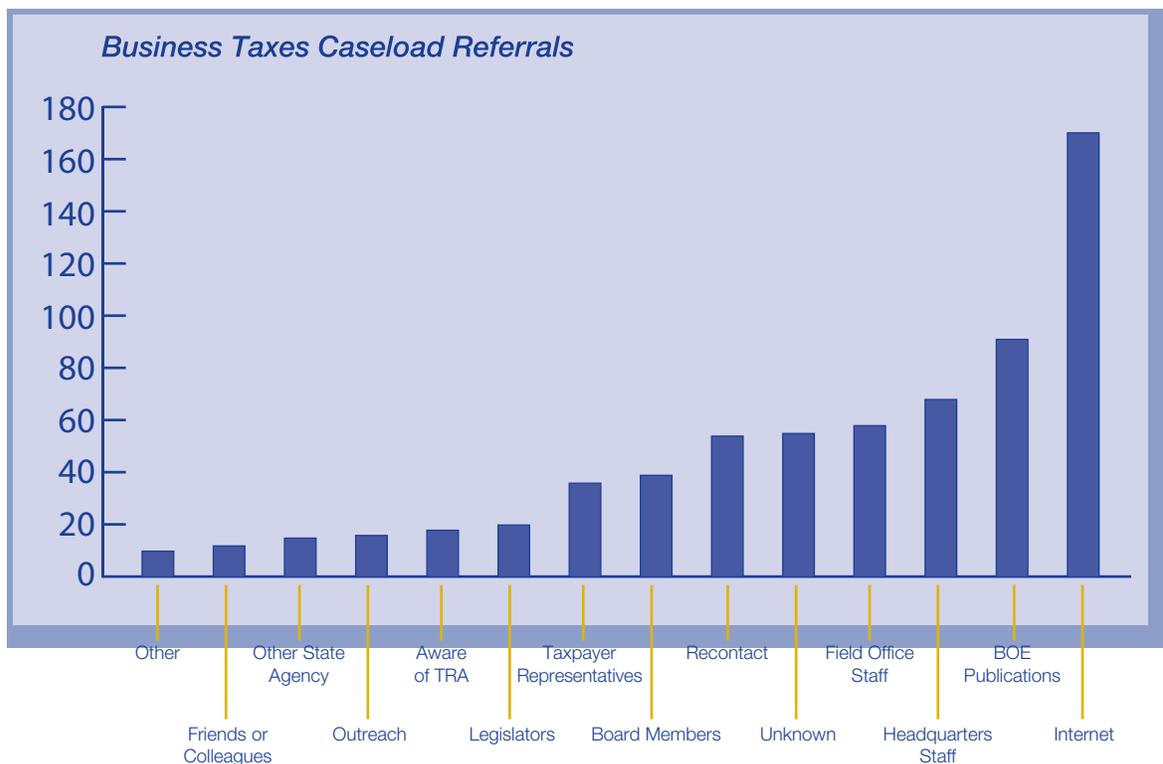
### *Taxpayer's representative was not provided a copy of Notice of Determination*

**Issue.** The TRA Office was contacted by a taxpayer's representative, who stated he worked with BOE audit staff on his client's sales and use tax audit. He and the taxpayer met with the audit staff and made it clear that the taxpayer did not concur with the audit findings. The representative had been waiting to receive the final audit report and Notice of Determination, but heard nothing further until his client was contacted by BOE collection staff regarding the outstanding audit liability. When he complained that he did not have the opportunity to file a timely Petition for Redetermination for the taxpayer, he was told the taxpayer must pay the liability and file a claim for refund. Shortly

thereafter, a BOE Notice of Levy sent to the taxpayer's bank captured the entire amount of the liability. This impacted the taxpayer's ability to pay its current quarter's sales tax liability.

**Resolution.** The TRA Office's research disclosed that the representative met with or spoke to the auditor and auditor's supervisor on a number of occasions during the course of the audit, the representative signed a Waiver of Limitation on behalf of the taxpayer pursuant to a Power of Attorney signed by his client, and the auditor was aware that the taxpayer did not agree with the audit findings. There is no record of a copy of the final audit report or Notice of Determination (NOD) being mailed to the representative. A Petition for Redetermination was not filed.

District audit management acknowledged that a copy of the NOD was not mailed to the representative, but stated the NOD was sent to the taxpayer at the address of record. TRA Office staff pointed out the failure to comply with BOE policy



as stated in an April 2006 memorandum from the Tax Policy Division in regard to correspondence with taxpayer representatives.<sup>2</sup> The memorandum states in part, “. . . when a representative is involved with an audit, petition, or claim of refund, there is an expectation that the representative will receive copies even though a specific request has not been made. When in doubt, staff is to confirm with the taxpayer and/or representative that copies are to be sent to the respective representative.”

TRA Office staff advised the representative to submit a petition, which would be considered an Administrative Protest (since the deadline for a timely Petition for Redetermination had passed), and confirmed receipt of the petition by the Petitions Section. The Petitions Section indicated that staff’s failure to follow BOE policy regarding notification would have prompted the placement of a hold on collection actions upon receipt of the Administrative Protest; however, this was not now possible because a levy had already been sent and the funds captured. The TRA Office technical advisor then advised the taxpayer’s representative to file a claim for refund, and ensured the receipt of the claim by the Refunds Section. Since the taxpayer was claiming the levy was causing a hardship, the TRA Office advisor assisted in securing financial information in support of the hardship and forwarded a request to the district compliance management to release at least part of the levy, since the taxpayer agreed to the BOE keeping a portion of the funds, even though the audit determination was being protested in its entirety.

During this time, the TRA Office advisor made sure the taxpayer’s representative was fully informed of all of his client’s rights and options. The advisor realized that the involuntary payment of the entire audit liability via the levy would foreclose the taxpayer’s right to pursue a settlement of the audit liability, if he chose to do so. Meanwhile, the bank was due to send the funds to the BOE in a few days.

Due to a lack of consensus regarding the consequences of staff’s failure to follow approved notification policy (that is, whether this failure and its consequences should obligate the BOE to release the levy) TRA Office staff met with Sales and Use Tax Department and Legal Department managers to discuss the matter. Pursuant to the Legal Department’s advice, the field office was directed to modify the levy to retain only the portion agreed upon by the taxpayer.

The taxpayer was satisfied with the levy modification and was thankful for the return of funds to his bank account. The audit staff and the taxpayer’s representative agreed to work together on a reaudit, and a hold was placed on collection actions pending consideration of the petition/ reaudit.

**Summary—Services Provided.** The TRA Office’s familiarity with BOE policy enabled the advisor to demonstrate that staff’s failure to follow policy resulted in an abrogation of the taxpayer’s appeal rights. This called into question the validity of the subsequent collection actions. The TRA Office’s persistence in seeking an equitable resolution to this matter prevented an avoidable disruption to the taxpayer’s business and a financial hardship. Working under a tight deadline (the approaching date the bank was obligated to send funds to the BOE), the TRA Office obtained the cooperation of the taxpayer’s representative, field audit staff, field compliance staff, the Petitions Section, the Refunds Section, Sales and Use Tax Department management, and Legal Department management, while following up on all aspects of the case to ensure necessary actions were completed. The TRA Office advisor made sure the taxpayer’s representative was fully informed regarding all rights and options available to his client, and fully engaged in reaching a resolution.

---

<sup>2</sup> See the Taxpayers’ Rights Advocate’s 2005-06 Annual Report, page 28, for background on the policy memo.

### *Information and assistance provided to corporate officer held responsible for corporate liability*

**Issue.** A former corporate officer whose company had gone out of business and declared bankruptcy contacted the TRA Office for information and assistance when he was billed personally for unpaid use tax from an audit of the corporation. He did not understand how staff determined he was responsible and he had not been able to obtain information about the outcome of the audit, which he understood had been appealed. Collection staff told him they were planning to file a lien. He was attempting to raise money to pay the large liability and then file a claim for refund. However, he was asking for the TRA Office's assistance in obtaining more information about the audit and the basis of his personal liability.

The technical advisor determined that there was no record of the corporation having appealed the audit, and that the corporate officer had not received a copy of the investigation for dual determination. The advisor obtained the cooperation of the field office in providing a copy of the investigation to the officer, and obtained a copy of the audit for the officer as well. The advisor discussed with the officer the requirements under Revenue and Taxation Code section 6829 for responsible person liability. The TRA Office advisor also provided information on guidelines used by staff to determine whether the requirements had been met. The advisor discussed the officer's appeal rights, answered questions about the concept of "willfulness," and explained about the recent legislative change regarding the statute of limitations for billing responsible persons. The advisor followed up by sending all relevant written materials to the officer.

The officer prepared a lengthy statement to attach to his claim for refund and asked the TRA Office technical advisor to review it and offer suggestions. The technical advisor agreed to perform an

informal review, and informed the officer about the manufacturing equipment partial exemption that had been in effect for purchases made between January 1994 and December 2003, in case the exemption applied to any of the machinery on which the auditor asserted use tax was due.

A few months later, the officer again contacted the TRA Office because he was confused about a contact by the field office. The advisor investigated, learned the field office had been asked to review the claim, and explained to the officer the standard procedures for claims for refund and described the next steps in the appeals process. The officer was very grateful for the TRA Office's assistance.

**Summary—Services Provided.** This case is an example of the depth of information and guidance provided to taxpayers by staff of the TRA Office. The technical advisors' knowledge of the law and BOE policies and procedures allows them to provide expert assistance to taxpayers and their representatives when they are upset and confused.

## ISSUE RESOLUTION

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

## Accomplishments—Changes Implemented, Concerns Resolved

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

### *Individual Financial Statement (BOE-403-E) revised*

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

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

Often, taxpayers contact the TRA Office because they cannot come to an agreement with collection staff on the amount of payment they can afford to pay on an installment payment agreement. In some cases, the TRA Office technical advisor noted that

the taxpayer did not provide information on all expenses the BOE deems necessary, such as apparel and health insurance. For instance, a taxpayer told the TRA Office the collector was asking for a higher payment than the taxpayer could afford. The technical advisor noted that, although the taxpayer had two small children, no expenses were listed for clothing. The taxpayer indicated she did not know these expenses were allowable because there was no listing for them on the BOE-403-E. For this reason, the TRA Office believed it would be helpful for both the taxpayer and collection staff to have all categories of necessary expenses listed on the BOE-403-E.

**Change Implemented.** The TRA Office brought this concern to staff's attention, and staff agreed that amendments to the BOE-403-E were needed. Revisions were completed in July 2009.

### *Processing of hospital claims for refund streamlined*

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

- The length of time between when their client hospital pays sales tax reimbursement to a vendor and when the sales tax is actually refunded by the BOE is excessive, up to three years.
- Vendors receive inconsistent advice from BOE staff regarding the application of tax to specific medical products and claims are investigated by BOE staff that do not have specific expertise regarding medical products.

- Claims for refund by client hospitals for use tax paid to vendors are rejected by the vendors, reportedly because the vendors were advised by BOE staff that since the applicable tax is a use tax, the vendor is not required to address the claim for refund.
- As auditors review the claims for refund, methodologies used with statistical sampling may not be appropriate.

This firm made specific recommendations for BOE actions to alleviate the long delays associated with hospital claims for refund, including centralizing and streamlining the processing and reviewing of these claims.

On May 29, 2008, the Advocate presented a report to the Board Members of staff's findings prepared by the Sales and Use Tax Department in response to the concerns raised regarding hospital claims for refunds.

**Changes Implemented.** In response to these issues, staff revised publication 45, *Hospitals and Other Medical Facilities*, to add a new section regarding the proper method of filing claims for refund and encouraging hospitals to issue exemption certificates to their vendors when purchasing items the sale of which the hospital knows to be exempt from tax. In addition, in July 2008, the completion of these types of claims was centralized in the BOE's Audit Determination and Refund Section (ADRS), and the staff began working more actively with consultants. Consultants have also supplied written permission from the vendors which have facilitated ADRS's communication with the consultants. The result is a more timely completion of claims and improved working relationships with the consultants.

### ***Procedures strengthened for implementing policy on collecting BOE-assessed liabilities***

**Area of Concern.** CPPM 703.030, *When to Proceed on BOE-Assessed Liabilities*, provides in part:

*In cases where all of the tax is paid and a claim for refund has been filed, accounts with billed, final amounts are placed in an appeal status and the . . . Stop Demand field is populated by the Audit Determination and Refund Section (ADRS). This action prevents demand billings from being issued and removes the account from ACMS [Automated Collection Management System]. No action to collect the remaining interest and penalty is to be taken until the account is removed from Stop Demand status. If the claim for refund is denied, the Stop Demand flag will not be removed for at least 180 days pending verification that a suit for refund of tax has not been filed by the taxpayer.*

The TRA Office was contacted by a taxpayer's representative whose client's bank account had been levied five days after the BOE's denial of the taxpayer's claim for refund. The refund claim had been filed after the tax portion of the liability was paid in full. TRA staff's research disclosed that a Stop Demand flag had not been placed on this taxpayer's account at any time. The TRA Office inquired as to whether the situation illustrated by this case was unusual or if it indicated a systemic problem calling for procedural improvements to assist ADRS staff to consistently comply with CPPM 703.030.

**Changes Implemented.** The Sales and Use Tax Department has implemented procedures in ADRS, including staff training, to ensure a Stop Demand flag is placed on refund accounts in which the tax has been paid in full. In addition, in July 2009, the Sales and Use Tax Department distributed a memo to staff to ensure they are aware of the 180-day waiting period per CPPM 703.030.

### **Work in Process—Issues Identified**

As a result of taxpayer contacts and review of trends, policies, and procedures within the BOE, the

TRA Office has recommended consideration of the following issues and is working with staff to develop solutions:

***Guidance to staff needed when accepting returns filed in response to compliance assessments***

**Issue.** If an active business with a seller’s permit fails to file a return and does not respond to staff’s inquiries concerning the nonfiling, staff may estimate the amount due and issue a billing for the amount, a “compliance assessment” or “CAS.” Often, the taxpayer files the missing return after the CAS becomes final. If the amounts on the post-CAS return differ from the estimated amounts on the CAS, the return is processed as a Pending Taxpayer Original return. Collection staff then reviews the post-CAS return to determine if the taxpayer reported correctly, and may request supporting documentation for the amounts reported. If the information on the post-CAS return is accepted, the taxpayer’s liability for the period is adjusted accordingly.

Sales and Use Tax Department staff alerted the TRA Office to a question from field staff who wondered whether there was a statute of limitations governing when a taxpayer would be allowed to submit a late return intended to replace a CAS. The TRA Office’s independent research disclosed no statute that sets the timeframe whereby a taxpayer must take action to enforce his or her rights to correct a billing when the BOE has assessed an estimated tax for failing to file a return.

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

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

***Guidance to staff needed for when a taxpayer is making court ordered restitution payments***

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

Discussions between the TRA Office, the Legal Department and the Sales and Use Tax Department resulted in concurrence that the collector should have made inquiries of the probation department or the court to confirm the adjusted payment amount was authorized by the court. This case brought to the TRA Office’s attention the need for guidance to staff on how to proceed with collection cases while restitution payments are being made. TRA Office staff could locate no guidelines regarding BOE’s authority or responsibility during this time.

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

- It is unclear what mechanisms are in place to monitor the payment of restitution payments or how to proceed if restitution payments are not made.
- A process is needed to ensure that collection staff has access to the court disposition upon sentencing so that all details regarding restitution payments are known.
- Taxpayers should be routinely informed that, regardless of the amount of restitution ordered by the court, their liability to the BOE is not discharged until paid in full.
- If the taxpayer has an additional BOE liability that is separate from the debt addressed by the court, BOE collection staff needs guidance on how to proceed with collection of the additional liability in light of the ongoing restitution payments.
- Policy development is needed to address a situation in which collection staff becomes aware of a change in the taxpayer's financial situation while restitution payments are being made. Can or should the BOE petition the court for an adjustment to the payment amount or date certain to complete the payments?

The TRA Office understands that the Investigations Division of the Legal Department normally receives information regarding the details of sentencing, including any restitution payment orders. In addition, the Investigations Division informed the TRA Office they can assist collection staff when the taxpayer is not complying with the terms of the disposition or plea agreement while serving out his or her probation.

After the TRA Office discussed these issues with departmental management, the Sales and Use Tax Department worked with the Legal Department's Investigations Division and Special Operations Branch, and the Property and Special Taxes Department to draft policies and procedures to guide staff actions when taxpayers are ordered to make restitution to the BOE. The new Operations Memorandum was in clearance as of July 2009 and was anticipated to be issued in late 2009.

### *Copy of investigation for dual billings should be provided to dualee*

**Issue.** Corporate officers and other individuals who have been personally billed for liabilities incurred by now-terminated corporations, partnerships, etc. ("dualees") have contacted the TRA Office on a number of occasions to seek information about the billing. Often, the individuals have expressed concern that they were not aware that they were to be personally billed or they received no explanation as to how the BOE determined they may be held personally responsible.

In researching the basis for the dual determinations, TRA Office staff learned that there was no policy in place in either the Centralized Collections Section or in field offices to provide the dualee with a copy of the investigation and staff recommendation prepared for management approval.

The TRA Office was concerned that taxpayers are not afforded due process when an individual is billed for a liability without an adequate explanation of why he or she was billed. As more than one dualee explained to the TRA Office, it was difficult to prepare an effective petition for redetermination without knowing staff's position. The TRA Office recommended that new procedures be promulgated to routinely provide a copy of all dual investigations, including the basis for staff's recommendation, appropriately redacted, to dualees once approved for billing.

**Work in Process.** Currently, upon request, a copy of the dual investigation package is provided, after appropriate redactions are made. The Sales and Use Tax Department is developing a standard report to be routinely provided to dualees that will explain the basis of the billing and how requirements for personal responsibility are deemed met.

**Guidelines needed on providing copy of levy to taxpayer**

**Issue.** BOE collectors are required to provide a copy of a Notice of Levy to the taxpayer after issuing it. Prior to July 2009, CPPM 753.205, *Notice of Levy*, provided in part:

*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.*

*Taxpayers are entitled to the exemptions provided in Code of Civil Procedure (CCP) section 704.010.<sup>3</sup> 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. 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.*

The TRA Office had received complaints on a number of occasions from taxpayers claiming they never received a copy of BOE’s Notice of Levy and only learned of the levy from their bank. When a

taxpayer does find out about the levy and contacts the collector to file a claim of exemption, the bank may have already sent the funds or is in the process of doing so. The TRA Office believed that guidance may be needed in this area to ensure consistency.

The TRA Office understands that it is prudent for the collector to avoid sending a copy of the Notice of Levy concurrent with issuing the levy to the financial institution, and that a delay is warranted so that the purpose of the levy is not thwarted. However, the TRA Office recommended consideration of procedural changes to ensure that the copy of the Notice of Levy and required informational material is sent to the taxpayer promptly after the levy is issued.

**Work in Process.** Various possible procedural revisions were discussed to ensure that a collector sends a copy of the levy to the taxpayer in time to enable the taxpayer to timely avail him- or herself of the right to file a claim of exemption. The Sales and Use Tax Department was concerned about the variability of banking operations, and surveyed field offices to determine the range of time that banks take to process levies. It was noted that banks generally send their notice to their customers immediately; however, the concern was that the customer (taxpayer) may not get the list of exemptions timely.

In July 2009, the Sales and Use Tax Department revised CPPM 753.205 to direct staff as follows:

*Generally, the tax debtor’s copy, including the instruction sheet and exemptions list shall be mailed to the tax debtor three business days after the levy has been mailed to the garnishee. If the levy notice is being served on a financial institution’s out-of-state processing center, the tax debtor’s copy should be mailed five business days after the copy mailed to the financial institution.*

<sup>3</sup> The reference should be to CCP sections 703.010 through 704.995, which allow tax debtors to claim exemptions from levy. See also CPPM 753.260, Exemptions Available to Taxpayers.

The Sales and Use Tax Department intends to continue analyzing the results of information provided by field offices and then consider whether any changes are appropriate to the policy for providing copies of levies currently contained in CPPM 753.205. The TRA Office will track all future taxpayer complaints indicating that they never received a copy of the Notice of Levy from BOE to assist the Sales and Use Tax Department in ensuring that staff is consistently following BOE policy.

***Possible unequal treatment of taxpayers regarding exemption from levy—social security deposits***

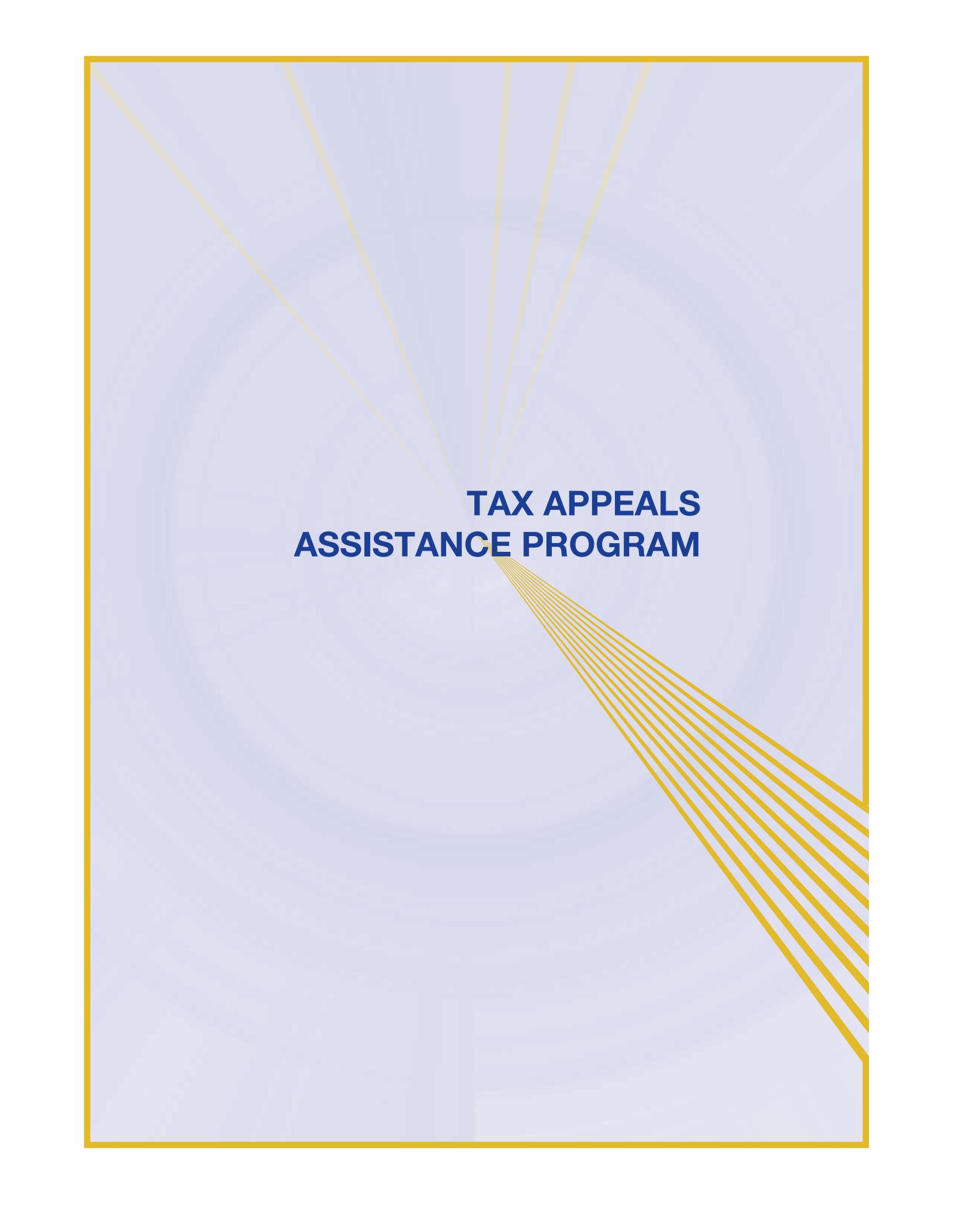
**Issue.** Section 704.080 of the CCP states, in part, that certain payments such as social security benefits, when directly deposited by the government or its agents, are exempt without filing a claim. As an example, this section provides “. . . \$2,425 are exempt where one depositor is the designated payee of directly deposited social security payments . . .”

However, if a taxpayer receives his or her social security benefits via a check, there is no automatic exemption if the BOE captures these funds through a levy. Rather, the taxpayer will have to file for an exemption with the BOE. Further, if the taxpayer’s social security funds are comingled with other funds, the taxpayer will likely be required to prove that the social security funds were not spent prior to the levy being served.

Taxpayers who receive social security deposits via check instead of via direct deposit may not be receiving equal treatment in regard to legal exemption from levy. The TRA Office proposed consideration of a policy clarification such that if a taxpayer files a claim of exemption stating that his or her social security funds have been captured through a levy sent by BOE (and provides supporting documents), the BOE would release or refund the captured funds using the same limits set forth

in CCP section 704.080. In addition, proposed policy would provide that, if a taxpayer is able to show that social security funds were received and deposited, he or she would not be required to prove that the social security funds were not spent prior to the levy being served.

**Work in Process.** The Sales and Use Tax Department, the Property and Special Taxes Department, and the Legal Department were in general agreement with this proposed policy. The Sales and Use Tax Department began surveying banks, to determine if they are honoring the social security exemption. In addition, the Sales and Use Tax Department plans to conduct a study regarding how BOE field offices and Headquarters sections are handling the social security exemption and the issue of comingled funds so that a consistent policy can be developed and distributed.



**TAX APPEALS  
ASSISTANCE PROGRAM**

## TAX APPEALS ASSISTANCE PROGRAM

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

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

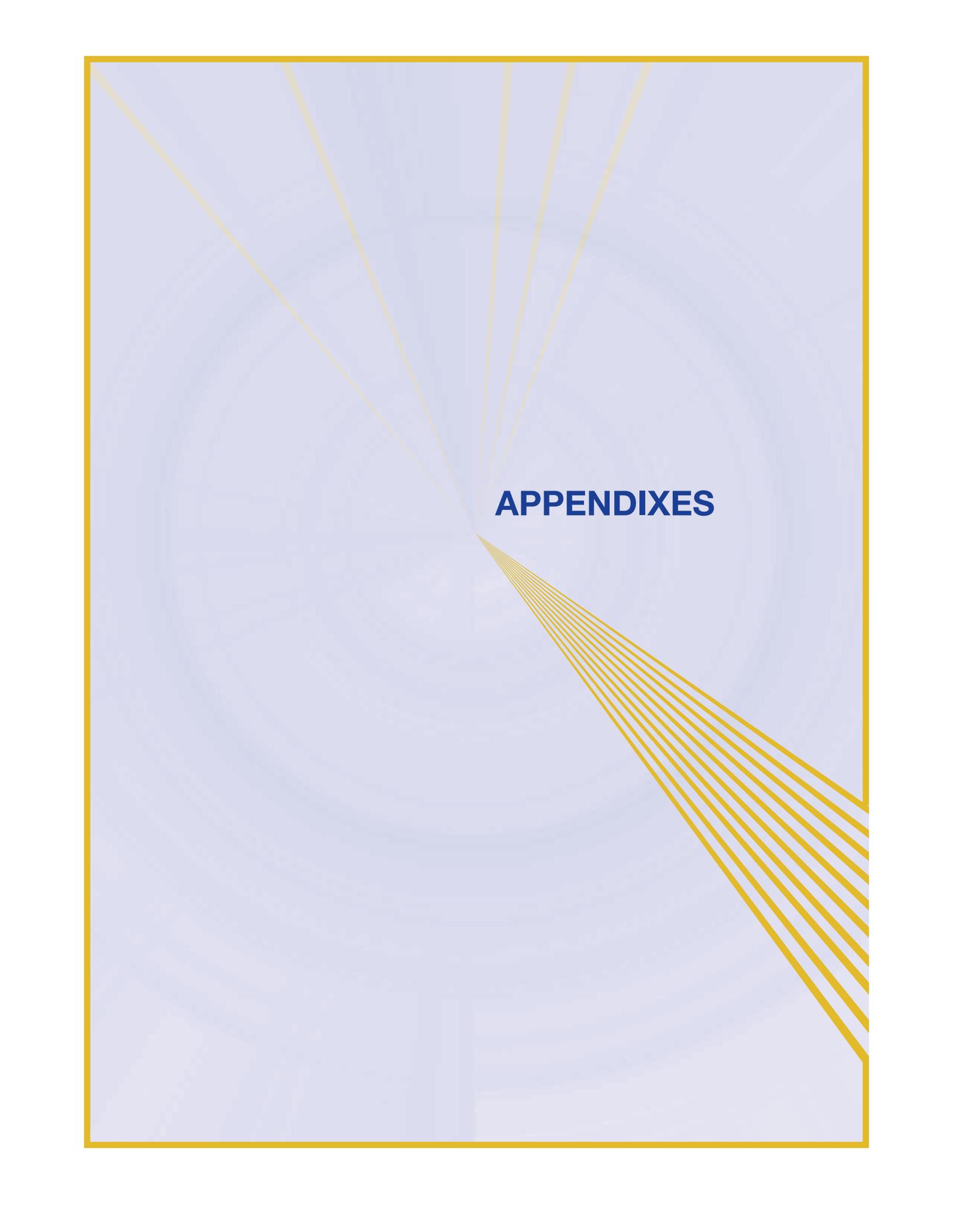
Five law schools participate in the program: the University of the Pacific McGeorge School of Law in Sacramento, the Loyola University Law School in Los Angeles, the Chapman University School of Law in Orange, the Golden Gate University School of Law in San Francisco, and the University of San Diego School of Law in San Diego.

Since its inception, the program has grown from one school with five students to five schools and 26 students. As of June 30, 2009, the program has accepted 520 appeals, 112 of which were active as of the end of the year. Of the remaining cases, 114 were successfully resolved without a formal Board hearing either because the appellant prevailed in his or her claim or because he or she ultimately agreed with the Franchise Tax Board's decision.

The Tax Appeals Assistance Program has been well received by all five law schools and the program's clients. As a result, the TRA Office took steps in 2008-09 to expand the program to include business taxes cases starting with the Fall 2009 semester. The TRA Office worked with the Appeals Division, the Sales and Use Tax Department, and the Property and Special Taxes Department this year to develop guidelines and parameters for adding business taxes appeals to the program, and sent out the first contact letters in September 2009 to prospective clients with consumer use tax appeals.<sup>4</sup>

---

<sup>4</sup> We note, however, that services to business taxes appellants may be limited in FY 2009-10 due to staff reductions caused by budget cutbacks.



**APPENDIXES**

## APPENDIX 1

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

(Revenue and Taxation Code Sections)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The amount of tax involved.

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

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

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

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

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

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

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

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

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

(1) To evaluate individual officers or employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For the purposes of this section:

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

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

**7093.5.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

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

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving

that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

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

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

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The taxpayer shall establish that:

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

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

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

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

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

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

liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

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

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

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

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

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any

false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

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

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

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

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

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one

thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

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

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

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

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

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

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

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

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

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

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

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

**7097.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state

the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

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

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

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

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

**7098.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

**7099.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a

taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

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

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Section 7156.

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

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

~~7099.1. (a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney.~~

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

(3) For purposes of this section:

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

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

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

~~(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.~~

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

~~(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.<sup>5</sup>~~

<sup>5</sup> AB 129 (Ma) re-established section 7099.1 with no sunset date provision, was signed into law on October 11, 2009, and took effect immediately. (Chapter 411, Statutes of 2009)

## APPENDIX 2

### The Morgan Property Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

**5900.** This part shall be known and may be cited as “The Morgan Property Taxpayers’ Bill of Rights.”

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

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

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

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

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

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

**5903.** “Advocate” as used in this part means the “Property Taxpayers’ Advocate” designated pursuant to Section 5904.

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

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

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

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

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

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

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

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

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

(2) Property tax exemptions.

(3) Supplemental assessments.

(4) Escape assessments.

(5) Assessment procedures.

(6) Taxpayer obligations, responsibilities, and rights.

(7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.

(8) Property tax appeal procedures.

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

(1) Whether the forms and their instructions promote or discourage taxpayer compliance.

(2) Whether the forms or questions therein are necessary and germane to the assessment function.

(b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:

(1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.

(2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.

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

(4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information

or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

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

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

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

**5908.** Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

**5909.** (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this

subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

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

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

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

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

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

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

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

## APPENDIX 3

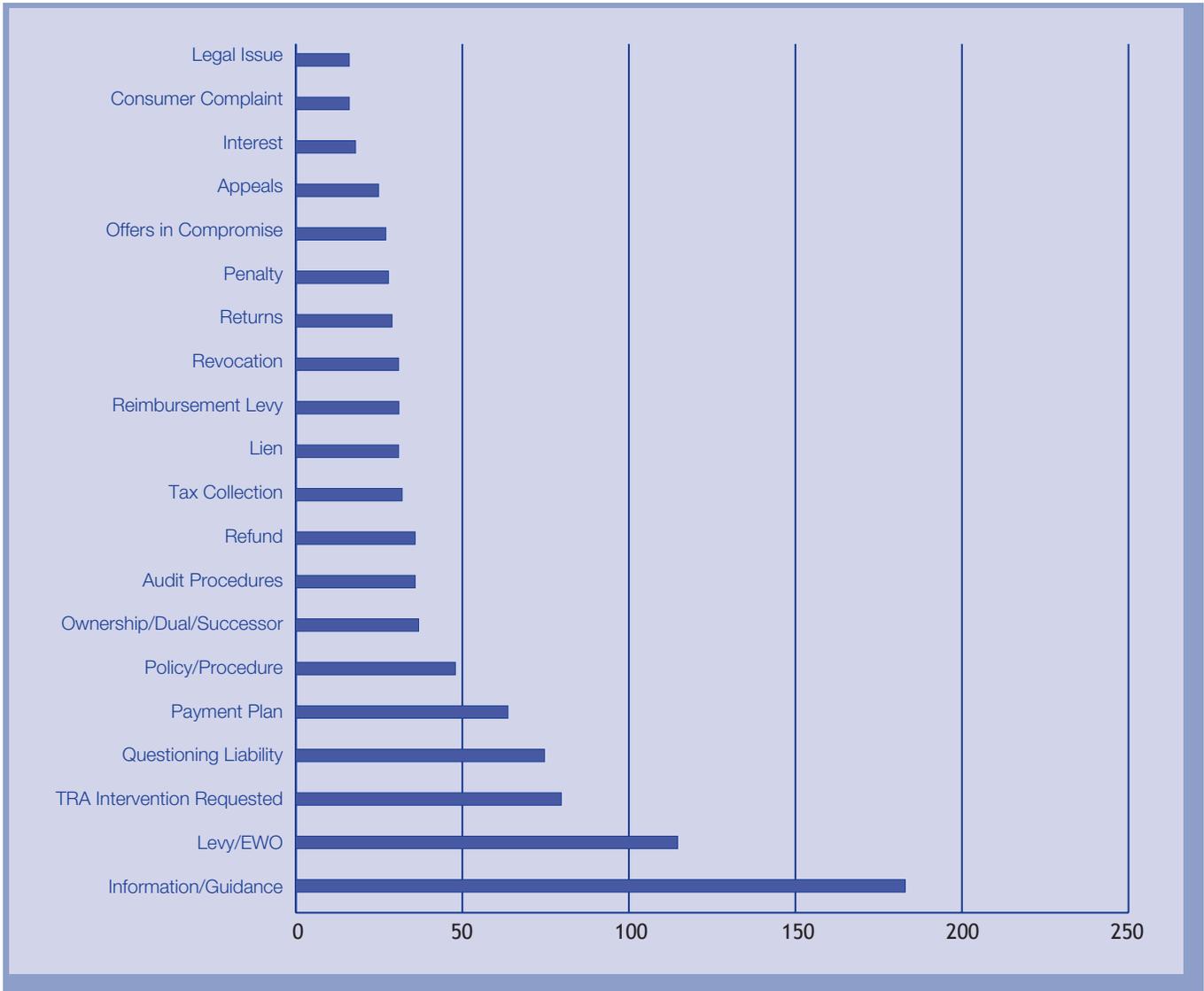
### Outcomes of Business Taxes Cases

Office of Origin	Cases by Issue Type			Total Cases	Customer Service Concerns	Agreed with Staff Case Handling		Case Handling Changed		Taxpayer Satisfied with Outcome	
	Audit	Compliance	Other			Yes	No	Yes	No	Yes	No
Norwalk (AA)	4	9	0	13	4	5	0	1	9	7	1
Van Nuys (AC)	7	12	1	20	6	14	1	4	12	11	2
West Covina (AP)	5	8	2	15	2	10	1	2	10	6	1
Ventura (AR)	1	10	1	12	0	7	0	3	5	9	1
Culver City (AS)	6	22	1	29	9	18	2	6	17	17	1
San Francisco (BH)	1	7	1	9	0	6	0	0	6	6	1
Oakland (CH)	1	19	0	20	3	16	0	4	14	9	1
Irvine (EA)	4	26	3	33	2	23	1	5	20	21	0
Riverside (EH)	5	13	2	20	0	13	0	4	14	8	1
San Diego (FH)	1	13	3	17	1	9	0	0	10	8	2
San Jose (GH)	3	25	2	30	1	22	1	5	17	16	3
Santa Rosa (JH)	5	13	2	20	3	13	1	8	7	13	0
Sacramento (KH)	8	50	3	61	7	42	2	12	38	40	3
Out-of-State (OH)	1	1	2	4	0	1	0	0	1	4	0
Appeals Division	6	7	6	19	2	9	2	2	12	7	0
Board Members' Offices	0	0	0	0	0	0	0	0	0	0	0
Centralized Collection Section	3	85	5	93	3	54	2	14	54	45	10
Consumer Use Tax Section	0	8	2	10	0	6	0	1	5	6	0
Environmental Fees Division	0	5	0	5	0	4	0	1	3	4	0
Excise Taxes Division	4	6	0	10	0	5	0	2	5	4	0
Franchise Tax Board	0	1	19	20	0	0	0	0	0	11	0
Fuel Taxes Division	1	11	0	12	2	8	0	1	9	8	0
HQ—General	5	3	11	19	2	8	0	0	8	11	0
Offers In Compromise Section	2	1	0	3	0	2	0	0	2	0	0
Petitions Section	5	3	1	9	0	3	0	1	5	5	0
Refunds Section	2	6	3	11	1	4	1	4	3	7	0
Return Analysis Unit	0	10	3	13	0	7	0	2	7	9	1
Special Procedures Section	1	7	2	10	0	5	0	1	8	3	1
Taxpayers' Rights Advocate	0	1	4	5	0	1	0	0	1	5	0
Other	2	21	75	98	0	4	0	1	7	58	2
<b>Total</b>	<b>83</b>	<b>403</b>	<b>154</b>	<b>640</b>	<b>48</b>	<b>319</b>	<b>14</b>	<b>84</b>	<b>309</b>	<b>358</b>	<b>31</b>

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

## APPENDIX 4

### Most Common Issues in Business Taxes Cases



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

