



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	02/22/13	Bill No:	<u>Assembly Bill 1222</u>
Tax Program:	Business Taxes	Author:	Bloom
Sponsor:	BOE	Code Sections:	See below
Related Bills:		Effective Date:	01/01/14

BILL SUMMARY

This Board of Equalization (BOE) sponsored bill increases from \$1,500 to \$2,300 the amount of levied funds the BOE’s Taxpayers’ Rights Advocate (TRA) is permitted to return to a taxpayer when the taxpayer can demonstrate that the levy threatens their or their family’s¹ health or welfare.

ANALYSIS

CURRENT LAW

Existing law² authorizes the BOE’s TRA to release a levy or notice to withhold or order the return of up to \$1,500 to the taxpayer³ within 90 days of receiving levied funds if the levy threatens the health or welfare of the taxpayer or the taxpayer’s family.

Conversely, the Cigarette and Tobacco Products Tax Law (Revenue and Taxation Code (RTC) Section 30459.2) and the Fee Collection Procedures Law (RTC Section 55333) require the BOE to release a levy upon the TRA’s order but do not to permit the return of levied funds, when the levy threatens the taxpayer’s or the taxpayer’s family’s health or welfare. These provisions also require the BOE to release a levy when the asset sales expense exceeds the liability.

Moreover, the BOE must return a taxpayer’s levied property or sale proceeds if: (1) the levy is not issued in accordance with law; (2) a taxpayer complies with an installment payment agreement; or (3) the property’s return facilitates collection or is in the best interests of the state and the taxpayer. These provisions do not apply if the BOE finds tax collection is in jeopardy.

PROPOSED LAW

This bill increases from \$1,500 to \$2,300 the amount of levied funds the TRA is permitted to return when the levy threatens the health or welfare of the taxpayer or the taxpayer’s family. Consistent with the other tax and fee laws, this bill also provides the TRA the authority to return up to \$2,300 in levied funds under the Cigarette and Tobacco Products Tax Law and the Fee Collection Procedures Law, which governs the collection of the Ballast Water, California Tire, Covered Electronic Waste Recycling, Fire Prevention, Marine Invasive Species, and Water Rights Fees, as well as the Natural Gas Surcharge.

BACKGROUND

The Katz-Harris California Taxpayers’ Bill of Rights⁴ provides certain guarantees under the

¹ The reference to the taxpayer and family includes the taxpayer’s spouse/partner and dependents.
² Sales and Use Tax Law (§ 7094), Use Fuel Tax Law (§ 9272), Alcoholic Beverage Tax Law (§ 32472), Energy Resources Surcharge Law (§ 40212), Emergency Telephone Users Surcharge Law (§ 41172), Hazardous Substances Tax Law (§ 43523), Integrated Waste Management Fee Law (§ 45868), Oil Spill Response, Prevention, and Administration Fees Law (§ 46623), Underground Storage Tank Maintenance Fee Law (§ 50156.12), and Diesel Fuel Tax Law (§ 60632) in the RTC.
³ The term “taxpayer” includes feepayers.
⁴ Assembly Bill 2833, Ch. 1574, Stats. 1988; effective January 1, 1989.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position

California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the tax assessment and collection process. The Taxpayers' Bill of Rights provides similar guarantees under the California Personal Income Tax Law and the Bank and Corporation Tax Law. In 1992, legislation⁵ extended the taxpayer rights provisions to most BOE-administered special tax and fee programs.

The Katz-Harris legislation added RTC Section 7094, which allowed the TRA to release a levy upon determination that the levy threatened the health or welfare of the taxpayer or the taxpayer's family. The language mirrored Franchise Tax Board (FTB) statutes and placed no limitation on the time for requesting the release or the amount that could be released.

In 1995, Section 7094 was amended⁶ to read as it does today. Among other things, the Legislature granted the TRA additional authority to return (within 90 days from the levy) up to \$1,500, when the TRA determines the levy threatens the taxpayer's or the taxpayer's family's health or welfare. Although the available legislative history does not explain the rationale for the dollar threshold, the statute itself seems to suggest that the Legislature attempted to strike a balance between the expanded power to return funds and the potential revenue impact.

STATUTORY HISTORY

RTC Section	Law	Date Added	Date Amended	Bill #	Amendment
7094	Sales & Use	1988	1995	SB 718	Return of Funds
9272	Use Fuel	1992 ⁷	1995	SB 718	Return of Funds
30459.2	Cigarette & Tobacco	1992		SB 1661	Release of Levy
32472	Alcoholic Beverage	1992	1995	SB 718	Return of Funds
40212	Energy Resources	1992	1995	SB 718	Return of Funds
41172	Emergency Telephone	1992	1995	SB 718	Return of Funds
43523	Hazardous Substances	1992	1995	SB 718	Return of Funds
45868	Integrated Waste	1992	1995	SB 718	Return of Funds
46623	Oil Spill	1995 ⁸		SB 722	Release of Levy & Return of Funds
50156.12	Underground Storage Tank	1992	1995	SB 718	Return of Funds
55333	Fee Collection	1992 ⁹		SB 1920	Release of Levy
60632	Diesel Fuel	1994 ¹⁰	1996	SB 1827	Release of Levy & Return of Funds

⁵ Senate Bill 1661, Ch. 438, Stats. 1992; effective January 1, 1993.

⁶ Senate Bill 718, Ch. 555, Stats. 1995; effective January 1, 1996.

⁷ The TP Bill of Rights was added to the Special Tax and Fee programs in 1992 by SB 1661 (Ch. 438, Stats. 1992).

⁸ The TP Bill of Rights was added to the Oil Spill Response, Prevention, and Administration Fees Law.

⁹ The Fee Collection Procedures Law was added to the Revenue and Taxation Code.

¹⁰ The Diesel Fuel Tax Law was enacted in 1994 by SB 840 (Ch. 912, Stats. 1994).

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IN GENERAL

Both the Internal Revenue Service (IRS) and the FTB are authorized to release a levy if the levy creates an economic hardship or otherwise threatens the health and welfare of the taxpayer or the taxpayer's family.

The FTB may release a levy under circumstances it deems appropriate, including, but not limited to:

- State expenses related to the sales process exceed the liability.
- TRA orders the release upon a finding that the levy threatens the taxpayer's health or welfare.
- Sale proceeds would not result in a reasonable reduction of the debt.
- Collection staff failed to follow administrative procedures when the levy was issued.
- Taxpayer entered into an installment payment agreement to pay the tax liability for which the levy was issued, unless the agreement allows for a levy.
- Release of the levy facilitates collection of the tax liability or is in the best interest of the taxpayer and state.

In general, the IRS releases levies under similar conditions as the FTB. These include:

- Levy release facilitates collection of the liability.
- The taxpayer has an installment payment agreement, unless the agreement allows for a levy.
- Secretary determines that the levy creates a financial hardship.
- The liability becomes unenforceable due to lapse of time or is satisfied.
- Fair market value exceeds the liability and release will not hinder collection.

IRS statutes authorize the return of wrongfully levied property. The amount and timeframe differ dramatically from the BOE's authority. The IRS may return property at any time, while levied funds may be returned prior to 9 months from the levy date.

COMMENTS

- 1. Sponsor and Purpose.** The BOE is sponsoring this bill to adjust for inflation the amount of temporary assistance taxpayers may receive when a levy threatens their or their family's health or welfare. In addition, the bill provides the TRA consistent levy return authority for all BOE administered tax and fee programs.
- 2. The return of levied funds does not reduce the tax liability.** The BOE is authorized to levy bank accounts to collect delinquent amounts. Occasionally a taxpayer is unable to contact the TRA to stop the funds from being levied until after the BOE has seized the funds. In these rare cases, levied funds are needed to cover the taxpayer's basic living expenses. Only the TRA, and not the Board, is allowed to order funds returned when the levy threatens the health or welfare of the taxpayer or the taxpayer's family.

The BOE's TRA bases the decision to return levied funds upon a taxpayer's reasonable documentation and financial condition disclosure. Typically the taxpayer completes a BOE financial statement with accompanying documents to substantiate income and expenses. Since California is a community property state, the BOE requests information about total household income and expenses.

3. Basis for the suggested increase. The increase from \$1,500 to \$2,300 is based on the accumulated California inflation factor from the date Section 7094 was first effective, on January 1, 1996, to the present. This measure also provides a mechanism for future inflation adjustments.

The amount returned may not cover a taxpayer's monthly living expenses, but a reasonable increase in the funds returned will help a taxpayer provide for his or her family when the need arises. The incremental inflationary adjustment ensures that the amount returned will keep pace with the cost of living.

COST ESTIMATE

This measure does not affect the BOE's administrative costs.

REVENUE ESTIMATE

The annual revenue loss is expected to be minimal, approximately \$4,600. This estimate is based on the TRA's historical experience and discussion with BOE's collection staff. Over the past ten years the TRA has averaged a return of funds about once per year. The return of funds is used infrequently because, in most cases where the taxpayer claims hardship due to a levy, the collection staff and the TRA have been able to reach an equitable outcome with the taxpayer.

Analysis prepared by:	John Cortez	916-445-6662	03/25/13
Contact:	Michele Pielsticker	916-322-2376	
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