



cc: (all with attachment)

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## Chapter 1, General

5. **REVOCATIONS:** The compliance staff enforces the provisions of the business tax laws pertaining to revoked accounts; reinstates licenses or permits of taxpayers who have complied with the laws; obtains evidence and prepares cases for prosecution of taxpayers who continue to operate after revocation; and seizes and impounds vehicles operated in violation of the law. For more information about revocations, see CPPM Chapter 3, Account Maintenance, Chapter 7, Collections.
6. **COLLECTIONS:** In collecting delinquent taxes, the compliance staff maintains adequate controls of accounts receivable at both the district and Headquarters levels; prepares and serves withhold notices; initiates and prepares warrants; requests recordation of certificates of lien; requests releases, partial releases and subordination of liens; seizes and sells motor vehicles under the Use Fuel and Diesel Fuel Tax Laws; seizes and sells liquor licenses to clear delinquent sales and use taxes; locates assets, including real property, on which to levy; and makes recommendations for revocation of licenses or permits for failure to pay delinquent tax liability. See CPPM Chapter 7, Collections, and Publication No. 54, Tax Collection Procedures, for more information about collection actions.
7. **ADVISORY SERVICES AND PUBLIC RELATIONS:** A principal objective of the SUTD and the PSTD is to ensure that taxpayers voluntarily report and pay the correct amount of tax. The compliance staff assists taxpayers in preparing tax returns and advises them of the correct application of the laws and regulations. A sincere and helpful attitude by each member of the compliance staff is of paramount importance in maintaining good public relations.

### **RELEASE OF TAX INFORMATION TO THE PUBLIC**

**120.025**

Information contained in the files and records of the BOE relating to taxpayers is confidential as provided in Government Code section 15619 (all Board tax records) and [RTC section 7056](#).

Overlying the above confidentiality sections of law, which prohibit the disclosure of confidential taxpayer information, are two other acts, the Information Practices Act and the Public Records Act. The Information Practices Act (IPA) is a “private access” statute that provides individuals wishing to access their personal information, as maintained in the files and records of any state agency, to have such access. The IPA also restricts disclosing personal information about an individual to the public. The Public Records Act (PRA) provides “public access” to any records maintained by a state agency that are not otherwise exempt from disclosure.

The Government Code provides that “public records” include any writing that contains information relating to the conduct of the public business and that is prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided. Government Code section 6254(k) does not permit a state agency to withhold disclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as taxpayer’s names or account numbers, must be redacted and the redacted document should then be released.

**REQUIREMENT TO DISCLOSE “WORKING LAW”**

Under the PRA, documents that disclose the BOE’s practices in applying its regulations to the cases coming before it are “working law” and are subject to disclosure upon request. Upon receipt of a request for working law document(s), all confidential taxpayer information must be redacted prior to releasing the document(s) to the requesting party. Examples of working law are:

1. A memorandum written by the legal staff to other departments of the BOE, which those departments can rely upon to make determinations about the applicability of statutes or regulations to certain tax situations.
2. An opinion letter written by a staff attorney to a taxpayer.

**DOCUMENTS THAT MAY BE WITHHELD**

In contrast to the working law of the agency, there are legal opinions and internal correspondence addressed to or from attorneys in the Legal Department that bear confidential status by virtue of the attorney-client privilege or the attorney work-product rule. Memoranda falling within the following listed categories are often labeled “Confidential: Attorney-Client Privilege” or “Confidential: Privileged Document,” and should not be released to the public without the approval of the author or the Legal Department:

1. Memoranda to a Board Member or Members or the Executive Director prepared for the signature of the Chief Counsel, except contribution disclosure opinions.
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda between the Legal Department and the Attorney General’s office when the Attorney General is acting as the BOE’s attorney.
4. Intra-Legal Department memoranda which reflect an attorney’s impressions, conclusions, opinions or legal research or theories, except briefs filed by SUTD or PSTD with the Appeals Division in accordance with the direction of the Board.
5. Memoranda between the Legal Department and program staff that evaluate the strengths or weaknesses of the agency’s position regarding the interpretation of statutory or regulatory provisions. This includes memoranda having to do with requests for reconsideration of reports issued by the Appeals Division.
6. Memoranda analyzing new or proposed statutes or regulations affecting programs administered by the BOE.

Note that if the holder of the attorney-client privilege, without coercion and in a non-confidential context, discloses a significant part of the communication or consents to such disclosure by anyone, this constitutes a waiver of the privilege.

In addition to documents exempt from public disclosure under the attorney-client privilege or the attorney work-product rule, any documents relating to confidential audit or compliance techniques are not to be released to the general public. Consult the Legal Department if there is any question about whether a particular document is confidential or not.

## **ADVICE TO POTENTIAL PUBLIC RECORDS ACT REQUESTERS**

Any person interested in obtaining BOE information under the PRA should be advised to submit a written request to the attention of the BOE's Disclosure Officer. Requests should be as specific as possible in identifying the desired records. At a minimum, the request must identify the subject matter of interest, e.g., Regulation 1501, RTC section 6596, sales by Indians, etc. If the requester is seeking records from a specific office, that office should be identified.

Many general subject files are divided into specific topics. For example, Regulation 1591 contains a subdivision on orthotic and prosthetic devices, among others. If a requestor asks for information on a specific topic contained within a general subject file, the general subject file may be indexed and the index provided to the requestor. From the index, the requestor can then identify and request, in writing, copies of specific documents.

## **PROCEDURES FOR HANDLING REQUESTS UNDER THE PUBLIC RECORDS ACT (PRA)**

### **ACKNOWLEDGMENT OF REQUESTS**

Immediately route requests for documents falling under the PRA to the Disclosure Officer in the Legal Department. The Disclosure Officer has ten working days to timely acknowledge receipt of the request. After acknowledging the request, the Disclosure Officer will forward a copy of the request to the appropriate BOE section for handling. The Disclosure Officer will route requests for district office information to the Tax Policy Division, which will coordinate preparation of the requested records for release. These requests may ask for document indices and/or copies of documents.

PRA requests that incorrectly refer to the IPA are addressed under the guidelines for PRA requests. Likewise, IPA requests that incorrectly refer to the PRA are addressed under the guidelines for IPA requests.

### **REQUESTED DOCUMENTS**

As stated earlier, a request may ask for documents addressing a specific type of property or transaction, or a request may be made for documents in a broader category, such as a regulation or code section. When handling these requests, either for document indexing or redacting and releasing documents, staff should adhere to the requested subject matter as closely as possible without being excessively restrictive. It is not always necessary to index entire files and not all documents contained within these files need to be redacted and released.

### **DOCUMENT INDEXING**

An index should clearly identify the source of the material and include the following information for each document, preferably on a spreadsheet:

1. Name of Addressee (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer").
2. Name of the Author (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer").
3. A short description of the subject of the document.
4. Document date.
5. Number of pages.

An additional column may be reserved for eventual use in identifying confidential documents not allowed to be released.

Each document should also be numbered as a reference to assist in locating documents at a later date. To allow continuous numbering, documents should be numbered sequentially from the oldest document forward. The original index should be maintained conspicuously within the file indexed to avoid duplicate effort in the event a subsequent request is received. As subsequent requests are received, the index should be updated before it is photocopied and released.

#### **DOCUMENT PREPARATION AND APPROVAL FOR RELEASE**

The integrity of the original documents should be maintained as much as possible. If a requested document only exists as an unredacted hard copy, make a photocopy of the original document, redact all necessary information and, after receiving approval from the Disclosure Officer to release the document, provide the redacted photocopy to the requestor. To avoid duplication of effort if a subsequent request for the same document is received, make a photocopy of the redacted document to provide to the requestor and retain the original redacted photocopy in the file.

The quality of hard copy documents often degrades over time. In order to provide a legible copy that has adequate contrast for reproduction purposes, it may be necessary to touch up the document. Once the photocopy is suitable for reproduction, the redaction should be done using a black felt tip pen, correction tape, or similar masking material that prevents exposure of confidential information.

If the document exists electronically, it should be saved and identified with a new document name. Redact the information from the newly saved document and convert it to portable document format (.pdf) before providing it to the requestor.

Information subject to redaction includes:

1. Taxpayer names.
2. Addresses.
3. Signatures.
4. Account numbers.
5. Telephone numbers.
6. Trade secrets.
7. Products or processes that can be used to identify the taxpayer.
8. Logos.
9. Letterhead on incoming correspondence.
10. Author's initials.
11. File names.
12. Any other information that can be used to identify the taxpayer. This includes handwritten notes as well as typed information contained in the formal correspondence. Care should be taken during the redacting process to ensure that confidential information is completely and adequately masked so that it is not revealed upon reproduction.

Documents recommended for release, including documents with redacted information, should be organized in sequential order. Documents recommended to be withheld from public release should be separated from the release copies and an index should be prepared to identify these documents and the basis for withholding them from public release.

All of the documents, including the index of documents to be withheld from public release, should be submitted to the Disclosure Officer in the Legal Department for review by an attorney and approval for release or withhold. The Disclosure Officer should initial, date, and indicate "PRA review" in the lower right hand corner of each document.

After review of the documents, the Disclosure Officer will return the documents, with corrections noted, to the unit working the request. The unit will incorporate the corrections and make the photocopies of the documents to be released. These photocopies should contain a disclaimer on each document indicating that the information contained within may be outdated. One effective means of transferring the disclaimer statement to each release copy is by using a transparency sheet containing a copy of the disclaimer as an overlay during the photocopy process.

### **RELEASE OF DOCUMENTS**

After the relevant documents are photocopied, the photocopies, the number of photocopied pages for release, and a copy of the index of withheld documents [are](#) mailed to the requestor by the Disclosure Officer. The Legal Department is responsible for providing the related charges to the Accounting Section for appropriate billing to the requester. In general, the cost for this service is ten cents (10¢) per page provided.

The law provides that copies of documents should be furnished within a reasonable amount of time. Generally, it is BOE practice to provide documents within 30 days of receipt of the request. If preparing the documents for release will take more than 30 days, the Disclosure Officer should be contacted so that the requester can be appropriately informed of the possible delay.

### **STORAGE OF REDACTED COPIES OF DOCUMENTS**

Staff handling PRA requests should organize the documents for each request in chronological order or, if indexed, in sequential order. In addition, the documents should be properly identified as to their source and subject. If an index is prepared, a copy should also be included as well as a copy of the index of the documents not subject to disclosure. Upon completing these tasks, the information should be stored on location for use in responding to subsequent requests.

## **PROCEDURES FOR HANDLING REQUESTS UNDER THE INFORMATION PRACTICES ACT (IPA)**

### **DOCUMENT PREPARATION AND RELEASE**

All personal information maintained in a taxpayer's file must be made available to the taxpayer or his/her authorized representative upon request. However, certain documents retained in a file, such as memoranda with reference to taxpayers other than the taxpayer whose file information is being requested, should be redacted to remove confidential information before the document is photocopied and released. Copies of redacted documents should be attached to the original file document and retained in the taxpayer's file for future use. In addition, any information contained in a file, which is of a confidential nature under the attorney-client privilege or attorney work-product rule, is not subject to disclosure.

Requests for copies of information from a taxpayer's own file should be handled by the district office that maintains the file. [This includes providing photocopies of tax returns, applications, or other business related material at no charge.](#) Requests for copies of file information maintained in headquarters should generally be handled by the section that receives the request or the appropriate section that handles the type of information requested, e.g., requests for refund information should be handled by the Audit

120.025 (Cont.)

Determination and Refund Section, requests for petition information should be handled by the Petitions Section, etc. [For records maintained electronically such as ACMS notes and audit workpapers, the district office or headquarters unit primarily responsible for creating those documents will also be responsible for processing the request.](#)

Acknowledgment of a request for documents is not required by the IPA. However, acknowledging a request is a good practice to follow, especially if the preparation of documents is anticipated to require an extended period of time to complete. Copies of documents should be furnished to the authorized requester within 30 days of receipt of the request. An additional 30 days is allowed in the event the records are geographically dispersed or are inactive and in central storage.

Charges for these services and copies of documents should be made in accordance with established guidelines. Generally, an agency may charge no more than ten cents (10¢) per page. (See Board of Equalization Administrative Manual (BEAM) Section 7223.1).

For more information regarding the IPA, refer to the pamphlet, "Information Security at the Board of Equalization", and BEAM, beginning with section 7223.

**REVISED UNIFORM PARTNERSHIP ACT (RUPA)**

**724.012**

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

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

“The board shall not be subject to subdivisions (c)<sup>1</sup> and (d)<sup>2</sup> of Section 16307 of the Corporations Code unless, at the time of application for a seller’s permit, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.”

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

Summary of Key RUPA Provisions

1. Pursuant to RTC section 6831 and other related statutes, RUPA billing and debt collection requirements may not apply to the BOE in every case. However, the BOE’s policy is that all partnership accounts are presumed to have RUPA rights for billing and collection purposes, despite RTC section 6831 and similar sections.

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

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

- a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.
- b. The partnership is a debtor in bankruptcy....”

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

- ~~1.2.~~ The legal theory of “entity” applies, i.e., the partnership is a distinct and separate entity from each of its partners. A notification sent to one partner is not sufficient to assert liability against the partnership or the other partners.
- ~~2.3.~~ A partnership (entity) survives the addition or deletion of partners (unless the written partnership agreement stipulates that the partnership terminates in such circumstances).
- ~~3.4.~~ Partners are jointly and severally liable for the debts and obligations incurred by the partnership, subject to certain limitations and conditions as discussed in CPPM 724.020.
- ~~4.5.~~ A partnership entity must be billed separately from individual partners, and each partner must receive a separate billing.
- ~~5.6.~~ Attempts to collect partnership debt must be taken first against assets of the partnership and the partnership assets must be insufficient to satisfy the liability before collection can be attempted against assets of individual partners (unless the partnership is a debtor in bankruptcy).
- ~~6. Pursuant to RTC section 6831 and other related statutes, RUPA billing and debt collection requirements may not apply to the BOE in every case. However, the BOE’s policy is that all partnership accounts are presumed to have RUPA rights for billing and collection purposes, even if they legally may not.~~

## LIABILITY OF PARTNERS

724.020

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

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

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

When a partner dissociates from a continuing partnership, that partner is generally not liable for partnership obligations incurred after the date of dissociation. There are two exceptions to this general rule, both of which are contained in the Corporations Code (CC) [sections](#).

~~CC section 16308(a) and 16703(b). 16308(a) However, these exceptions do not pertain to unpaid sales and use tax and special tax and fee liabilities incurred by a continuing partnership. Both of the exceptions provided by CC sections 16308(a) and 16703(b) exist for the purpose of protecting creditors who enter into transactions based upon a representation that a specific person was a partner. states that persons that hold themselves out as partners, or who consent to others making representations that they are partners, are liable to any third parties who enter into transactions in reliance on such representations, whether or not a true partnership obligation exists.~~

~~CC section 16703(b) makes the dissociated partner liable to any third parties who enter into transactions with the partnership within two years after the date of dissociation, but only if the third party reasonably believed that the dissociated partner was then a partner and the third party did not have notice of the partner's dissociation.~~

~~Both of the exceptions provided by CC sections 16308(a) and 16703(b) exist for the purpose of protecting creditors who enter into transactions based upon a representation that a specific person was a partner. These exceptions do not pertain to unpaid sales and use tax or property and special tax and fee liabilities incurred by a continuing partnership.~~ As such, a partner that dissociates from a *continuing* partnership but who does not notify the BOE, either directly or by filing a Statement of Dissociation with the Secretary of State, is not liable under RUPA for taxes and fees incurred by the continuing partnership after the date of dissociation.

If a partner fails to notify the BOE of their dissociation from a continuing partnership, evidence provided by the partner should be examined to determine if the partner did, in fact, dissociate from the partnership and the date of the dissociation. Corporations Code sections 16601(1) and 16602(a) provide that a partner has the authority to dissociate from a partnership at any time by providing notice to the partnership of his will to withdraw as a partner. The dissociated partner has the burden of proving the date of dissociation which may involve providing substantiating documentation such as:

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

The date of a partner's dissociation must be captured in the online system by entering the date of dissociation in **both** the End Date and Legal End Date fields in the Client Taxpayer System.

If a partnership is dissolved as a result of a partner's dissociation or dissolved within 90 days after a partner dissociates, the partner will continue to be liable to the partnership's creditors for all of the obligations the dissolving partnership incurs until it winds up its affairs, including a predecessor liability pursuant to RTC section 6071.1 and Sales and Use Tax Regulation 1699(f), and CC sections 16701.5 and 16807. A predecessor liability could arise in any situation where the BOE was not informed that a partnership dissolved and post dissolution liabilities were incurred by an entity that continued operating the business under the dissolved partnership's seller's permit. Information regarding predecessor's liability is provided in CPPM 734.000, *Predecessor's Liability for Successor's Tax*.

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

#### **Referral to the Board of Equalization Legal Department**

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

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

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

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

**Key points to remember:**

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

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

**PARTNERSHIP COLLECTIONS****724.023**

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

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

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

**CANCELLATION**

**830.030**

The Board previously delegated to the Sales and Use Tax Department (SUTD), the authority to cancel or redetermine to zero all vehicle, vessel, and aircraft determinations (billings) in excess of \$50,000. On April 29, 2015, the Board delegated to staff approval authority to refund, cancel, or redetermine to zero all determinations.\*

Those items above \$50,000 that are refunded, canceled or redetermined to zero must be made a public record and those public records are to be retained in the Board Proceedings Division.

**PROCEDURES**

Approval for all cancellations of consumer use tax billings on vehicles, vessels, and aircraft will be sent to the SUTD and will no longer be heard on the Board's non-appearance Consent Calendar. The Petitions Section will coordinate sending all such cancellations in excess of \$50,000 to the Deputy Director, SUTD, or designee for approval. In general, the current review process and workflow related to such cancellations of CUTS billings in excess of \$50,000 will remain unchanged.

The following is a breakdown of Headquarters responsibilities for CUTS billing cancellations in excess of \$50,000:

- Deputy Director, SUTD, or Designee  
The Deputy Director, SUTD, or designee shall approve cancellations of all vehicle, vessel, and aircraft billings in excess of \$50,000 when tax is determined not to be due. The approval becomes effective ten days after the cancellation is made available as a public record.
  
- Petitions Section  
The Petitions Section will coordinate approval of cancellations of all vehicles, vessels, and aircraft CUTS billings in excess of \$50,000. The Petitions Section will forward for approval to the Deputy Director, SUTD, or designee all such CUTS cancellations in excess of \$50,000 when tax is determined not to be due. The Petitions Section will continue to review cancellation recommendations received from the CCS or received pursuant to petitions for redetermination. Case files of pending approvals are to be maintained in the Petitions Section.  
The Petitions Section will process approved cancellations on the Integrated Revenue Information System (IRIS) and issue appropriate notices or statements to taxpayers to reflect the cancellation of billings following the ten day public record period and approval of the cancellation.  
The Petitions Section will notify the Audit Determination and Refund Section (ADRS) when approved cancellations involve a resulting refund in excess of \$50,000 following the ten day public record period.
  
- Audit Determination and Refund Section  
When cancellation of the billing results in a refund of payments in excess of \$50,000, the refund will continue to require approval by the Deputy Director, SUTD, or designee. The Petitions Section will forward cancellations resulting in a refund in excess of \$50,000 to ADRS for further processing. ADRS is responsible for the issuance of the approved refund.

- Centralized Collection Section

The CCS will continue to forward all recommendations to approve CUTS billing cancellations over \$50,000 to the Petitions Section for final approval and cancellation.

- Consumer Use Tax Section

The CUTS will issue the original use tax billing, as is current practice. The CUTS will refer claims for refund, including refunds in excess of \$50,000, to ADRS for processing.

\* NOTE: This revision contains pending regulatory changes which require approval from the Office of Administrative Law before it becomes effective.

**INFORMATION SHARING BETWEEN CALIFORNIA MUNICIPALITIES AND THE BOE (AB 990)**

**909.000**

**GENERAL**

**909.010**

The procedures to implement the provisions of RTC sections 6066.3 and 6066.4 are referred to as the AB 990 process. AB 990 provides municipalities with the statutory authority to obtain seller's permit information from sellers desiring to engage in business in their jurisdictions. This enabled the municipalities and the BOE to form a partnership for the purpose of identifying and reporting unregistered sellers and to correct any misallocation of local tax. Participating municipalities will compare their licensing data with BOE's seller's permit information using a Statewide Registration CD provided to them each month by the BOE. The municipalities provide information for non-registered businesses, questionable Tax Area Codes (TACs), and/or business address discrepancies on a template provided by the BOE.

The BOE is required to provide the municipalities with an acknowledgment of each submittal and issue a finding for each record in the municipalities' submittals. If a finding can be made based on the information submitted by the municipality, the finding shall be issued within 30 days of receipt of the information. If additional information is required before a finding can be made, an interim report shall be sent to the municipality within 30 days of receipt of the information and a finding must be sent within 120 days of receipt of the information.

**DISTRICT OFFICE PROCEDURES**

**909.020**

District offices will designate an AB 990 Coordinator to act as a liaison between the municipalities and the BOE regarding the AB 990 requests from the municipalities. Municipalities generally become aware of the AB 990 program when they contact the BOE to verify the registration of a business to ensure they are receiving the proper tax allocation. More information about AB 990 can be found in Publication 28, *Tax Information for City and County Officials*. Municipalities choosing to participate in the AB 990 program will contact the District Principal Compliance Supervisor or a designee at the BOE district office having jurisdiction over the municipality's area and provide information regarding their AB 990 contact person. The information should include the contact person's email address and phone number, and the municipality's mailing address. The contact person's information and the municipality mailing addresses, including any updates for all participating municipalities in the district's jurisdiction, will be emailed to the Allocation Group of the Audit Determination and Refund Section (ADRS) and the Statewide Compliance and Outreach Program (SCOP) at [SUTD.AB990allocation@boe.ca.gov](mailto:SUTD.AB990allocation@boe.ca.gov) and [SUTD.SCOP-AB990@boe.ca.gov](mailto:SUTD.SCOP-AB990@boe.ca.gov) respectively. The AB 990 Coordinator will also provide the municipalities' mailing addresses to the Production Operations Group of the Technology Services Division (TSD) at **TSD-PFP** advising them to add the municipality to its statewide registration CD mailing list.

The District Principal Compliance Supervisor or designee will ensure that the AB 990 Coordinator establishes contact with the municipality's AB 990 contact person and provides the contact person with his/her name, email address, phone number, a copy of the BOE's proprietary AB 990 Process CD (AB 990 Input Program) and instructions for its use. The AB 990 Input Program is installed on a computer in the municipality's office and allows registration information to be transferred to a template and

submitted electronically to BOE headquarters. The AB 990 Coordinator will assist the municipality in the installation and operation of the AB 990 Input Program. To facilitate this assistance, the AB 990 Database Program is installed in each district office.

## **SCOP AND ADRS ALLOCATION GROUP PROCEDURES**

**909.030**

### **AB 990 DATABASE PROGRAM**

The AB 990 Database Program is installed in the district offices and on computers in BOE headquarters units responsible for the AB 990 program, specifically the SCOP Coordinators and the Allocation Group. The program will be used to process AB 990 requests from participating municipalities. In addition to the Input Program issued to participating municipalities, the AB 990 Database Program has the following three components:

1. **Assignment Program** (dbAssigner.mdb) used by the SCOP and Allocation Group to import the municipalities' submittals into the program for assignment to BOE staff in their respective offices, and then forwarding the submittals to a central database on the network server.
2. **End User Program** (dbEndUser.mdb) used by the SCOP and Allocation Group to retrieve the AB 990 files from the network server and to work the assignments resulting from the municipalities' submittals.
3. **Central Database** residing on the network server. This is a database of all submittals by municipalities statewide, including records of SCOP and Allocation Group activity on each assignment based on these submittals.

If problems are noted with the AB 990 Database Program, the SCOP and Allocation Group staff should work through their respective LAN Coordinators. The LAN Coordinator should open a HEAT ticket with TSD if the problem cannot be resolved.

### **AB 990 Submittals from Municipalities**

BOE's Local Government webpage provides municipalities participating in the AB 990 program with phone numbers and email addresses for various groups responsible for allocation, distribution, and petitions of local tax allocation. In addition, AB 990 submittals regarding no-permit operations or unregistered sub-locations will be sent to SCOP at SUTD.SCOP-AB990@boe.ca.gov. Submittals regarding TAC changes and reallocation of local tax will be sent to the Allocation Group at SUTD.AB990allocation@boe.ca.gov.

If problems are noted with the incoming AB 990 emails and attachments, the SCOP and Allocation Group staff will seek the assistance of their respective LAN Coordinator. If the problem cannot be resolved by the LAN Coordinator, he or she will open a HEAT ticket with TSD.

### **Processing AB 990 Submittals**

AB 990 submittals regarding no-permit operations and unregistered sub-locations will be received and processed by the SCOP, and those regarding TAC changes, reallocation of local tax, or other miscellaneous requests such as name or address changes will be received and processed by the Allocation Group. SCOP and Allocation Group staff will acknowledge receipt of incoming AB 990 emails. If extenuating circumstances prevent the sending of an acknowledgment the same day, it must be

sent as soon as possible on the next business day.

SCOP and Allocation Group staff should check their respective AB 990 mailboxes for incoming emails from the municipalities. The attachment files will be initially saved in a folder and then imported to the Assignment Program. The assignment process involves taking the following four steps for every record in the files:

1. Assigning the records to users either in SCOP or in the Allocation Group.
2. Choosing and assigning the district office of control. The district office of control will be based on the business address provided for the record in the submittal.
3. Entering the date of knowledge. This date will be the date the submittal was received from the municipality.
4. Adding the records in the attachment files to a table in the AB 990 Database Program.

After all records in the files are assigned, they will be moved to the central database on the network server. Subsequently, the End User Program will be used to retrieve and work the newly created assignments. Working the assignments will include investigative activity, issuance of findings, and possibly registration or modification to registration information in IRIS.

#### **Date of Knowledge and AB 990 Timelines**

The receipt of an AB 990 submittal from a participating municipality constitutes the date of knowledge and starts a 30-day timeline during which a finding will be made on the municipality's submittal and conveyed to the municipality. This usually involves determining whether a permit is required or whether the TAC of an existing account is correct. The 30-day period can be extended to 120 days for requests that require more information to make a finding. In such cases, the requesting municipality should still be notified within 30 days that more information is required to make the finding. For the purposes of local tax reallocation, the date of knowledge also determines the specific periods (tax quarters) subject to reallocation under RTC section 7209. The date of knowledge is valid if the information provided is sufficient to indicate the probability of improper allocation (see "Threshold Information"). If the submittal is rejected for insufficient information, and is later resubmitted by the municipality with sufficient information, the latter date (i.e., re-submittal date) will constitute the date of knowledge.

#### **Threshold Information**

AB 990 submittals from the municipalities requesting new registrations (no-permit operations) and for changes to existing seller's permits should contain the information shown in the respective tables below. Accounts or records with information missing from any mandatory field should be rejected.

1. New Registrations

<b><u>MANDATORY INFORMATION</u></b>	<b><u>OPTIONAL INFORMATION</u></b>
<u>Legal Owner Name</u>	<u>Business Type: (S) Sole Proprietor, (P) Partnership, (C) Corporation</u>
<u>DBA or "None" if not known</u>	<u>NAICS or SIC code applied</u>
<u>Starting date of business</u>	<u>FEIN</u>
<u>Business telephone number</u>	
<u>Owner's telephone number or "same" if applicable</u>	
<u>Business address (USPS format)</u>	
<u>Mailing address (USPS format)</u>	
<u>Description of business activity</u>	
<u>Description of product sold</u>	
<u>Action request-see decision table following</u>	
<b><u>Submitted by:</u></b>	
<u>City or County name</u>	
<u>Contact person</u>	
<u>Email address</u>	

2. Change to Existing Seller's Permit-Adding Sub-location, Change of Address, or TAC

<b><u>MANDATORY INFORMATION</u></b>	<b><u>OPTIONAL INFORMATION</u></b>
<u>Legal Owner Name</u>	<u>Business Type: (S) Sole Proprietor, (P) Partnership, (C) Corporation</u>
<u>DBA or "None" if not known</u>	<u>NAICS or SIC code applied</u>
<u>Starting date of business</u>	<u>FEIN</u>
<u>Business telephone number</u>	
<u>Owner's telephone number or "same" if applicable</u>	
<u>Business address (USPS format)</u>	
<u>Mailing address (USPS format)</u>	
<u>Seller's permit number provided by licensee</u>	
<u>Action request-see decision table following</u>	
<b><u>Submitted by:</u></b>	
<u>City or County name</u>	
<u>Contact Person</u>	
<u>Email address</u>	

**AB 990 Action Request Field**

The following choices appear on a pull-down menu of the Input Program for the user in the municipality to make a selection to fill the mandatory **Action Request** field. The selection in this field will dictate the action required to be taken by the SCOP or Allocation Group.

**ACTION REQUEST DECISION TABLE:**

<u>NO PERMIT IDENTIFIED</u>
<u>NO SUBPERMIT IDENTIFIED</u>
<u>PERMIT MISALLOCATED TO STATE POOL</u>
<u>PERMIT MISALLOCATED TO COUNTY POOL</u>
<u>IN LIEU MISALLOCATED TO CITY</u>
<u>CITY MISALLOCATED TO IN LIEU</u>
<u>TEMPORARY VENDOR NO PERMIT IDENTIFIED</u>
<u>TEMPORARY VENDOR NO SUBNUMBER IDENTIFIED</u>
<u>INCORRECT TAC</u>
<u>PERMIT ADDRESS INCORRECT</u>
<u>PERMIT NAME INCORRECT</u>
<u>OTHER</u>

**Working Assignments and Issuing Findings**

The AB 990 assignments will be accessed by users through the End User Program of the AB 990 database. A finding will be issued for each assignment based on the municipality's action request noted (see "AB 990 Action Request Field") and the result of SCOP or Allocation Group investigation. The assigned user will verify the validity of the municipality's requests through a search of the BOE's registration records and/or contact with the business entity to make the appropriate finding from the list below. This list is available in a pull-down menu of the End User Program.

1. **Permit is required** - BOE has determined that the business activity requires a permit, and a permit will be issued. This finding requires follow-up action.
2. **Permit is not required** - BOE has determined that either the business did not operate or the business activity does not require a seller's permit.
3. **Permit located** - BOE has located a permit for the entity at the address indicated by the municipality. The permit number should be entered in the comments column.
4. **Sub-location added** - In response to the municipality's notification of an unregistered sub-location, or a no-permit operation, BOE has verified that an active permit exists and has issued a permit for the sub-location.
5. **TAC changed** - BOE has determined that the TAC on the permit was coded to the wrong jurisdiction, or was otherwise incorrect, and has been changed to reflect the correct registration. This finding may require follow-up action.
6. **TAC is correct - Permit verified** - BOE has verified the permit for the entity and has determined that the TAC is correct.
7. **Permit name or address is correct** - BOE has verified the name and address on the permit, and has determined that they are correct.
8. **Permit name/address corrected** - BOE has verified that the name and/or

address on the permit were incorrect, and the correction has been made.

**9. Duplicate request** - BOE has determined that the submittal is a duplicate of one either being processed with a prior date of knowledge, or with the same date of knowledge.

**10. Rejected – insufficient information** - BOE has determined that there is not sufficient information provided by the municipality to make an informed finding. This “Rejected” finding will be used when information in any mandatory field of the municipality’s submittal is missing or incomplete.

The assignment records will be marked complete after the findings have been issued and any necessary comments entered. Certain assignments require additional work after the findings are issued. The assignments requiring additional work after the findings are issued are the ones that require issuance of permits (“Permit is required”) and assignments involving reallocation of local tax (“TAC changed”).

### **AB 990 Reports**

The findings made by the BOE are communicated to the municipalities by means of a “Completed Records Report.” The “Work in Process Report” is an interim report that captures the records on which findings are pending because additional time and/or information are required. Both reports are generated through the End User program. Before sending these reports to the municipalities, copies will be saved on the G:\ drive in a folder titled “Outgoing Reports.” The reports will be saved as Microsoft Excel files and each file name will include the respective municipality name and the date the report was created. The reports are communicated to the municipalities by means of an email attachment. To meet the requirements of RTC section 6066.3, these reports must be emailed to the municipalities no later than 30 days from the date of receipt of the submittal. Findings should be made on the records in the Work in Process Report as soon as possible, and communicated no later than 120 days from the date of receipt of the submittal. All reports to the municipalities containing confidential information will be encrypted.

SCOP staff uses a follow up report to work assignments that require follow up action after findings have been issued. This report generates the list of assignments for which the finding “Permit is required” was issued.

### **Action Requests for Businesses without Seller’s Permits**

In response to the municipalities’ action requests regarding no-permit operations, SCOP staff should take the following actions. BOE registration records should be checked in IRIS to ascertain if the business has a valid permit issued by the BOE. If an active permit for the entity at the specified address is found, the finding “Permit located” will be issued and the permit number should be entered in the “BOE Permit” field of the actions worksheet in the End User Program.

If no record is found, phone contact should be made with the business, or a letter should be sent, inquiring about potential business operations to confirm that a permit is required. If phone calls and letters do not resolve the investigation, a field call will be made to determine if a permit is required. If the investigation confirms that the business is operating and requires a permit, the finding “Permit is required” will be issued. Appropriate notes will be added to the assignment record and the record will be marked complete. If a permit is required, SCOP will assist the business in registering for a seller’s permit and will follow-up to add an account characteristic

code 21 (AB 990 Account) in IRIS to track the account for statistical purposes. After the permit is issued, an email notification will be sent to the municipality referencing the date of knowledge of the assignment and the permit number.

If the investigation reveals that the business is engaged in an activity not requiring a seller's permit, the finding "Permit is not required" will be issued. This finding will also be issued when a closed-out permit is found for the entity at the indicated location and the investigation reveals that the business did not operate, or is no longer operating.

The process of issuing the permit and notification to the municipality should be completed no later than 120 days from the date the BOE was informed of the no-permit operation. If, in spite of SCOP staff's repeated attempts to obtain compliance, a no-permit operator fails to register for a seller's permit, and therefore, a permit cannot be issued within 120 days of receiving the information from the municipality, a criminal complaint (as allowed under RTC section 6071) should be pursued. The municipality should be informed via email that compliance activity is in progress. As soon as the permit is issued, an email notification including the permit number and the date of knowledge will be sent to the municipality. If a "Permit is required" finding is issued, and later investigation reveals that a permit is not required, the municipality should be notified.

#### **Action Requests for Businesses with Unregistered Sub-locations**

Action requests from municipalities regarding unregistered sub-locations should be validated by SCOP staff through a search of registration records in IRIS. If the indicated sub-location is registered and is active, the finding "Permit located" will be issued. The permit number and the sub-location number will be entered in the assignment record and conveyed to the municipality.

If the sub-location is not registered in IRIS, phone contact should be made with the business, or a letter should be sent inquiring about potential business operations at the reported sub-location. If necessary, a field call should be made to determine if a permit is required. If the purported sub-location is not operating, the finding "Permit not required" will be issued.

If the sub-location has been verified as an active selling location, SCOP staff will add the sub-location in IRIS and mail a permit for the sub-location to the taxpayer's mailing address. Comments will be added to the registration record in IRIS. The finding "Sub-location added" will be issued, and the permit number and the sub-location number will be entered in the "BOE Permit" field of the actions worksheet in the End User Program. Notes will be added to the assignment record in the AB 990 database before marking it complete.

#### **Action Requests for Misallocated Permits and Incorrect TACs**

The Allocation Group will address the action requests from municipalities regarding misallocated permits and incorrect TACs. These should be validated by verifying the business address and the TAC in IRIS. If the taxpayer's business address in IRIS is different from the business address indicated by the municipality, the taxpayer should be contacted to verify the correct address. If the business address and the TAC for that address are found to be correct, the finding "TAC is correct – permit verified" will be issued. The same finding will be issued if the business address is incorrect but the permit is correctly allocated. In such instances, the business address will be corrected

in IRIS and a comment will be added in the assignment record to state that the business address has been changed.

If the business address is correct, but the TAC is incorrect or misallocated, or if both the TAC and the business address are incorrect, the appropriate change will be made to the account in IRIS to reflect the correct TAC and/or the business address. In cases where a TAC cannot be readily determined, (e.g. location is on a boundary line between two or more jurisdictions) the Local Revenue Allocation Unit should be contacted by email using the **+Area Codes** email address. The subject line should identify the email as an AB 990 request and the email should include the complete address for the location. After making TAC changes, comments will be entered in IRIS, and will include the date of knowledge and the name of the municipality that sent the action request. The finding "TAC changed" will be issued in the assignment record.

Reallocation of local tax, if required, will be done in accordance with the statutory provisions of RTC section 7209. Whenever a TAC change results in reallocation of local tax, the amount of local tax subject to reallocation and calendar quarters impacted by the reallocation will be communicated to the municipalities by email within the statutory AB 990 timelines. The account number and the date of knowledge for each account subject to reallocation should be referenced in the email.

The AB 990 procedures for submitting information for local tax reallocation are in addition to, and separate from, any procedures established under Uniform Local Sales and Use Tax Regulation 1807, *Petitions for Reallocation of Local Tax*. If inquiries regarding improper allocation of local tax or reallocation requests are received under both the AB 990 process and Regulation 1807, the date of knowledge and the processing of the request will be based on the earliest submission. Duplicate submissions will not be processed. Municipalities retain the right to appeal reallocation findings made by BOE under AB 990. Such appeals will be handled in accordance with the terms and procedures set forth in Regulation 1807.

#### **AB 990 Assignments Follow Up and Purging of Records**

The SCOP Coordinators and the Allocation Group Supervisor will have access to the AB 990 Database Program and will periodically monitor the AB 990 process to ensure the assignments are completed, changes to registration records in IRIS are made, permits are issued when required, and the reports and notifications to municipalities are sent in accordance with the mandated timelines and established procedures. They will also ensure that records of municipalities' submittals and copies of outgoing reports are maintained as specified in the preceding paragraphs. All submittals and copies of outgoing reports older than two years will be purged from their respective folders.

#### **TSD PROCEDURES**

**909.040**

The Production Operations Group of TSD will maintain a mailing list of all municipalities participating in the AB 990 program. During the last week of each month, the Production Operations Group will mail a copy of the current Statewide Registration CD to each participating municipality, all district offices, the Allocation Group, SCOP offices, and other requesting units in headquarters. The Statewide Registration CD contains the registration information for all currently active seller's permits and for permits closed during the last three years. The mailing list will be

updated every month in response to email requests from district offices and HQ units.  
The TSD Service Desk will assist SCOP and Allocation Group staff in resolving problems with the AB 990 mailbox and with incoming emails from the municipalities.  
The programmer assigned to the AB 990 Database will be responsible for resolving problems or issues related to the AB 990 Database Program.