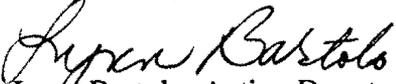


Memorandum

To : Mr. David Gau
Chief Deputy Director (MIC 101)

Date: February 2, 2016

From : 
Lynn Bartolo, Acting Deputy Director
Sales and Use Tax Department (MIC 43)

Subject : **Board Meeting February 23-25, 2016**
Item N: Administrative Agenda
Proposed Revisions to Audit Manual (AM) Chapter 4, General Audit
Procedures; AM Chapter 5, Penalties; and Compliance Policy and Procedures
Manual (CPPM) Chapter 7, Collections

I am requesting approval to forward the attached revisions to the Board Proceedings Division to be placed as consent items on the Administrative Agenda at the February 2016 meeting. The proposed revisions to the following sections incorporate current policies and procedures:

- AM Chapter 4, *General Audit Procedures*: Sections 0400.00 – 0404.00; section 0417.07; sections 0442.00 – 0442.04; Exhibit 4 was deleted and new Exhibits 14 - 19 were added
- AM Chapter 4, *General Audit Procedures*: Section 0419.35; section 0419.60; and sections 0437.05 – 0437.20
- AM Chapter 5, *Penalties*: Sections 0501.25 and 0502.40
- CPPM Chapter 7, *Collections*: Added new section 722.026

The revisions have been reviewed and approved by SUTD management, provided to Board Members, and posted on the Board’s website at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties. No comments were received from Board Members or other interested parties.

If you have any questions, please let me know or contact Ms. Susanne Buehler at (916) 324-1825.

LB:ljm
Attachment

Approved:

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the February 23, 2016 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

Mr. David Gau
Chief Deputy Director

cc: (all with attachment)

Mr. Wayne Mashihara (MIC 47)

Ms. Susanne Buehler (MIC 92)

Mr. Richard Parrott (MIC 88)

Mr. Kevin Hanks (MIC 49)

Mr. John Thiella (MIC 73)

Mr. Marc Alviso (MIC 101)

Mr. Chris Lee (MIC 101)

Ms. Leila Hellmuth (MIC 43)

GENERAL AUDIT PROCEDURES

0400.00

INTRODUCTION

0401.00

The primary objective of the audit program is to determine, with the least possible expenditure of time, the correct measure of tax. The audit program provides information and assistance to taxpayers, enabling them to complete returns and pay taxes correctly and efficiently. Interpretations of the law and related regulations during the audit process provide taxpayers with proper basis or method for reporting future tax liabilities.

It is not the purpose of the Audit Manual (AM) to lay down rules so rigid the auditor is precluded from the exercise of reasonable judgment. Suggested procedures that conform to standard audit practices are presented with an explanation of the terms frequently used by auditors. The auditor should recognize, however, that there are many variations necessitated by application of the law, rules and regulations, taxpayer's methods of reporting, and types of records encountered. For these reasons, it is impractical to present procedures that will be applicable to all situations. The typical flow of the audit process is illustrated in Exhibit 1.

[AM sections 0401.00 and 0402.00 apply to audits, field billing orders and claims for refund. Completion of Form BOE-414-Z, *Assignment Activity History*, \(BOE-414-Z\) using the 414-Z Program is mandatory for all audit assignments \(including reaudits and claims for refund\). See AM section 0221.00.](#)

Specific reference is made to the glossary contained in AM section 0490.00 for terms peculiar to tax auditing which are used in this chapter. The auditor is expected to have a good working knowledge of these terms prior to reading this chapter.

AUDIT SELECTION

0401.015

Each district is responsible for determining which accounts are to be audited.

An audit assignment does not always result in a completed audit. Preliminary testing (AM section 0403.25) may disclose that an audit is not warranted, in which case auditors **will** prepare Form BOE-596, *Report on Account Being Waived for Audit* ([See](#) AM section 0212.00).

When deciding whether to waive or perform an audit, the auditor should consider the following points:

- Are accurate and complete records kept?
- Does the markup on cost of goods sold appear adequate?
- Are the persons preparing tax returns familiar with the law and the rules and regulations pertaining to their particular business?
- Are the reported amounts reasonable considering the type of business, nature of the premises, the location in the community, etc.?
- Do the reported amounts vary materially from period to period?
- Is there a good system of internal control?
- Is the taxpayer's past [reporting](#) record good?

When working on an audit assignment, the auditor may discover other accounts which may not have reported the correct amount of tax. Such information should be communicated to the audit supervisor.

FORM BOE-1164

~~0401.20~~ [0401.02](#)

The auditor should prepare Form BOE-1164, *Audit Memorandum of Possible Tax Liability*, (Exhibit 2) in appropriate circumstances. The information on this form is valuable in audit selection and may aid in disclosing tax that may otherwise remain unreported. Therefore, the importance of preparing this form cannot be overemphasized. For information on the use of Form BOE-1164, see AM section 0408.18.

The auditor should also be alert for activity in other ~~business taxes~~ [tax and fee programs](#) for which the taxpayer may not have a permit. See AM sections 0205.51, 0205.53, 0205.55, 0205.56, and 0205.57.

Confidentiality of Form BOE-1164 Information

Current policy allows copies of Form BOE-1164 to be released to a taxpayer if the confidential information about another taxpayer is redacted. Thus, seller information must be redacted when the form is provided to the buyer, and buyer information must be redacted when the form is provided to the seller. Any invoices that are attached to Form BOE-1164 must also be redacted to remove confidential information.

The information to be redacted includes any information which might lead to the discovery of confidential taxpayer information such as the taxpayer's name, permit number, purchase order number, invoice number, dollar amount of purchase, or comments.

Audit Memorandums Concerning State Agencies

~~0401.23~~

The Department of Finance no longer audits state agencies and therefore no longer receives or takes action on audit memorandums. Therefore, the audit memorandums prepared by auditors which involve state agencies should be distributed in the same manner as other audit memorandums.

The Out-of-State District in auditing out of state businesses should question any sales or leases to the State of California. If they find sales or leases subject to use tax in which the tax was not ~~billed-paid~~ to the state or reported by the retailer, such sales or lease receipts should be assessed in the audit. Special care should be taken to accurately assess applicable local and district taxes.

PUBLIC RELATIONS

[0401.03](#) ~~0401.30~~

It is important that the auditor attempt to establish a good rapport with the taxpayer thereby encouraging a cooperative attitude. The Board [of Equalization \(BOE\)](#) has established a basic policy which is clearly stated in AM Chapter 1 — *General Information*. The complete compliance with this policy cannot be overemphasized.

The auditor should maintain an objective attitude, tempered by the fact that we are ~~dealing~~ [working](#) with human beings. To the extent possible, the auditor should:

- Encourage a cooperative attitude by being cooperative
- Maintain an “arms-length” relationship with the taxpayer ~~in the sense of~~ [by](#) not becoming personally involved

- Avoid arguing with the taxpayer
- Avoid “humorous” remarks as they ~~are frequently~~may be misinterpreted by the taxpayer
- Avoid political and religious discussions

Public relations are a factor during the entire course of the audit. The auditor should develop a sense of timing as to when it is best to discuss the various audit phases with the taxpayer; e.g., after agreement has been reached regarding appropriate test procedures with the taxpayer, no further discussion should be required until test findings are established or necessary changes in agreed procedure are required. On the other hand, many taxpayers prefer to receive schedules of questioned items as they are completed. This makes it possible for the taxpayer to begin work on possible exceptions while the auditor continues the test. This method facilitates a more rapid completion of the audit and makes an early test cutoff possible, if appropriate.

The auditors’ appearance, clothing and conduct should be appropriate to their professional status.

There is one basic difference between tax auditing and public accounting: The public accountant is serving their client and is on the client’s premises at the request of the client; the tax auditor’s presence is usually not requested.

MONEY LAUNDERING

[0401.04](#)~~0401.35~~

In cooperation with the Department of Justice, the ~~Board~~BOE has agreed to provide assistance in the enforcement of money laundering violations by reporting suspected violations. If potential violations of money laundering or monetary instrument transaction reporting laws are suspected, a report documenting the suspected violation should be prepared and forwarded to the Chief, Field Operations ~~Division~~Department (FOD).~~Equalization Districts 1 and 2 and Out of State District or the Chief, Field Operations Division, Equalization Districts 3 and 4 and Centralized Collection Section. That office~~FOD will then forward the report to the Department of Justice. This report should be submitted in a form similar to that shown in Exhibit ~~153~~.

The law contains two money laundering offenses the auditor should look for when conducting ~~their regular functions~~an audit. These are referred to as the “facilitation” offense and the “capturing” offense.

The facilitation offense includes conducting or attempting to conduct a transaction involving a monetary instrument or instruments exceeding \$5,000 through a financial institution with the intent to promote, manage, establish, carry on or facilitate the promotion, management, establishment or carrying on of any criminal activity.

The capturing offense involves the laundering of illegally derived proceeds. It includes conducting or attempting to conduct a transaction involving a monetary instrument or instruments exceeding \$5,000 through a financial institution with knowledge that the monetary instrument represents the proceeds of criminal activity.

Auditors should not spend a significant amount of time investigating potential money laundering violations. However, any suspected violations ~~which are~~ discovered in the course of regular auditing procedures should be reported.

TAX AUDITING

0401.05

Introduction

0402.05

Tax auditing is defined as an inquiry into all phases of a taxpayer's business ~~in which~~ where significant tax error could occur. Tests are ~~made~~ conducted in accordance with generally accepted auditing standards. They are extensive or comprehensive only to the degree necessary to support a professional audit opinion as to the ~~correctness~~ accuracy of returns as filed. Tests of records where potential errors are small are normally not as comprehensive as tests where substantial errors are possible. Expression of the auditor's opinion or recommendation concerning all tax-significant phases of a taxpayer's business are reflected in ~~two~~ the following types of audit reports: ~~—These are:~~

1. BOE-414-A "Change" reports recommending:
 - Deficiency determination per section 6481
 - Determination — No returns filed per section 6511
 - Refund recommendation per section 6901
2. BOE-414-C "No change" reports

Very limited testing or sampling may be all that is necessary to support a "No Change" report or "No Change" phase(s) of a "Change" report. Testing to support substantial change recommendations must include sufficient verification or explanatory comments so that the report is understandable and can be evaluated by other members of the staff as to the soundness of the auditor's opinion or recommendation. (See AM Chapter 2 for investigations ~~—(Form~~ BOE-414-B, Field Billing Order, ~~)~~ and field waivers (BOE-596) which are short of a full report as contemplated by Form BOE-414-C, Report of Examination of Records, or Form BOE-414-A, Report of Field Audit ~~reports~~.)

Auditors should make the most efficient use of their time by making full use of all available records and worksheets of the taxpayer. The auditor should schedule exceptions noted. This has the advantage of aiding the auditor in discussing the direct findings with the taxpayer. This procedure also helps to clarify ~~the late~~ the exceptions to the specific law and/or regulations.

Audit Approach

0402.10

Many taxpayers are careful to report taxable transactions accurately, especially after one or more audits have been made. To make an extensive examination of three years' operations in these situations may not be justified. Short tests should be made before starting a complete verification of three years' operations.

If these short tests indicate the taxpayer has not properly reported their tax liability, the auditor should make more extensive tests. The short test should be designed so that the result can be combined with more extensive tests to determine the proper measure of additional tax.

Approach to Auditing Credits or Refunds

0402.20

A primary purpose of the ~~Board's~~ BOE's audit program is to provide reasonable assurance that taxpayers pay neither more nor less tax than required by law. Consequently, the ~~Board~~ BOE is just as concerned with refunding overpayments as with collecting underpayments. If a refund situation is noted in the course of the audit, the auditor should normally secure a claim for refund from the taxpayer utilizing ~~the~~ Form BOE-101, *Claim for Refund or Credit*.

Sampling and projection techniques may be used by taxpayers to determine the amount of overpayment of tax liability using criteria similar to the techniques used by auditors (AM sections 0405.20 and 1302.05). If sampling and projection techniques are not appropriate for some or all of the transactions, the amount of the refund will be determined on an actual basis.

The preferred method of sampling is statistical sampling, as described in Chapter 13 of this manual. Claims for refund using statistical sampling methods must meet the ~~Board's~~ BOE's established standards for statistical sample evaluation. If statistical sampling is not feasible, non-statistical sampling procedures, as discussed in this chapter, may be considered.

Once the taxpayer has filed a claim for refund and has requested or suggested determining the amount of refund by means of sampling, the claim will be assigned to an auditor who will contact the taxpayer to determine if sampling is feasible and, if so, develop a mutually agreeable sampling plan. The auditor may choose to consult a Computer Audit Specialist (CAS) on the sampling plan. Taxpayer requests for CAS consultation are subject to the procedures outlined in AM section 1302.25(h).

During the course of an audit, ~~either~~ conducted on an actual or sample basis, the auditor may detect both underpayments and overpayments. It is very important that the underpayments and overpayments (credit offsets) be treated equally. When an audit is done on a sample basis, both overpayments (in certain situations) and underpayments need to be taken into account and treated the same when examining sample items, analyzing the sample results, and projecting the resulting errors to the population being tested. Any allowable credit offsets resulting from the sample should be a part of the calculation of the percentage of error to be applied to the population. See section 1302.25(i) for additional discussion of tax overpayments (credit offsets) in the sampling plan.

The completion and transmittal of audit reports recommending refunds must be given urgent priority. Each district must establish ~~permanent~~ procedures for the early identification and control of audits involving refunds so that such audits are completed and transmitted without unnecessary delay.

Waiver of Credit Interest Policy

0402.25

Claims for Refund

The taxpayer should always be allowed a reasonable time in which to support a claim for refund. Under most circumstances, ninety days is considered reasonable.

If the taxpayer has been granted a ~~ninety~~ 90 day delay and requests additional time, consideration should be given to obtaining a waiver of credit interest. The ~~Board~~ BOE may require a claimant to sign a Form BOE-146, *Waiver of Credit Interest*, as a condition to

deferring action on a claim for refund (Revenue and Taxation Code section 6908(b)). In some cases, it may be appropriate to allow up to an additional ninety days because of the size of the claim and ~~large amount~~quantity of supporting ~~detail~~documentation required. However, delays beyond six months should not be allowed without a waiver of credit interest or the approval of the Deputy Director, Sales and Use Tax Department, or designee, or Chief of Field Operations Department, or designee, as appropriate.

An extension of time beyond twelve months from the date the taxpayer was first notified in writing to compile the necessary data in support of the claim should not be allowed even if the taxpayer is willing to sign a waiver of credit interest or an extension to an existing waiver of credit interest. If the taxpayer does not provide the supporting data within the twelve-month period, the claim for refund will be denied for failure to support the grounds upon which the claim was based. Exceptions to this policy must be approved by the Deputy Director, Sales and Use Tax Department, or designee, Chief of Field Operations Department, or designee, as appropriate.

Deficiency Audits with Credits

If the taxpayer contends that there are other credits which offset or exceed a deficiency disclosed by an audit in process and requests ~~a delay~~additional time to obtain information supporting such credits, completion of the audit may be delayed for up to ~~ninety~~90 days. A notation should be made on the BOE-414-Z of the date and reason for the delay. Should the taxpayer request a further delay, the deficiency audit should be completed as a non-concurred audit and processed in the usual manner.

With regard to the credits in question, it is critical that the auditor obtain a timely claim for refund which includes the taxpayer's specific contentions. The claim for refund, and when appropriate a waiver of credit interest, should be forwarded to the Audit Determination and Refund Section (ADRS) with all pertinent information concerning the credits and the waiver of credit interest. Subsequent action by the district office, if ~~any~~needed, will be requested by Headquarters.

It should be noted that refunds are to be considered priority assignments. In those cases where a taxpayer has given the ~~Board~~BOE a waiver, it becomes even more imperative that prompt action be taken.

Authorized Signatory

To preclude any question about the validity of a waiver, ~~the~~ Form BOE-146, *Waiver of Credit Interest*, must be signed by:

- ~~(1) The taxpayer owner~~ in the case of a sole proprietorship,
- ~~(2) A~~ partner in the case of a partnership,
- ~~(3) A~~ corporate officer in the case of a corporation, ~~or~~
- A member in the case of a limited liability company (LLC), or
- ~~(4) A person someone~~ holding a written power of attorney from the owner, partner, member, or a corporate officer. ~~one of these persons.~~

Taxpayers may use Form BOE-392, *Power of Attorney*, to document power of attorney status. In lieu of Form BOE-392, BOE staff may accept any written documentation identified as a power of attorney containing the essential elements as described in AM section 0403.15, *Power of Attorney*.

~~The essential elements of a valid written power of attorney are:~~

- ~~1. The document must be dated and identified as a “power of attorney.”~~
- ~~2. The document must clearly authorize the agent (controller, assistant controller, or some other person) to act in a manner consistent with the signing of a waiver. Ideally, the power of attorney will authorize the agent to act in “sales and use tax matters.” However, a less specific description may be acceptable if it can reasonably be interpreted to impose upon the agent the right to execute the Form BOE-146, *Waiver of Credit Interest*.~~
- ~~3. The person granting the power of attorney must be the owner, partner, or a corporate officer of the company being audited.~~

With respect to corporations, if the title of the person signing the waiver is other than chairman of the board, president, secretary, or chief financial officer, the auditor must verify, by examining the corporate articles or bylaws regarding corporate officers, that the titled position constitutes a corporate officer.

With respect to partnerships, if the person signing the waiver is not listed as a partner on the Integrated Revenue Information System (IRIS) TAR AI screen, the auditor ~~will~~ must verify the validity of the person’s status as a partner by reviewing the partnership agreement. Any changes in partners must be reported to district compliance as provided in AM section 0219.03.

*A copy of the written power of attorney must be obtained and ~~attached~~ included with ~~to~~ the copy of the waiver(s), Form BOE-146 in the **Forms** subfolder of the audit case folder, and transmitted to Headquarters with the audit report if the waiver signatory is other than a corporate officer, partner or owner.*

OVERVIEW – AUDIT PROCEDURES

0401.06

To facilitate the completion of audit assignments pursuant to Regulation 1698.5, *Audit Procedures*, audit procedures and guidelines in AM sections 0401.07 to 0401.18 provide for the following:

- Appropriate and timely communication between BOE staff and the taxpayer, of requests, agreements, and expectations related to an audit.
- Auditing environment for timely completion of an audit within two years (neither BOE staff nor taxpayers should construe this goal to mean the audit must take two years when the audit can be completed sooner, or that the completion of an audit must occur within two years when a longer timeframe is warranted).
- Consistent definitions and procedures to allow audit manual users with various levels of expertise, both within and outside BOE, to navigate through the sometimes complex audit process.

AUDIT PLAN

0401.07

All audits must be guided by an organized plan. A carefully thought-out, but flexible, audit plan is the first step towards good working papers and a good start. Such an audit plan forces advance thinking and a proper overview of the assignment as a whole.

The objectives of the audit plan are as follows:

- Establish open lines of communication.
- Promote understanding of commitments made and agreements reached.
- Identify key potential audit issues.
- Assist in the progression and completion of the audit.

An audit plan allows the auditor and the taxpayer to work together to resolve problems as early as possible in the audit process and establish a common understanding and working relationship. The audit plan should be sufficiently detailed so that the taxpayer and BOE staff can assess, at any time, the extent of work that has been completed, the work remaining, and a timeframe for the completion of the work remaining. In doing so, the audit plan helps ensure an effective and efficient audit that is less burdensome, less costly, and less intrusive.

The complexity of the audit plan will differ based on the circumstances of each audit. The auditor should develop an audit plan that strives for the timely completion of an audit within a two-year timeframe beginning with the opening conference (AM section 0401.09) and ending with the exit conference (AM section 0401.16). Most audits, however, will be completed in a much shorter timeframe although some may require a period beyond two years. The auditor should consider the duration of the audit and anticipated completion date when preparing the audit plan.

Working With Taxpayers

A positive working relationship with the taxpayer is conducive to the effective and timely completion of the audit. Taxpayer participation in the development of the audit plan is encouraged. The audit plan should be discussed and expanded upon during the course of the audit as the auditor learns more about the taxpayer's business and records.

By reviewing the audit plan with the taxpayer:

- Both parties will be able to more efficiently manage the fact gathering and analysis process.
- The taxpayer will be able to anticipate deadlines better and provide alternative solutions to resolving issues, such as when specific records are unavailable or missing but alternative records or documents can be provided which contain the requested information.
- Apprehension by the taxpayer may be minimized, and communication and cooperation is enhanced.
- The materiality or immateriality of specific audit areas can be discussed early, and if appropriate, those areas found to be immaterial may be waived from examination.

- The audit plan can be revised as the need for more, less, or different work arises than originally noted.

Development of an Audit Plan

The audit plan sets forth the road map for the audit and therefore should be completed as a preliminary step to conducting the audit. Prior to the opening conference, auditors should begin to prepare an audit plan.

Because the audit process is collaborative, the auditor should obtain input and information from the taxpayer regarding the business and its records prior to the formulation of an audit plan. This may be done in a pre-audit conference (AM section 0401.08) or during preliminary contact to set-up the first audit appointment (AM section 0403.10).

In order for the audit plan to be meaningful and relevant, the auditor should review the taxpayer's history and prior audit(s) in determining the scope of the expected audit. This includes analyzing tax returns, transcripts, the taxpayer's account (including ownership); reviewing the prior audit history; researching the business and industry; researching for other BOE tax and fee accounts; and performing other information gathering techniques that provide the auditor with a better understanding of the taxpayer's business and potential audit issues.

The audit supervisor is required to review and sign the audit plan before it is presented to the taxpayer. The audit supervisor should document his or her approval on the BOE-414-Z (AM section 0221.00).

The auditor should discuss the audit plan with the taxpayer at the opening conference (AM section 0401.09), and provide a copy at the time of the discussion. When it is necessary for the auditor to first review the taxpayer's records or to obtain supervisory approval, a copy of the audit plan may be provided to the taxpayer after the discussion but no later than 30 days from the opening conference.

Additional guidelines for preparing an audit plan:

- The audit plan should be clearly marked "Initial" or "Revised" with a revision date at the top of all audit plans.
- After the opening conference, the auditor, the supervisor, and assigned team members (if applicable) should complete the final audit plan incorporating changes made as a result of discussions with the taxpayer.
- If there are significant changes to the audit plan discussed at the opening conference and the supervisor who previously signed the audit plan was not present at the opening conference, the auditor should submit the audit plan to the supervisor for review and approval before providing it to the taxpayer.
- Any changes or revisions to the audit plan should be provided to the taxpayer.
- Audit supervisors should review the progress of all audits at least monthly. The audit plan should always be a part of the review and the audit supervisor should write a comment on the BOE-414-Z at the time of review.

Audit Plan Details

In addition to any areas, audit procedures, and/or tasks to be addressed in the audit, the following items should also be included in the audit plan. Additions or deletions from the audit plan should be done on a case-by-case basis.

1. **Audit Scope** — The audit scope shows the audit period, district/branch/area office conducting the audit, areas to be examined, number of divisions or locations, related accounts, and overview of transactions.
2. **List of Key Personnel** — Identify all key BOE staff, taxpayer personnel, and any outside representatives, including their addresses and telephone numbers. The auditor should confirm that the taxpayer personnel identified in the audit plan are authorized to provide the BOE with records, receive Information Document Requests (IDRs), and are authorized to enter into preliminary and final discussions with BOE. See AM section 0403.14, *Contacts with Third Party Representatives*.
3. **Timeframes** — The audit plan should document the estimated timeframe required to complete the audit. Although not shown in the audit plan, budgeted hours for the entire audit should be established and taken into consideration when estimating the time required for each area of the audit. Establishing a timeframe in the audit plan and adhering to it is critical in completing audits timely. Throughout the audit process, these timeframes serve as benchmarks against which progress is measured. Timeframes should be established for the following:
 - Estimated start and completion dates
 - Scheduled future field appointments
 - Status conferences (AM section 0401.10)
4. **Claims for Refund** — The audit plan should document claims for refund filed and the testing procedures to be used to verify the claimed amounts.
5. **Amended Returns Filed by the Taxpayer** — Determine if any amended returns were filed by the taxpayer and whether copies of returns will need to be requested.
6. **Audit Issues** — Identify known audit issues and the potential tax application or effect. The taxpayer should be informed that additional audit issues may arise during the course of the audit and changes to the audit plan will be made accordingly.

Signing the Audit Plan

The audit supervisor reviews and signs all audit plans before they are presented to the taxpayer. Then the auditor and taxpayer should sign the final completed audit plan, and provide the taxpayer a copy. Signing the audit plan shows a commitment by all parties that the audit will be conducted in the manner discussed and will allow for the timely completion of the audit. If the taxpayer does not agree with the audit plan and refuses to sign, the auditor should make changes, if warranted, in order to reach an agreement with the taxpayer. If the auditor feels no adjustment is warranted, the auditor should consult

with the audit supervisor prior to proceeding as provided in the audit plan. Both the taxpayer's and the auditor's position should be documented on both the audit plan and on the BOE-414-Z.

The auditor and the audit supervisor should initial and date any amendments to the original audit plan and provide a copy of the amended audit plan to the taxpayer. The auditor should document on the BOE-414-Z the delivery of the original and any amended audit plans to the taxpayer, or the reason the taxpayer did not sign the audit plan. Signed copies of the audit plan and copies of all amended audit plans, should be scanned and saved in the *Forms* subfolder of the audit case folder.

PRE-AUDIT CONFERENCE

0401.08

A pre-audit conference is a meeting between the taxpayer and BOE staff (including the audit supervisor and computer audit specialist (CAS), if appropriate) prior to the opening conference (start of the audit) to discuss the availability and production of records, including electronic records. While a telephone discussion may suffice for smaller or less complex audits, a pre-audit conference is required on larger or more complex audits, especially those where electronic records are involved. After the auditor conducts the preliminary overview work on the audit, he or she will have the ability to determine whether a pre-audit conference is warranted.

The pre-audit conference may occur several months before the first day the field work begins. Among other things, such as discussion of staffing and resources that are needed by the taxpayer and BOE staff, a pre-audit conference provides for a discussion of the records that are required, the period for which requested records are available, the manner in which they are to be furnished, and the timeframe in which they are to be made available. Participation in a comprehensive pre-audit conference by key taxpayer and BOE staff will minimize the likelihood of misunderstanding and reduce delays in retrieving records.

Prior to the pre-audit conference, the auditor should send the taxpayer the appropriate Form BOE-80 series, *Audit Engagement Letter*, to confirm arrangements to begin the audit or to establish contact with the taxpayer. These forms are discussed in AM section 0403.10.

Taxpayers (owners, partners, or corporate officers) should be invited and encouraged to attend the pre-audit conference, even if they have authorized another person to represent them (AM section 0403.14.). The audit supervisor should attend the pre-audit conference, when feasible, to ensure proper direction and control of the audit is in place. In cases involving electronic records, the CAS should participate in the pre-audit conference to discuss the availability of the electronic records, as appropriate. The auditor should suggest that the taxpayer include their information technology staff in the pre-audit conference to discuss the technical aspects of retrieving the necessary electronic records.

The CAS assigned to a specific audit will serve as a technical consultant to the auditor(s) to assist with the electronic records and sampling. At the pre-audit conference, the auditor should inform the taxpayer that technical questions regarding the data may be addressed to the CAS; and all questions and issues related to the audit and scope of work will be handled by the auditor. The CAS should be given access to the BOE-414-Z so that the CAS can enter comments as appropriate. For more information about the role of CAS, see AM section 0403.12.

Items to be discussed in the pre-audit conference should include, but are not limited to the following:

- General audit procedures
- Use of Prior Audit Percentage of Error (AM section 0405.33)
- Use of Managed Audit Program (AM section 0435.00)
- Availability of and access to records
- Computer assisted audit procedures
- Relevant sampling issues
- Data transfer process
- Verification of data
- Security of data
- Timeframes for the furnishing and reviewing of records
- Name of the person(s) designated to receive IDRs
- Potential new or emerging issues
- Potential claims for refund

OPENING CONFERENCE

0401.09

The opening conference is considered the start date of the audit since it is generally the first on-site meeting between the taxpayer and BOE staff to discuss how the audit will be conducted and to begin the field work. For large or complex audits, the audit supervisor should attend the opening conference to ensure that proper direction and control of the audit are in place.

The opening conference establishes the groundwork necessary to conduct an effective and efficient audit and establishes lines of communication that help build a good working relationship between the auditor and taxpayer. During the opening conference, the auditor and taxpayer will introduce the participants of the audit, agree on a general audit plan, discuss audit processes and procedures, and agree upon expected timeframes. The auditor may charge a reasonable number of hours to the audit for preliminary work such as the overview work, as well as time spent conducting a pre-audit conference.

Introduction of Personnel

At the start of the opening conference, the auditor and supervisor (if present) should introduce themselves to the taxpayer. If the team audit approach is being used, see AM Section 0402.06, *Role of Lead Auditor*.

The taxpayer should also introduce their staff and identify those persons who will be working with the auditor and BOE staff on the audit. The auditor should obtain the name, title, and telephone number of the taxpayer's staff in the event that the main contact person is not available or leaves the company during the audit. Taxpayers (owners,

partners, or corporate officers) should be invited and encouraged to attend the opening conference, even if they have authorized another person to represent them.

General Discussion

The general discussion at the opening conference is an opportunity for the auditor to perform the following tasks:

- Advise the taxpayer of relevant law sections or regulations pertaining to the taxpayer's business and explain where the information relating to the taxpayer's business is located on the BOE website.
- Address any questions the taxpayer may have regarding their rights during the audit or the appeals process.
- Emphasize the BOE's expectation of completing the audit within two years, or as appropriate for the size and complexity of the audit.
- Discuss the general history of the taxpayer, including any changes in ownership, acquisitions, changes in product line, going concern, and unusual activities during the period under audit, or current changes that may impact the audit.
- Discuss the facts of any pertinent issue or area within the business, such as how a product is made or where assets and supplies are purchased.
- Determine whether there are known credit issues for which a claim for refund will be filed.
- Obtain a signed copy of Form BOE-82, *Authorization for Electronic Transmission of Data*, and discuss the BOE policy for emailing taxpayer information (AM section 0101.67).
- Request copies of the returns filed and their back-up to start the review of the taxpayer's filings.

Potential Audit Issues

Auditors should inform the taxpayer of potential audit issues, including potential areas of refund, identified during the cursory review process or established in a prior audit. Possible items to discuss include, but are not limited to:

- **Recurring Audit Issues.** If a prior audit determination is being protested or was changed during the appeals process, the auditor should determine the status of the recurring issues. When applicable, the auditor should discuss any changes to the law or regulations related to these items since the last audit.
- **Potential Areas of Refund.** The auditor should inform the taxpayer of the benefit (i.e., interest offset) of providing a claim for refund early in the audit. The taxpayer should also be notified that if a claim for refund is presented at the end of the audit, the claim for refund may be addressed separately so as not to delay the completion of the current audit.
- **Potential Time Saving Areas.** The auditor should consider and discuss any areas where audit time may be reduced and where efficiencies of reviewing the information can be accomplished.

- Prior Audit Percentage of Error. The auditor should discuss the possible use of a prior audit percentage of error. See AM section 0405.33.
- Managed Audit. The auditor should discuss the taxpayer's eligibility to participate in the Managed Audit Program. See AM section 0435.00.
- Deletions or additions to the business such as the sale or addition of an asset or entire division.

Taxpayer's Return Preparation

Obtaining information on how the sales and use tax returns for the audit period were prepared will provide valuable information on how to address issues and identify the person(s) within the taxpayer's business who is knowledgeable in given areas. The auditor may want to ask the taxpayer the following questions:

- Who prepared the returns? If it is not the same contact person(s) the auditor is working with, is that individual(s) still available for questions or information?
- Where are the workpapers/worksheets for the tax returns located and what lead-time is needed to obtain them?
- Are the tax return workpapers/worksheets electronic, and if so, in what format?
- Have amended sales and use tax returns been filed during the audit period, and if so, for which periods?
- How were district tax allocations addressed? Is the taxpayer engaged in business in other taxing jurisdictions?
- Are instructions or return preparation guidelines issued to those preparing the returns, and if so, are they available?
- Did the method of reporting change over the course of the audit?

Taxpayer Records

Government Code section 15618 authorizes an auditor to examine records of the taxpayer and of persons doing business with the taxpayer. Revenue and Taxation Code section 7054 provides additional authority for the examination of records pertaining to the Sales and Use Tax Law. Similar provisions are found in other tax and fee programs administered by the BOE. Government Code section 15613 authorizes the BOE to issue a subpoena for the attendance of witnesses or to produce books, records, accounts and papers.

Taxpayer records (both original and copies) are confidential and must be safeguarded at all times. The auditor should inform the taxpayer that any information provided is confidential and protected. The auditor may not remove records from the taxpayer's or representative's premises without permission from the taxpayer or designee. Records relating to the audit of one taxpayer should not be brought to and accessed/worked on at another taxpayer's location. Receipt of taxpayer original records requires accurate and timely completion of Form BOE-945, *Receipt for Books and Records of Account*, by the auditor and must be signed by the taxpayer, with a copy provided to the taxpayer. A scanned copy of the BOE-945 should be saved in the *Forms* subfolder of the audit case folder. For additional

information on handling taxpayer's records and preparation of Form BOE-945, see AM section 0403.35, *Receipt of Taxpayer's Records*.

In addition to explaining the legal authority for requesting records, the auditor should also explain the reason why specific records are being requested as they relate to the audit. This allows the taxpayer the opportunity to provide or recommend additional or alternative records the auditor may not be aware of that will provide the same information/documentation being requested.

Below are some questions the auditor should ask the taxpayer if not already covered in a pre-audit conference:

- What are the taxpayer's record keeping practices and record retention policies?
- Has anything changed in the taxpayer's record keeping during the audit period or from that of the prior audit?
- What areas of the taxpayer's organization have responsibility for the records that need to be examined? Who is the contact person(s) in each area?
- What electronic records are available and in what format are they stored?
- Has there been a change in accounting software?
- What documents are actually retained?
- What alternative records may be available to assist in auditing a specific area if the requested records are not available?
- How long will it take to retrieve documents from storage? Where is the document storage area located?
- Who should the auditor contact if the primary contact is unavailable or has left the company?

For additional procedures and guidelines when starting an audit, see AM section 0403.20, *Preliminary Examination*.

Photocopies and Scanning of Taxpayer Records

Photocopies or scans of taxpayer records may be needed for documentation of transactions and to support the facts as set forth in the audit report. The taxpayer is required to provide photocopies, or make records available for photocopying or scanning. However, the auditor should limit the request to relevant portions of a specific issue. The auditor should not arbitrarily request photocopies of all records in the audit or a particular area in the audit unless there is a legitimate need for such records.

Additional guidelines:

- It is helpful to establish what procedures the taxpayer would like for photocopying and scanning records or documents. The taxpayer may request that their staff do all of the photocopying and scanning. The auditor should ask who to contact if there are any problems with photocopying or scanning requests.

- In audits where the auditor is permitted to make the photocopies and scans of documents, if the taxpayer requests it, the auditor should provide the taxpayer a copy of all documents photocopied or scanned for the audit file.
- The auditor should not photocopy or scan any documents without first securing the taxpayer's permission. In addition, no photos of any records should be taken using personal cell phones or other personal electronic devices.
- State-issued cell phones may be used for the purpose of taking pictures of taxpayer records. Any pictures and videos taken with a state-issued cell phone should only be for business purposes. The pictures or videos should only be transferred via email or a direct download to the users' machine and then moved to the LAN. When taking pictures of taxpayer records is not conducive (i.e. voluminous amount of records), staff must issue a properly completed BOE-945, *Receipt for Books and Records of Account*, when a scanner or photocopier is unavailable. See AM section 0403.35.
- The law may prohibit photocopying or scanning of certain documents. If an auditor encounters this situation in an audit, the auditor should discuss this with his or her supervisor.
- Photocopies and scans of all taxpayer records must be included as part of the audit working papers (AWPs) or properly purged at the completion of the audit.

Discussion of Information Document Requests (IDRs)

The auditor should explain the IDR process and determine who should receive the IDRs. See AM section 0401.12. The auditor should also request a secondary contact in the event the requested documents, data, or other information cannot be provided by the primary contact.

Discussion of Audit Findings Presentation Sheets (AFPSs)

The auditor should explain the AFPS process and how it will be used in the audit. See AM section 0401.14.

Waiver of Limitation

Form BOE-122, *Waiver of Limitation*, is a legal agreement that a taxpayer may voluntarily enter into with the BOE. The waiver of limitation extends the statute of limitations for specific periods indicated on the form. The auditor should explain how waivers of limitation will be addressed throughout the audit. See AM section 0215.00.

Generally, a waiver of limitation should be requested when:

- The audit is about to commence and the taxpayer requests a postponement in starting the audit.
- The audit is in process and the taxpayer requests a postponement in completing the audit.
- There is a documented understatement or overstatement that cannot be billed/refunded without additional examination and there is insufficient time to conduct an audit that could be used as a basis for a determination before the expiration of the periods.

Reasons for requesting a waiver of limitation should be entered on the BOE-414-Z. The auditor should also document any circumstances that may lead to a delay in the audit

process. Supervisory approval of the circumstances which necessitated the request for a waiver or extension will be noted on the BOE-414-Z before presenting the waiver to the taxpayer. Regulation 1698.5 adds the provision that if the extension of the statute of limitations totals two years or more, the District Principal Auditor must approve the extension before it is presented to the taxpayer for signature. This must also be documented on the BOE-414-Z.

If the taxpayer declines to sign a waiver of limitation, the BOE may issue a determination for the expiring period(s).

Scheduling Future Appointments

To complete the audit timely, the auditor should establish future audit appointment dates with the taxpayer so that both parties understand the expectations and resources that will be needed to complete the audit. This will establish a commitment to obtaining and reviewing audit work by the next scheduled appointment. Whenever possible, appointments should be scheduled with the intent of completing work efficiently; generally this means scheduling appointments for a full working day.

Use of Taxpayer Facility

Taxpayers may be limited in the space they have available. However, it is appropriate for an auditor to request adequate working space to work efficiently and protect confidential taxpayer records. The availability of office space should not dictate the number of audit staff assigned to complete any given audit. During the pre-audit conference or the opening conference, the auditor should identify the resources needed to conduct the audit, including workspace and electrical outlets. The auditor should inform the taxpayer of how many auditors will be assigned to the audit.

Some taxpayers assign permanent work areas to auditors until the audit is complete or for the duration of a field visit. If an auditor is provided with an office, the auditor should determine who has access to the office and what hours the auditor will have access to the office. If temporary space is assigned, the audit staff may make an agreement with the taxpayer so that records will be made available at the beginning of the first day of each field visit. For security purposes, the taxpayer may require that an auditor obtain and wear an identification or access badge. Generally, auditors are not authorized to sign any confidentiality agreements in order to obtain an access or identification badge. An exception can be made with prior approval from the District Principal Auditor (DPA).

Taxpayer Requests to Change Audit Location

Audits generally take place at the location where the taxpayer's original books, records, and source documents relevant to the audit are maintained, which is usually the taxpayer's principal place of business. A request to conduct the audit at a different location should include the reason(s) for the request. It is the taxpayer's responsibility to provide all requested records at that location. Requests will be granted unless BOE staff determines the move will significantly delay the start or completion of the audit, or the BOE does not have adequate resources available to conduct the audit at the requested location. Form BOE-122 should be requested in all cases where the taxpayer requests a transfer of an audit to another district office.

After an initial request to change the audit location has been granted by BOE staff, any subsequent requests for location changes in the same audit period shall be made in writing and include the reason(s) for the request. These subsequent requests will be considered on a case-by-case basis. Approval of these requests is at the discretion of BOE staff.

If the taxpayer operates out of a private residence, or has a small office or work environment that will not accommodate the auditor(s), BOE staff may require the records be brought to a BOE office or taxpayer's representative's office. If the audit is conducted at a BOE office, the taxpayer will be provided a receipt for records. See AM section 0403.35.

Exit Conference

The auditor should discuss the purpose of the exit conference and make the taxpayer aware that the exit conference will be held at the conclusion of the audit so that the taxpayer knows what to expect and is aware of the timeframes associated with a response to the audit findings. See AM section 0401.16, *Exit Conference*.

OBJECTIVE OF THE TAX AUDIT STATUS CONFERENCES

0401.10

There are two kinds of status conferences: (1) meetings between the taxpayer and BOE staff held throughout the audit to discuss audit issues and the progress of the audit, and (2) meetings between the audit supervisor and audit staff to discuss the progress of the audit and any audit issues. Status conferences are used to keep lines of communication between the taxpayer and auditor open, as well as keep the supervisor apprised of the audit's progress toward meeting the projected completion date.

- **Status Conference with Taxpayer** – Taxpayers (owners, partners, or corporate officers) should be invited and encouraged to attend status conferences, whether or not the taxpayer has authorized another party to represent them. Status conferences with the taxpayer should be held regularly to measure the actual audit progress with planned benchmarks. Supervisors are encouraged to attend status conferences when available or when there is a need for their presence (complex issues, delays, slow progress). The auditor should record a summary of each status conference on the BOE-414-Z. However, some audits may not require a status conference, particularly in smaller audits where issues are quickly resolved. When an actual meeting between the audit staff and the taxpayer or representative is not possible or practical, a telephone conference with the taxpayer or representative may be sufficient and this type of meeting should be recorded on the BOE-414-Z.
- **Status Conference with Audit Supervisor and Staff** – Status conferences should be held between the auditor (or audit team) and audit supervisor on a regular basis. Status conferences should also be held between the lead auditor and the audit team on a regular basis. These conferences provide an opportunity to make needed adjustments to keep the audit on track with the planned completion date. This includes evaluating the initial budgeted hours and making adjustments to the budgeted hours or workload assignments, if necessary. The audit supervisor should record the discussion held with the auditor or the audit team on the BOE-414-Z.

Discussion of Information Document Request (IDR)

While IDRs (AM section 0401.12) are generally discussed separately, the status conference provides an opportunity for the auditor to:

- Review outstanding and new IDR requests;
- Review the timeframes for outstanding and new IDRs;
- Discuss IDR requests that cannot be resolved with taxpayer;
- Address taxpayer's questions regarding the materiality of an issue/area that is the subject of an IDR; and
- Discuss the consequences of non-compliance with an IDR, such as the issuance of a subpoena.

Discussion of Audit Findings Presentation Sheet (AFPS)

AFPSs (AM section 0401.14) are generally discussed when they are provided to the taxpayer. The status conference provides an opportunity for the auditor to:

- Discuss and try to reach agreement on the facts related to the audit issue or describe what facts are still not agreed to, even if there is disagreement with the application of the law;
- Discuss follow-up requests on outstanding AFPS, with specific expectations for completion; and
- Provide follow-up written confirmation of any agreements or understandings that resulted from prior meetings.

Scheduling Audit Appointments

Status conferences provide the opportunity to review any audit appointments that were previously made and to cancel, postpone, or make new appointments in order to keep the audit moving towards completion. The audit plan should be revised to reflect any changes.

Resolving Disputes Related to the Conduct of the Audit

The auditor should immediately discuss any disputes (conflicts/issues) concerning the conduct of the audit with the taxpayer. This may include, but is not limited to, interpersonal disputes, disagreement of where the audit takes place, or the type of testing being performed. The auditor should not wait until the end of the audit to resolve any conflicts; they should be discussed during an audit appointment or during a status conference. If the dispute is not resolved between the auditor and the taxpayer, assistance from the audit supervisor should be requested. If the audit supervisor and the taxpayer are unable to resolve the issue, the taxpayer or audit supervisor may request DPA assistance to resolve the issue. If the issues/dispute cannot be resolved and discussions have been previously held with the taxpayer representative, bookkeeper, or tax manager, it may become necessary for the DPA or District Administrator to advise the owner, partner(s), LLC Member or Chief Financial Officer of the issue and seek resolution with their assistance. When necessary, the Chief of Field Operations Department may need to seek resolution of the issues.

INFORMATION DOCUMENT REQUEST (IDR)

0401.12

The purpose of issuing an IDR (Form BOE-698-A) is to document and provide a written request for information/documentation when the taxpayer fails to provide the records in response to verbal requests for the same records. The IDR process includes the issuance of

an initial IDR, a second IDR, and a Formal Notice and Demand letter to furnish the information/documentation. Before auditors proceed with the IDR process, taxpayers should be allowed to comply with verbal requests for the same records. However, when BOE staff is unable to make verbal contact with the taxpayer, the auditor may proceed directly with the IDR process. The auditor has the discretion to determine reasonable response times for verbal requests. The auditor should discuss the IDR process and significance of issuing an IDR with the taxpayer at the opening conference.

The IDR should generally contain a request for records for a single area of the audit as opposed to one IDR for all areas of the audit. A single area IDR assists the taxpayer if questions need to be distributed to different departments. It provides for better organization in monitoring and following up on IDRs and for better organization of AWP's. In the event that a taxpayer is unresponsive or provides incomplete records, the use of the single area format allows the auditor to send a follow-up request using the same IDR, but modified to update the history of the request. Separate IDRs make it easier to document the history of a request (date of the original request, follow-up dates, extensions granted). However, if the taxpayer does not provide any records or minimal records at the beginning of the audit, rather than issuing an initial IDR for each area of the audit, a single IDR may be prepared to request all records necessary to conduct the audit. In such cases, the outlined IDR process should be followed including the issuance of a second IDR and Formal Notice and Demand letter, if necessary.

Auditors should use Form BOE-698-C, *Information Document Request Master Log*, to maintain and track all issued IDRs, and to provide a clear focus for the status of IDRs. Copies of the IDR Master Log (either printed or electronic) should be shared with the taxpayer so that all parties have a common understanding of the expectations and status. See Exhibit 16 for an illustration of a completed master log.

NOTE: All IDRs and the IDR Master Log should be included in the *Forms* subfolder of the audit case folder as memo schedules.

Initial IDR

The auditor should issue the initial IDR (Exhibit 14) after verbal requests with due dates for specific information/documentation were made, and the taxpayer did not furnish the information/documentation, unless doing so results in a period of the audit expiring under the statute of limitations. If a period of the audit will expire, the BOE may issue a determination for an expiring period(s) in lieu of following the IDR process. When the auditor is unable to make verbal contact with the taxpayer, or if the taxpayer has established a pattern of delaying the progress of the audit by not responding to verbal requests, the auditor may proceed directly with the IDR process. All verbal and IDR requests must be documented on the BOE-414-Z. The auditor or lead auditor of a team audit will sign the initial IDR before issuance to the taxpayer. The audit supervisor will review the initial IDR before submission to the taxpayer to ensure the information being requested by the auditor is reasonable and relevant to the area being reviewed and that the information being provided by the taxpayer is as stipulated in the IDRs.

All IDR requests will be on Form BOE-698-A, *Information Document Request*. The auditor should use the following guidelines when preparing Form BOE-698-A

- **Numbering IDRs** — IDRs should be numbered sequentially when they are provided to the taxpayer. They should retain the same number when they are

reissued or followed-up on (unless the nature of the information request has changed). For example, an auditor may first prepare an IDR for resale certificates, and thus should be numbered 1. Next, the auditor may prepare an IDR for paid bills, and thus should be numbered 2, and so on.

- **Due Date** — 30 days for the initial IDR and 15 days for the second IDR, measured from the date the IDR is delivered or mailed to the taxpayer and the person designated by the taxpayer at the pre-audit or opening conference to receive IDRs.
- **Signature** — The auditor or lead auditor of a team audit should sign the initial IDR before issuance to the taxpayer. The audit supervisor should sign the second IDR before issuance to the taxpayer.
- **Subject** — Generally, the area of the audit for which information or records are requested.
- **Description of Request** — Identify the information or documents requested. Clearly state the reason for the request and provide any applicable law or regulation references if appropriate.
- **History Section** — Enter all requests for information, due dates, and responses by the taxpayer. These will include verbal requests, prior IDRs, follow-ups by the auditor, and partial responses by the taxpayer.

The auditor should discuss the content of an IDR with the taxpayer to ensure the taxpayer understands what information or document is being requested and why. Discussion of the applicable laws and regulations is also essential. The auditor should also discuss alternative documentation if the information requested is not available or will not resolve the audit issue.

If the taxpayer maintains information or records electronically, the IDR should specifically state that electronic records are requested. The taxpayer should not be required to create records in electronic format for audit purposes.

Responding to IDRs

The auditor must contact the taxpayer within 30 days of receiving a response to the initial IDR. However, every effort should be made to contact the taxpayer as soon as a response is received. When the taxpayer provides the requested records, the auditor should either (1) notify the taxpayer the records are sufficient, (2) issue additional IDRs, or (3) notify the taxpayer that additional time is needed to review the records provided and provide the taxpayer with a reasonable date for future contact. All contacts with the taxpayer regarding follow-ups and deadlines must be recorded on the BOE-414-Z.

Taxpayers will be allowed 30 days to respond to the initial IDR, measured from the date the IDR is delivered or mailed to the taxpayer and the person designated by the taxpayer at the pre-audit or opening conference to receive IDRs. Due dates for responses to IDRs shall be within the statute of limitations applicable to the audit. The timeframes allotted for responses to IDRs are intended to provide an orderly audit process, but they cannot be used to limit the taxpayer's right to provide information. This means if the taxpayer does provide information while the audit is still open, even if it is after the due date set in the IDR, the auditor must give consideration to and analyze the information received.

Any response other than full compliance with an IDR must be reviewed by the DPA who will determine the course of action to be taken in response to any issues or extensions requested by the taxpayer. The DPA will document his or her recommendations on the BOE-414-Z and in any necessary correspondence. All telephone contacts with the taxpayer regarding extensions of IDR due dates must be documented either by a brief letter summarizing the discussion with the taxpayer or an email, as well as documented on the BOE-414-Z.

In cases where an extension to an IDR is granted, the auditor should note on the IDR form that an extension was granted, the due date for the extension, and the reason for the extension. A notation to this effect should also be made on the IDR Master Log (Exhibit 16).

Second IDR

If the taxpayer does not provide, by the date due, the documentation requested in the initial IDR, the auditor may proceed directly in preparing a second IDR (Exhibit 15) for the same records. The audit supervisor should review the second IDR to ensure it is prepared correctly before it is issued to the taxpayer. The second IDR will be issued under the supervisor's signature and will include an explanation of the relevance of the records being requested. Form BOE-698-A should be used to prepare the second IDR and the appropriate box marked "Second IDR" checked. A copy of the initial IDR should be attached when providing the second IDR to the taxpayer. The history section of the IDR should reflect all requests for information, due dates, extensions granted, and responses by the taxpayer. Taxpayers will be allowed 15 days to provide the records in response to the second IDR measured from the date the IDR is delivered or mailed to the taxpayer and to the person designated by the taxpayer at the pre-audit or opening conference to receive IDRs, unless doing so results in a period of the audit expiring under the statute of limitations. The auditor and supervisor should document all requests for information, due dates, extensions granted, and responses by the taxpayer on the BOE-414-Z.

If the taxpayer provides incomplete or missing records, the DPA must review the response and determine if an extension is warranted. In all cases where an extension to the second IDR is provided, and the taxpayer fails to provide the requested records by the due date of the extension, a Form BOE-698-B, *Formal Notice and Demand letter*, should be prepared.

Formal Notice and Demand to Furnish Information

Form BOE-698-B, *Formal Notice and Demand letter*, (Exhibit 17) should be issued when a taxpayer fails to furnish the requested records in response to a second IDR requesting the same records as the initial IDR. The *Formal Notice and Demand letter* will be signed by the DPA.

The *Formal Notice and Demand letter* should state the due date for the requested records and reference the two previous IDRs (copies of each IDR should be attached). The *Formal Notice and Demand letter* should be sent to the taxpayer (owner, partner, corporate officer, LLC Member), and the person designated by the taxpayer at the pre-audit conference to receive IDRs. The auditor should consider sending a copy of the *Formal Notice and Demand letter* to a representative in addition to the taxpayer's designee to receive IDRs if the designee is uncooperative in responding to previous information document requests. Taxpayers will have 15 days from the date the *Formal Notice and Demand letter* was delivered or mailed to the taxpayer and the taxpayer's designee to receive IDRs, unless doing so results in a period of the audit expiring under the statute of limitations.

The *Formal Notice and Demand* letter informs the taxpayer that if the BOE does not receive the requested information, a subpoena may be issued or an estimated liability may be billed (Form BOE-698-B provides this statement). Subpoena requests should follow the guidelines set forth in AM Exhibit 3, and should be prepared on Form BOE-301, *Subpoena Request Form*. Although individual IDRs are issued for specific areas, a subpoena request should cover all records requested. The subpoena should be considered only when the records are known or believed to exist, the potential liability to be revealed by the records is significant, and all other methods of obtaining the records have been unsuccessful. Because the time to prepare a subpoena request may delay the audit, it is recommended that the subpoena request process begin immediately after the 15 day deadline noted in the *Formal Notice and Demand* letter that was sent to the taxpayer. In the event the taxpayer responds to the *Formal Notice and Demand* subsequent to the 15 day deadline, the subpoena request may be withdrawn.

NOTE: Without a subpoena or the taxpayer's/representative's permission, under no circumstances should the auditor take it upon herself/himself to review, schedule, photocopy, or otherwise access information from files to which the taxpayer has "forbidden" access.

All *Formal Notice and Demand* letters should be included in the *Memos and Misc. Documents* audit subfolder as memo schedules.

AUDIT FINDINGS PRESENTATION SHEET (AFPS)

0401.14

The purpose of issuing an AFPS (Exhibit 18) is to present the auditor's findings for each area of the audit as it is completed. It communicates to the taxpayer specific audit findings regarding an issue or area within an audit and allows the taxpayer to address those findings while the auditor continues to work on other areas of the audit. The purpose and use of the AFPS form should be discussed at the opening conference.

AFPSs should be prepared in all large and complex audits with multiple areas of tax change. It is not necessary to prepare an AFPS for no-change audits or audits with only one or two areas of tax change that are clearly defined. Although the use of AFPSs was initially intended for use in larger or complex audits, its use will be helpful in organizing and presenting tax errors to all taxpayers.

An AFPS should be issued during the course of the audit as soon as each area of the audit is completed. For example, if an auditor has completed the examination of fixed asset accounts, and will begin the sales for resale test, an AFPS should be issued for the fixed asset examination. An audit area is considered complete when the auditor has completed all of the verification and the taxpayer has been given the opportunity and resources to provide documentation to refute the audit findings for that area. Issuing an AFPS provides the opportunity to conclude and resolve issues during the audit rather than addressing all issues/areas at the conclusion of the audit.

Preparing and Issuing AFPSs

AFPSs should be prepared on Form BOE-699, *Audit Findings Presentation Sheet*. Space is provided for the discussion of the specific issue, the facts developed, the relevant law, and the audit recommendation on the issue. All AWP's associated with the respective issue or area, including the lead and subsidiary schedules, should be provided. The auditor should

include as much detail as possible on the AFPS to isolate the errors in contention. In a team audit, the lead auditor should review and approve all AFPSs before presentation to the taxpayer. If an issue is controversial or complex, an AFPS, along with the related AWP, may be reviewed by the audit supervisor or district reviewer, when appropriate, prior to providing the AFPS to the taxpayer. All issuances of AFPSs, follow-ups, and deadlines must be recorded on the BOE-414-Z.

The following guidelines should be used when preparing Form BOE-699:

- **AFPS Number** — AFPSs should be numbered sequentially at the time they are issued starting with the number 1. Auditors may assign numbers differently in order to facilitate team audits, but it is imperative that the taxpayer understand the numbering system so that they are not looking for a "missing AFPS" which has not been issued.
- **Audit Area/Issue** — Provide a short description of the audit area being addressed.
- **Due Date to Respond** — Follow the guidelines for response times set forth by Regulation 1698.5. This will generally be 30 days from the date the AFPS is delivered to the taxpayer.
- **Description of Findings** — Provide a short description of the findings, schedule reference number, and estimated taxable measure.
- **Summary of Findings** — Provide a summary of the audit findings. Include the methodology the auditor used to determine audited taxable measure if necessary.
- **Law or Regulation** — Cite the relevant statutory law and regulations along with the application of the tax to the facts.
- **Auditor's Position** — State the auditor's findings and conclusions based on the relevant law and facts.
- **Taxpayer's Position** — Ask the taxpayer to indicate their position regarding the audit findings. If they are in disagreement, they should state the reason they do not agree on the back of Form BOE-699 and attach any supporting documentation for their position.
- **Taxpayer Signature** — Obtain the signature of the taxpayer or representative (if applicable) and the date the AFPS was signed.
- **Resolution**—If the taxpayer disagrees with the audit findings, the auditor must indicate what steps were taken to resolve any disagreements.

An AFPS Master Log (Exhibit 19) must be maintained to track all AFPSs and to provide a clear focus for all adjustments made. Auditors should use Form BOE-699-A, *Audit Findings Presentation Sheet Master Log*, to maintain and track AFPSs. The AFPS Master Log should be shared with audit team members and the audit supervisor. This allows the lead auditor or audit supervisor the opportunity to review AFPSs and monitor the status of the audit. A copy of the AFPS Master Log may also be shared with the taxpayer.

All AFPSs and the AFPS Master Log should be included in the *Memos and Misc. Documents* audit folder as memo schedules.

Taxpayer Response to AFPS

Upon issuance of an AFPS, the auditor should give the taxpayer an opportunity to clarify the facts and provide rebuttal arguments to the audit findings. The taxpayer should be encouraged to respond using the back of form BOE-699 or other correspondence. This process can result in the resolution of the issue at the lowest level, minimizing time and costs for both the BOE and the taxpayer. The taxpayer should indicate agreement or disagreement with the audit findings and provide additional documentation to support their position if they disagree. The taxpayer should be advised that agreement to an area of the audit through use of an AFPS does not preclude protest or other administrative rights (Form BOE-699 contains this statement).

Response times may vary, depending upon the difficulty and complexity of the issue or area and the amount of discussion that has already taken place between the auditor and the taxpayer in advance of issuing the AFPS. The response time should generally be 30 days from the date AFPS was mailed or delivered to the taxpayer. However, due dates for responses to any AFPS shall be within the statute of limitations applicable to the audit. Auditors will consider late responses to an AFPS, provided a period of the audit will not expire due to the statute of limitations. Depending on the area or issue in the audit, some AFPSs can be responded to in less than 30 days. Others will require additional time. The auditor has the discretion to adjust this timeframe as warranted. All responses and follow-ups must be documented on the BOE-414-Z.

If the taxpayer does not respond to the AFPS, or returns an AFPS without any indication of whether they agree or disagree, the auditor should make every effort to obtain verbal indication of whether the taxpayer agrees or disagrees. If the taxpayer does not provide any verbal indication, or if the taxpayer wishes to withhold any agreement, it will be assumed the taxpayer does not agree with the audit result for that area. The auditor should enter a "Discussion with Taxpayer" comment in the "General Audit Comments" of Form BOE-414-A, *Field Audit Report* (AM section 0207.10).

Revising AFPSs

While every effort is made to ensure the audit findings are correct before the issuance of an AFPS, there are times when an AFPS will need to be revised. For example, once the taxpayer has a clear understanding of the proposed adjustment, the taxpayer provides additional documentation to support their position, or the auditor may find a computational error. Both may necessitate issuing a revised AFPS and providing a copy to the taxpayer for response. A revised AFPS should be issued when:

- Errors are noted in the computation of taxable measure.
- Additional material facts are provided.
- A different section of the law is applicable rather than the one(s) stated in the original AFPS.
- Any other adjustment to the audit findings is deemed warranted.

The auditor should use the same numbering for the revised AFPS as the original AFPS, with some indication that it is a revised version. For example, AFPS 1 is for sales for resale. When a revised AFPS is issued, it should be numbered 1-A. The second revised AFPS should be numbered 1-B, and so on. The auditor should note in the Master AFPS Log that a

revised AFPS was issued. The auditor should retain copies of all AFPSs that have been provided to the taxpayer.

If the auditor determines that a revised AFPS is not warranted based on the taxpayer's response, the auditor should make a comment in the resolution section of the AFPS and provide a copy to the taxpayer. The taxpayer's responses to AFPSs should not be included in the audit package without a comment being made in the resolution section as to how the taxpayer's response was addressed and why.

Withdrawing an AFPS

In some cases, the taxpayer might provide additional information/documentation resulting in a no-change in a particular area of the audit. The AFPS should then be formally withdrawn. This can be accomplished by using the original AFPS, adding a comment in the resolution section that provides a brief explanation of the reason for the withdrawal and providing a copy to the taxpayer. The Master AFPS Log should be updated to reflect the AFPS withdrawal.

EXIT CONFERENCE

0401.16

The purpose of an exit conference is for the auditor and taxpayer to discuss and review the final audit findings. The exit conference is generally held after the field work has been completed; however, an exit conference may also be held on the last day of the field work. The auditor assigned to a particular area of the audit should methodically lead the taxpayer through the AWP's, discussing the results of each area of the audit. The auditor may want to recap any findings previously discussed in status conferences or through an AFPS.

The auditor should provide the taxpayer a digital copy of the final AWP's (unless the taxpayer specifically requests a paper copy), prior to the exit conference so the taxpayer has the opportunity to review them. When providing a copy of the digital AWP's, the auditor must redact or remove files containing confidential information such as Federal Tax Information or BOE-1164s. If the auditor has not completed the AWP's prior to the exit conference, he or she may provide the taxpayer a copy during the exit conference.

If at the time of any discussion the AWP's are not complete, the auditor may provide digital copies of all schedules that were used in the discussion with the taxpayer. Once the AWP's are completed, the auditor should ensure the taxpayer receives a copy of the final set of AWP's either by mail, encrypted email, or hand-delivery. Delivery of the AWP's should be documented on the BOE-414-Z.

Who Should Attend the Exit Conference?

Generally the auditor will facilitate the exit conference. Taxpayers (owners, partners, LLC Members, or corporate officers) should be invited and encouraged to attend the exit conference, even if they have authorized another party to represent them. At a minimum, the auditor should request the person who primarily handled the audit for the taxpayer, be present at the exit conference. The audit supervisor should attend the exit conference when the audit tax liability is above \$25,000, when it is likely the taxpayer will disagree with the audit findings, or when there is an evasion penalty.

Agenda for the Exit Conference

In addition to an explanation of the audit findings, the following are suggested topics for the exit conference:

- **Review Process** — The auditor should explain the BOE’s review process (by the audit supervisor and reviewer) and provide an estimated date the audit will be submitted for review. The taxpayer should be made aware that the audit is not final until after the review and billing process. Any AWP’s adjusted as a result of the review process will be provided to the taxpayer as soon as possible.
- **Timeframe to Provide Additional Documentation** — Generally, taxpayers will be allowed 30 days from the date of the exit conference to indicate whether they agree or disagree with the audit findings, unless doing so results in a period of the audit expiring under the statute of limitations. If the taxpayer disagrees with the audit findings, they may provide additional information within these 30 days for the auditor to consider. The auditor may adjust the audit findings if warranted based on the information provided.
- **Correspondence from the BOE** — The auditor should explain the letters or notices the taxpayer can expect to receive from BOE, such as the formal audit report, the 10-day hearing process, BOE-836-A, *Report of Discussion of Audit Findings*, and the *Notice of Determination*.
- **Prepaying an Audit Liability** — The auditor should provide the taxpayer an estimate of when a *Notice of Determination* may be issued. The auditor should also inform the taxpayer how to download a copy of Form BOE-1, *Audit Prepayment Information*, and explain how to prepay an audit liability to stop the accrual of additional interest.
- **Petition for Redetermination, Administrative Protest, Claim for Refund and Settlement** — The auditor should inform the taxpayer how to download a copy of Publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*, and explain to the taxpayer their protest and appeals rights.

Exit conferences are also addressed in AM section 0207.00.

CONCURRENT AUDITS

0401.18

Generally, the BOE will not hold in abeyance the start of an audit pending the conclusion of an audit of prior periods or pending completion of an appeal of a prior audit currently in the BOE’s appeals process. In cases where a prior audit is under appeal and the audit for the subsequent periods is not held in abeyance, the BOE will begin the current audit by examining areas that are not affected by the outcome of the appeal. However, each audit engagement should be considered on a case-by-case basis and the decision whether to postpone the subsequent audit or begin the subsequent audit will be at the discretion of the District Administrator.

~~AUTHORITY — EXAMINATION OF RECORDS & ISSUANCE OF SUBPOENAS 0401.25~~

~~Government Code sections 15618 authorizes an auditor to examine records of the taxpayer and of persons doing business with the taxpayer. Revenue and Taxation Code (RTC) section~~

~~7054 provides additional authority for the examination of records pertaining to the sales and use tax. Similar provisions are found in other tax and fee programs administered by the Board.~~

~~Government Code section 15613 authorizes the Board to issue a subpoena for the attendance of witnesses or to produce books, records, accounts and papers.~~

~~By developing a good working relationship with the taxpayer, an auditor should rarely have to rely on a subpoena as a means of obtaining records. However, if a taxpayer refuses to make requested records available, or places undue restrictions or conditions on their use, the auditor's supervisor should be consulted immediately. Once notified, the supervisor should request the necessary records from the taxpayer and explain to the taxpayer, either verbally or in writing, the relevance of the records being requested. If the taxpayer continues to deny access to necessary records, the District Principal Auditor should send a letter to the taxpayer detailing the specific records being requested and the relevance of the records, including a reasonable compliance date. If the taxpayer fails to comply with this request, the District Administrator may request the issuance of a subpoena duces tecum based on the specific records detailed in the District's previous letter.~~

~~Without a subpoena or the taxpayer's/representative's permission, under no circumstances should the auditor take it upon herself/himself to review, schedule, photocopy, or otherwise access information from files to which the taxpayer has "forbidden" access.~~

~~Requests for the issuance of subpoenas must be made by District Administrators and submitted to the Chief, Field Operations Division, Equalization Districts 1 and 2 and Out-of-State District, or the Chief, Field Operations Division, Equalization Districts 3 and 4 and Centralized Collection Section for approval and forwarding to the Legal Department. When the Legal Department has prepared the subpoena, it will be forwarded to the requester with complete instructions for service. Further information concerning the subpoena process, authority and use is contained in Exhibit 4 — *Policy and Procedure for Subpoena Requests*.~~

OVERVIEW**0402.01**

To accelerate the completion of audits, the BOE has implemented a team audit approach. However, not all audits may be conducive to or require the audit team approach and use of a team audit will be at the discretion of the audit supervisors or District Principal Auditor (DPA).

The implementation of the team audit approach is beneficial to both the BOE and the taxpayer as it provides for a more efficient and effective audit program. Team auditing will increase productivity by reducing the time necessary to complete an audit which ultimately decreases the disruption to the taxpayer's operations.

In the team audit approach, the team consists of one lead auditor and one or more audit team members who will work on the audit through its completion. This approach allows the lead auditor to manage the audit workload and timeframes within the time constraints of each audit. It provides less experienced audit staff an opportunity to participate in auditing large and complex businesses that they would not otherwise experience early in their career. Thus, team auditing is an effective and efficient training tool that will prepare and train audit staff to conduct these types of audits in the future.

District Audit Workload

Once accounts are selected for audit and prioritized, each district office should review their available audit cases for application of the team audit approach. A list of viable audit cases should be developed at the beginning of each fiscal year and assigned according to priority. Regular meetings between the DPA and the audit supervisors should be held to ensure priority audits are addressed. Neighboring districts should work cooperatively and seek assistance from one another to ensure that priority work is planned for, managed, and conducted in a timely manner.

Selecting Audit Teams

An audit team may be comprised of auditors from any classification. Audit supervisors should meet regularly to discuss the availability of audit staff in relation to the scheduled audits. The audit supervisors, in conjunction with the DPA, will select the lead auditor and the team members required for a specific audit. The number of audit teams should be distributed equally between supervisors when possible. If an audit team consists of auditors from various audit crews, the supervisor of the lead auditor is the designated supervisor for that audit team.

Additional guidelines when selecting audit teams are as follows:

- Lead auditors and their respective team members should encourage each other to be focused and productive.
- Less experienced auditors should initially be assigned to work on the smaller, less complex segments of large or medium size audits. As these auditors progress, they should be assigned to work on more complex segments of the audit.
- Each audit team member should be assigned a specific area(s) or segment(s) of the audit.

- Not all audit team members must be present at a taxpayer's location at the same time for a specific appointment. However, the audit team members should be aware of their workload in any given audit and the timeframe within which to complete a designated topic, area, or segment.
- For continuity between audits, a previous audit team member may be assigned as the lead auditor on a subsequent audit of the same taxpayer. However, the lead auditor of the prior audit may not be assigned as the lead auditor in the subsequent audit of that same taxpayer.
- Smaller audits may also be conducive to the team auditing approach; however, smaller audits may require fewer audit team members than larger audits. Smaller audits should also be considered as training audits for new audit staff.
- Auditors may work on more than one team audit concurrently.
- Auditors who are assigned as audit team members on large assignments may also be assigned to work on their own smaller, individual audits as time permits.

ROLE OF THE AUDIT SUPERVISOR

0402.04

The role of the audit supervisor in team auditing cannot be over-emphasized, especially when an office has multiple audit crews with audit team members crossing supervisory lines. Audit supervisors should work closely together to establish the best audit team for each audit.

Planning/Reviewing

To assist the audit team in effective planning, the audit supervisor should:

- Communicate the goals of the audit to the lead auditor and the audit team members to keep them focused on completing the audit timely;
- Provide adequate resources to assist in the timely completion of the audit;
- Ensure the appropriate delegation of tasks, not only to complete the audit, but to further develop audit team members' audit skills; and
- Work with the lead auditor to review the prior audit and other completed audit assignments that will help identify successful audit techniques and avoid those that are less productive.

The following documents are subject to the audit supervisor's review and approval during the course of the audit:

- Audit Plan (AM section 0401.07) — The audit supervisor is required to review and sign all audit plans prior to submission to the taxpayer. The audit supervisor should also make a comment on the BOE-414-Z, documenting his or her approval.

- Information Document Request (IDR) — The audit supervisor is required to review each initial IDR to ensure it is correct and the information being requested is reasonable and relevant to the area being reviewed. In addition, the audit supervisor should ensure that the information requested is provided by the taxpayer as stipulated in the IDRs. If necessary, a second IDR requesting the same records as the initial IDR, may be issued. The second IDR must be reviewed and signed by the audit supervisor. The second IDR should provide an explanation of the relevance of the records being requested. The audit supervisor should document their review of each IDR on the BOE-414-Z. For more information on IDRs, see AM section 0401.12.
- Audit Findings Presentation Sheet (AFPS) — In a team audit, the lead auditor should review and approve all AFPSs before presentation to the taxpayer. If an issue is controversial or complex, an AFPS, along with the related AWP's should be reviewed by the audit supervisor prior to providing the AFPS to the taxpayer. Early review of any AFPSs by the supervisor will reduce the time spent by the supervisor in reviewing the entire audit package at the end of the audit. For more information on AFPSs, see AM section 0401.14.
- Waiver of Limitations (Form BOE-122) — The audit supervisor should ensure that no periods within the audit expire under the statute of limitations and the taxpayer does not request any unreasonable delays in completing the audit.
- BOE-414-Z (AM section 0221.00) — The audit supervisor should provide all team members, including the CAS, access to the team audit's BOE-414-Z in the 414-Z Program. The audit supervisor should review the BOE-414-Z on a regular basis to stay current on the audit's progress and provide guidance to complete the audit timely.
- Formal Notice and Demand Letter — The audit supervisor will review the formal demand for the production of books and records prior to submission to the DPA for approval and signature.
- Subpoena Requests — The audit supervisor and DPA will review all subpoena requests prior to submission to the District Administrator for approval and signature.

Budgeted Hours/Time Management

The audit supervisor assigns the initial budgeted hours for all new audit assignments. When setting budgeted hours for team audits, the audit supervisor should:

- Establish initial budgeted hours for audit assignments of accounts with no prior audit history by using historical hours per audit by industry, auditor experience, and other relevant factors.
- Establish budgeted hours based on hours spent on the prior audit in combination with the factors noted above if an audit assignment has a prior audit of the taxpayer's business.

- Have the flexibility to assign initial budgeted hours that differ from the average in-state and out-of-state hours.
- After the completion of the audit, review the variance, if any, between budgeted and actual hours, and discuss with the audit team the lessons learned, both positive and negative, so that future audits can duplicate successful techniques and procedures, and avoid those that were less productive or less efficient.

Communication

To assist the lead auditor and audit team members in maintaining effective communication in the audit, the audit supervisor should:

- Arrange for one-on-one meetings with the lead auditor or audit team members when necessary;
- Keep their *Outlook* calendar up to date in the event a meeting needs to be scheduled;
- Attend the pre-audit conference, opening conference, any status conferences, as well as the exit conference with the taxpayer when available;
- Oversee the development and mailing of correspondence to taxpayers (owners, corporate officers) where the taxpayer's representative(s) delays the audit by not providing the necessary books and records or when requested information is not furnished on a timely basis; and
- Hold regular status meetings each month with staff to ensure the audit team stays on track for the timely completion of the audit. The meetings should include discussions on current audit findings, foreseeable audit and scheduling issues, and the overall progress of the audit. Status meetings are also an appropriate time for the audit supervisor to review required forms such as the audit plan, IDRs, AFPSs, waivers, and the BOE-414-Z. Audit team members should be prepared to provide a copy of their Form BOE-609-A, *Auditor's Time Report*, for review by the audit supervisor and lead auditor. Budgeted hours and any necessary amendments should also be discussed. These regular status meetings will help ensure the audit team stays on track for timely completion of the audit.

With respect to field visits, the audit supervisor should:

- Make his or her presence known to the taxpayer as early on in the audit as possible. The presence of the audit supervisor at the taxpayer's location during an audit imparts a sense of urgency to expedite the audit process and lends credence to the work being performed by the lead auditor and the audit team members.
- Visit the business location on a regular basis, where feasible, to review the progress being made and to answer any questions that may arise.
- Allow the lead auditor to be in control of the pre-audit conference, opening conference, status conferences, and the exit conference with the taxpayer. However, the audit supervisor should be present to offer assistance and answer questions.

- Introduce the next audit team. If a subsequent audit is scheduled during the last field visit or at the exit conference, the audit supervisor should bring in the next team of auditors and introduce them to the taxpayer or taxpayer's representative to establish the next audit cycle. The supervisor should attempt to retain one or more of the prior audit team members as part of the new audit team.

ROLE OF THE LEAD AUDITOR

0402.06

The lead auditor sets and communicates the goals of the audit, organizes the work, and ensures adherence to timelines. The lead auditor listens objectively and communicates expectations and instructions to both taxpayers and audit team members. The lead auditor also encourages a cooperative, productive, and positive atmosphere while promoting adherence to BOE policies and procedures.

The lead auditor is responsible for the overall management of the audit and is involved in the decision making in all aspects of the audit. The lead auditor:

- Acts as the main contact person and liaison between taxpayer and BOE during the audit;
- Interacts with various levels of professional and managerial staff;
- Distributes, prioritizes, and reviews the work of audit team members; and
- Communicates and negotiates with taxpayers on sensitive issues and problems.

The lead auditor is a role model and should:

- Be professional in all interactions with taxpayers, representatives, supervisors, and other audit team members;
- Provide guidance to audit team members on complex tax and audit issues; and
- Promote and develop the strengths in each audit team member, thereby improving their skills.

Planning/Reviewing

Overview

The lead auditor is responsible for reviewing the taxpayer's history and prior audit(s) and determining the scope of the expected audit. This generally takes place in the period prior to the opening conference when the auditor performs most of the preliminary overview work. This includes analyzing tax returns, transcripts, the taxpayer's account (including ownership); reviewing the prior audit history; researching the business and industry; and performing other information gathering techniques that provide the auditor with a better understanding of the taxpayer's business and potential audit issues.

Audit Plan (AM section 0401.07)

An audit plan is required on all audits. The lead auditor is responsible for the development of a detailed audit plan for each assignment. The lead auditor should develop an audit plan that strives for completion of an audit within a two-year timeframe, where applicable, commencing with the date of the opening conference and ending with the date of the exit conference. While most audits will be completed in a much shorter timeframe, others may require a period beyond two years.

The audit plan should include all areas under audit: the audit procedures to be used, timeframes, deadlines and estimated completion dates. The lead auditor should:

- Discuss the audit plan with the audit supervisor and audit team members;
- Assign the tasks within the audit plan to the audit team members;
- Make audit team members aware of all audit appointments and whether or not they are expected to be present;
- Work with the audit supervisor to develop budgeted hours for the audit and/or for each member of the team, or for each area of the audit for which they are assigned;
- Present the audit plan to the audit supervisor for review and signature prior to it being submitted to the taxpayer; and
- Discuss and provide a copy of the draft audit plan to the taxpayer at the opening conference, or when necessary for the auditor to first review the taxpayer's records, within 30 days from the opening conference.

Contact with the Computer Audit Specialist (CAS)

The lead auditor should consult with the CAS during the planning stages and throughout the audit as deemed necessary to determine the electronic records that are needed and to prepare appropriate sampling plans. While considered a member of the audit team, the CAS will serve in a consulting capacity while the lead auditor is responsible for making decisions regarding the audit approach. Additional guidelines with respect to working with the CAS are as follows:

- The lead auditor should introduce the CAS to the taxpayer at the pre-audit conference.
- The taxpayer may address specific technical questions regarding the data to the CAS; however, the taxpayer should be made aware that all questions and issues related to the audit approach and scope of work should be discussed with the lead auditor.
- The lead auditor should routinely follow-up with the CAS on the status of the taxpayer's electronic data analysis.

Budgeted Hours/Time Management

Budgeted Hours

The lead auditor should work with the audit supervisor to determine the budgeted hours for each assignment. The budgeted hours should be based on factors such as the size and complexity of the business, number of audit team members, and the hours used in prior audits. While the audit supervisor will ultimately set the initial budgeted hours during the planning stage, it is the responsibility of the lead auditor to approach the audit supervisor to discuss any changes in the audit plan that will affect the actual number of hours on the audit. Through discussion with the audit supervisor, the estimated number of hours may be revised based on changing circumstances in the audit.

Overall Time Management

The lead auditor is responsible for the overall time management of the audit. Some general time management techniques include continuous monitoring of the audit, establishing reasonable timeframes for the taxpayer and audit team members, setting deadlines, confirming deadlines in writing, and following-up on those deadlines. Additional time management procedures the lead auditor should use include, but are not limited to:

- Scheduling a pre-audit conference (where applicable);
- Adhering to the timelines set forth in the audit plan (or amended audit plan), and ensuring adequate resources to do so;
- Ensuring audit team members are aware of audit appointments and whether or not they are expected to be present;
- Ensuring audit team members have adequate work and are actively working towards completing their assigned area of the audit timely;
- Holding regular status conferences with the taxpayer;
- Holding regular status meetings with audit team members and holding all audit team members accountable for their assigned audit areas and timeframes;
- Comparing Form BOE-609-A, *Auditor's Time Report*, of each audit team member with the audit plan and discussing this with the audit supervisor to make sure the hours are reasonable for the work performed; and
- Preparing timely status reports on all audits for supervisor/management review.

Preparation of Information Document Request (IDR) (AM section 0401.12)

When a taxpayer or their representative fails or refuses to provide records or supporting information/documents in response to verbal requests for the same records, (or when otherwise appropriate), the lead auditor is responsible for preparing and tracking IDRs. However, before proceeding with the IDR process, taxpayers should be allowed to comply with verbal requests for information/documents. The lead auditor has the discretion to determine reasonable response times for verbal requests.

As part of the IDR process, the lead auditor should:

- Prepare, maintain, and track all IDRs issued during the course of the audit;
- Sign the initial IDR before issuance to the taxpayer;
- Ensure all IDRs are presented to the audit supervisor for review;
- Timely follow-up with the taxpayer within 30 days on all IDR responses received from the taxpayer;

- Notify the audit supervisor if any IDRs are not responded to in full;
- Assist in the preparation of the appropriate *Formal Notice and Demand* letter if the taxpayer fails or refuses to provide the information stipulated in the initial IDR and the second IDR; and
- Prepare the request for a subpoena for the production of books and records for the audit supervisor's and DPA's review and district administrator's approval, when appropriate.
- Document all verbal and IDR requests on the BOE-414-Z.

Preparation of Audit Findings Presentation Sheet (AFPS) (AM section 0401.14)

During the course of an audit, one or more areas may be completed prior to the completion of the audit as a whole. An AFPS should be prepared for each area upon completion and provided to the taxpayer. The following guidelines should be followed when preparing AFPSs in a team audit:

- The lead auditor must ensure that the audit team members complete the appropriate AFPS for the respective segment or area for which they are responsible.
- The lead auditor must review all AFPSs with audit team members before presentation to the taxpayer. If an issue is controversial or complex, an AFPS along with the related AWP's should be reviewed by the audit supervisor prior to providing the AFPS to the taxpayer.
- The audit team member responsible for the respective audit segment or area should participate with the lead auditor in the discussion of the AFPS with the taxpayer. The lead auditor should be present to answer any questions and to assist in the resolution of non-concurred issues.
- In general, within 30 days of the taxpayer providing additional information in response to an AFPS, the lead auditor must notify the taxpayer if an adjustment to the audit is warranted based upon the information provided. It is the duty of the lead auditor to notify the audit supervisor and taxpayer if this timeframe cannot be met.

Communication

The lead auditor's communication skills are key to an effective team audit. The lead auditor is the central communication point between the taxpayer, the audit supervisor, and audit team members. To ensure effective communication in the audit, the lead auditor must:

- Keep their *Outlook* calendar up-to-date;
- Periodically discuss the status of the audit with the audit supervisor (at least monthly);

- Provide prompt responses to the audit supervisor's questions and requests;
- Continually communicate with team members;
- Ensure all audit team members are aware of all audit appointments and whether or not they are expected to be present;
- Make regular, appropriate, and timely comments on the BOE-414-Z (at least weekly, or when appropriate) and ensure audit team members do the same;
- Keep the taxpayer continually informed of the status of the audit and prepare appropriate written correspondence when necessary;
- Prepare timely IDRs;
- Coordinate the preparation and presentation of AFPSs;
- Ensure audit team members provide prompt responses to the reviewer's questions or "go-backs" on a timely basis; and
- Regularly communicate with other lead auditors in the office or other districts to discuss experiences and difficulties encountered, and share ideas for successful team audits.

Working With Audit Team Members

The lead auditor should delegate tasks and assignments in a way that enables work to be completed efficiently and that challenges and develops audit team members. Audit team member duties and responsibilities should be appropriate for each classification, knowledge and experience level. This does not preclude experienced audit team members or the lead auditor from performing basic verification work, should the need arises. Lead auditors are expected to work with the audit team members for the timely completion of an audit and not simply delegate work.

Additional guidelines when working with audit team members are as follows:

- The audit team members should participate in developing the audit plan.
- Audit team members should be made aware of all audit appointments, and be asked to attend all conferences with the taxpayer regarding the area in which they worked whenever possible.
- Audit team members should back up their work on the J:\Drive as necessary, but at least once a week. However, the audit team members should provide the lead auditor with an electronic copy of the work they completed at the end of the field visit, or when any changes to the schedules or AWP's are made throughout the course of the audit. The lead auditor should always maintain a complete set of the most current electronic AWP's.

- When an audit team member has finished their specific audit area, they should be redirected to assist on another area of the audit, or should be released to conduct other audit assignments at other taxpayer's locations.

The lead auditor should address and appropriately resolve minor issues regarding audit team members. The lead auditor should also provide the audit supervisor feedback, both positive and negative, regarding audit team members' performance and productivity.

Conducting the Audit

The tone for the audit should be set early and an open line of communication with the taxpayer should be encouraged throughout the audit process. The lead auditor should promote a collaborative relationship with the taxpayer from the inception of the audit and encourage the taxpayer's cooperative participation in the audit process.

The lead auditor is responsible for setting appointments and conducting meetings with the taxpayer. These meetings include the pre-audit, opening, status, and exit conferences. The audit team members should be present to assist the lead auditor with the meetings and whenever possible, the audit supervisor should be present. At the opening conference, the lead auditor should introduce him or herself, the audit team members, and provide, in writing, the name and phone number of the audit supervisor and all audit team members.

The lead auditor should explain the audit team's reporting lines to the taxpayer and each team member's role in the audit, including the area or segment in the audit that each team member will be responsible for completing. Changes in personnel during the course of the audit should be timely communicated to the taxpayer.

The lead auditor is responsible for securing, monitoring, and maintaining the waiver of limitations status and obtaining necessary extensions. The lead auditor should inform the supervisor of the circumstances that necessitate a request for a waiver, and ensure supervisory approval is documented on the BOE-414-Z before the waiver is presented to the taxpayer for signature. If the extension of the statute of limitations totals two years or more, approval by the DPA will be documented on the BOE-414-Z.

At the conclusion of an audit, the lead auditor is responsible for compiling the AWP's into a final product for presentation to the taxpayer. Audit team members should complete the final working papers in their assigned area and be prepared to present them to the taxpayer along with the lead auditor. This includes completing the necessary schedules, forms, and general and subsidiary comments.

At the exit conference (AM section 0401.16), the lead auditor may want to recap any findings previously discussed in status conferences or through an AFPS. The audit team member assigned to a particular area of the audit should lead the discussion of that area. However, the lead auditor should be present to assist with any questions or concerns the taxpayer may have.

ROLE OF AUDIT TEAM MEMBER

0402.08

The role of the audit team member is to work with the audit supervisor and lead auditor to timely complete the audit. The audit team member is not strictly limited to their tasks or assigned area(s) in the audit. A good audit team member contributes to the success of the team. They share helpful ideas and information and may go beyond what is required of them.

Budgeted Hours/Time Management

To assist the lead auditor in managing the time it takes to complete the audit, the audit team member should:

- Complete their assigned tasks timely and inform the lead auditor of any potential delays.
- Keep track of their hours on Form BOE-609-A and be prepared to provide the lead auditor and the audit supervisor a copy of the completed form and other pertinent documents during regular status conferences.
- Compare their actual hours to the budgeted hours on the audit plan and notify the lead auditor of any possible differences.

In team audits, each area of the audit may be completed in parts rather than simultaneously. The entire team does not need to visit the taxpayer's location all at once, unless all records are available and the taxpayer has the facilities to accommodate all BOE staff assigned to the audit team. Thus, audit team members may be scheduled to perform fieldwork at different times, depending on the availability of records or taxpayer's facilities. For example, the taxpayer may have all of the records for a sales test, but not the paid bills test. The audit team member assigned to the sales test will go to the taxpayer's location, but the audit team member assigned to the paid bills test may be working at another taxpayer's location during this time. Once the paid bills are available, the audit team member assigned to paid bills will go to the taxpayer's location to complete their area. It is not necessary for the lead auditor or other audit team members to be in the field at the same time, thus saving the BOE and the taxpayer time and resources.

Audit team members who have completed their assigned area(s) of the audit should ask for instructions from the lead auditor on the next area of the audit to be completed. Audit team members may not return to the work location of the team audit to work on audits of other taxpayers.

Communication

During a team audit, the audit team member must effectively convey information and encourage an exchange of ideas. To achieve this, the audit team member should:

- Share helpful ideas and information with the team;
- Proactively inform the lead auditor or audit supervisor of any obstacles that may arise;
- Independently prepare complex oral and written communications;

- Possess the ability to express alternative views in a constructive manner and seek mutually beneficial solutions; and
- Work well with others, even when differences in communication style, viewpoints, or culture exist.

The audit team member should be present at all meetings and discussions for areas in which they worked whenever possible. This includes, but is not limited to, audit plan preparation, the opening, status, and exit conferences with the taxpayer, and any status conferences with the supervisor.

During the opening conference, the lead auditor and audit team members should discuss with the taxpayer which team members to contact if any questions arise in the audit. Furthermore, the lead auditor and audit team member should discuss with the taxpayer which BOE staff member the taxpayer should contact if he or she has any questions regarding the audit. Because situations are different, and taxpayers have different preferences of whom they wish to communicate with, these contacts should be established and understood by both the taxpayer and all audit team members at the beginning of the audit. These contacts should also be noted on the audit plan. See AM section 0401.09, *Opening Conference*, for more detailed information.

On a regular basis, each audit team member is expected to enter comments related to the audit in process on the BOE-414-Z.

When an audit team member has completed their area(s) of the audit, they must immediately inform the lead auditor so that an AFPS can be prepared. The audit team member who completed the particular area should complete the AFPS. The audit team member may conduct the actual discussion of AFPSs with the taxpayer, if necessary; the lead auditor should be present to answer any questions and to assist in the resolution of non-concurred issues.

Conducting the Audit

Audit team members are assigned different areas in the audit based on their expertise and the complexity of the audit area. Such areas may include tests of sales for resale, paid bills, test of assets, etc. The audit team member is responsible for performing those tasks, as well as completing the write-up for that particular area. This includes:

- Working paper completion — The entire schedule should be completed including calculations and all referencing.
- Projection of error — The audit team member should complete any projection of errors associated with their assigned area.
- Schedule comments — comments related to individual transactions in the schedule, such as disallowed sales for resale or purchases subject to use tax, should be completed by the audit team member.
- General comments — The general comments (Schedule 12 comments) should be completed by the audit team member who is responsible for that area.

- Go-Backs — The audit team member assigned to a particular area is responsible for answering an audit reviewer’s question(s) on a go-back regarding that area in a timely manner. The audit team member is also responsible for making any required comments or corrections required by the reviewer.
- IDRs — The audit team member should assist in the preparation of document requests including IDRs and follow-up IDRs, and *Formal Notice and Demand* letters.
- AFPSs — The audit team member responsible for their respective audit segment or area will complete the appropriate AFPS; however, the lead auditor must review all AFPSs prior to presentation to the taxpayer. The audit team member should also participate in the discussion of the AFPS with the taxpayer. Any documentation provided by the taxpayer in response to an AFPS should be reviewed by the audit team member and discussed with the lead auditor as appropriate.

It is the responsibility of the audit team member to be aware of all areas of the audit in case they are asked to fill in for another audit team member. One purpose of the team audit approach is to respond to setbacks with minimal disruption to productivity. If an audit team member is unable to attend a conference or perform fieldwork, it is up to the other audit team members to willingly accept new assignments and change focus as demands may modify the course of the audit. At the exit conference, the audit team member assigned to a particular area of the audit should lead the discussion of that area.

ROLE OF THE COMPUTER AUDIT SPECIALIST IN A TEAM AUDIT 0402.12

The lead auditor is responsible for the audit as a whole. However, the CAS assigned to a specific audit is considered part of the audit team with respect to that audit and will serve as a technical consultant to the auditor(s) to assist with the electronic records and sampling.

The CAS’s responsibility is primarily that of: obtaining the necessary data, data processing, recommending strata breaks and sample sizes and sample selection as defined in the auditor’s Form BOE-472 *Audit Sampling Plan*. Specific technical questions regarding the data and testing may be addressed to the CAS, however, all questions and issues related to the audit and scope of work should be discussed with the lead auditor.

For detailed information on the role and responsibilities of a CAS in an audit, see AM section 0403.12.

PROGRAMMING — AUDIT SURVEY	0403.00
STARTING AN ASSIGNMENT — GENERAL	0403.05
.....	
TRANSFERRING AN AUDIT TO ANOTHER DISTRICT	0403.07
.....	
PRELIMINARY ARRANGEMENTS	0403.10

The following procedures must be performed before starting an audit assignment:

- (a) Review the district master file (if available) to obtain information about the taxpayer’s type of business, starting date, closeout date, ownership, reorganizations, and general record of reporting; and to review refund notices, delinquencies, audit memos, etc. The following taxpayer information may also be obtained through the Integrated Revenue Information System (IRIS) or the Internet:
- The IRIS TPS TP screen for prior audit information and petition and claim for refund status. If a “Y” is noted under the appeal category, check the APL PR screen for more information.
 - The IRIS COM BA screen for comments from all IRIS subsystems. If payment problems are noted, the auditor may request that compliance staff review the account on Automated Compliance Management System (ACMS) for additional information.
 - The CTS AL screen to find related businesses, accounts or permits with the BOE.
 - The DIF DA screen to identify any outstanding balance and to determine if any collection action is being taken against the taxpayer.
 - The Internet to find information on company history, product lines, store locations, recent mergers and acquisitions, bankruptcies, etc.
- (b) Contact the taxpayer to arrange for the following information:
- Exact date and time for starting the audit assignment or a pre-audit conference (AM section 0401.08).
 - Records to be available supplied for at the start date of the audit~~assignment~~.
 - Name and position of person to be contacted. *(The auditor must leave his or her name and telephone number with the taxpayer at this time.)*
 - Desk space/work area.
- (c) Verify registration information, including:
- The current ownership is the same as the permit. Sole proprietors may not know that becoming a partnership or incorporating is a change in ownership.
 - The accuracy of the assigned area code(s).
 - The accuracy and currency of all subpermits.

- The correctness of the taxpayer’s local and transit tax allocation procedures.
- Any other area(s) which could impact the accuracy of the reported local tax.

If any errors are discovered, the auditor is to take *immediate* corrective action such as:

- Obtaining the date when the change or error first occurred.
- Notifying District Compliance as described in [AM](#) section 0219.03 (or preparing other forms as required by District Compliance) if an area code change is required.
- Notifying District Compliance of new or closed-out subpermits.

The appropriate BOE–80 series “Audit Engagement Letter” should be used to confirm arrangements to begin audits or to establish contact with the taxpayer.

BOE–80–A	<i>Audit Engagement Letter – Confirm Start Date</i>
BOE–80–B	<i>Audit Engagement Letter – Agreement to Delay Start Date</i>
BOE–80–C	<i>Audit Engagement Letter – Initiate Contact</i>
BOE–80–D	<i>Audit Engagement Letter – 10–Day Follow Up</i>
BOE–80–DOH	<i>Audit Engagement Letter – 10–Day Follow Up (Out-of-State)</i>
BOE–80–EOH	<i>Audit Engagement Letter – In Area (Out-of-State)</i>
BOE–80–FOH	<i>Audit Engagement Letter – Apology (Out-of-State)</i>

Forms BOE–80–A, BOE–80–B, BOE–80–C, and BOE–80–EOH include the following enclosures:

- Form BOE–80–RU, *Record Update*
- Publication 70, *Understanding Your Rights as a California Taxpayer*
- Publication 76, *Audits*
- Publication 17, *Appeals Procedures, Sales and Use Taxes and Special Taxes*

Form BOE–80–RU is intended to help obtain taxpayer’s current registration information at the start of an audit. The auditor should verify the accuracy of the information provided by the taxpayer on Form BOE–80–RU and include a comment to that effect on Form BOE–414–Z, [Audit Assignment Contact](#)-History. ~~The original completed~~ [A copy of](#) Form BOE–80–RU should be included [in the Forms subfolder of the audit case folder, with the audit working papers \(AWP\).](#) To update the taxpayer’s registration information on IRIS, a copy of Form BOE–80–RU should be sent to the District Compliance Supervisor.

Normally the initial contact with the taxpayer will be by telephone. When the audit appointment results from a telephone contact, the appointment must be immediately confirmed by mail using Form BOE–80–A, *Audit Engagement Letter — Confirm Start Date*, with the enclosures listed above. If the audit will commence within a week of making the appointment, the engagement letter and enclosures may be given to the taxpayer at the start of the audit. If the audit appointment is with the taxpayer’s representative, the engagement letter and enclosures should be sent to the taxpayer, with a copy to the representative.

The auditor should grant reasonable requests by taxpayers to delay the start of an audit, but should be alert to detect attempts to forestall it. If excessive delay in the start date is agreed to, and a reporting period is about to expire, Form BOE-80-B, *Audit Engagement Letter – Agreement to Delay Start Date* should be used. Form BOE-122, *Waiver of Limitation*, covering a minimum of two quarterly reporting periods should be included ~~in~~ with the enclosures. (AM section 0215.15 provides guidance when a waiver of limitation should be requested.) If the audit is a result of a claim for refund filed by the taxpayer, Form BOE-146, *Waiver of Credit Interest*, should be obtained.

If the auditor is unable to contact the taxpayer by telephone, Form BOE-80-C, *Audit Engagement Letter – Initiate Contact* should be used. If the taxpayer does not respond by the date specified on Form BOE-80-C, Form BOE-80-D, *Audit Engagement Letter – 10-Day Follow Up* should be sent to the taxpayer. As Form BOE-80-D explains, if the books and records are not provided by a specific date, the ~~Board-BOE~~ will either issue a subpoena requiring the taxpayer to provide the books and records or prepare a billing for estimated additional taxes due. The books and records must be subpoenaed when an estimated billing has been prepared and the taxpayer, at any time, disagrees with the proposed assessment or determination.

During the course of an audit, if the taxpayer or the taxpayer's representative refuses to provide or claims not to have some or all of the records which the auditor has requested orally, procedures outlined in AM section 0401.12, *Information Document Request*, should be followed. These procedures also apply when the taxpayer refuses to provide access to computerized records that can be used for testing purposes. ~~the auditor, after consulting with his or her supervisor, must decide on the course of action to pursue. When computerized records are maintained, taxpayers will be required to make them available according to the requirements of Regulation 1698, *Records*. The following procedures, as well as the procedures discussed in AM section 1304.35, *Methods of Selecting a Sample*, should be followed when computerized records exist and can be used for testing purposes to which the taxpayer refuses to provide access. The following procedures should also be used when non-computerized ("paper") records are maintained.~~ However, if most of the records are available, or the auditor believes that the requested records do not exist and the estimated deficiency is either small or would not be significantly altered if the records were available, then no further effort should be expended to obtain the records. A letter should be written to the taxpayer confirming that a request for the records had been made, acknowledging that the taxpayer or representatives failed to provide the records requested, and advising that a billing based on ~~an estimate~~ the available records is being prepared.

- ~~• If records sufficient to complete the audit have not been provided and/or the auditor believes records exist that would materially change the results of the audit, the auditor must notify his/her supervisor. The supervisor will prepare a written request to the taxpayer for specific records necessary to perform the audit and explain the relevance of the records requested. Any previous oral requests should be referenced in the letter. The letter must specify a date by which the records are to be furnished. A copy of the letter will be enclosed as a memo schedule in the audit.~~

~~If the taxpayer does not comply, the District Principal Auditor must send a follow up letter to the taxpayer referencing the supervisor's letter. The letter should advise the taxpayer of the requirements of RTC sections 7053, *Records*, and 7054, *Examination of Records*, and inform them that a subpoena will be issued for the records and/or a billing prepared for estimated additional taxes due, unless the requested records are~~

~~provided within a specified period (usually 10 days). If the taxpayer does not provide the records, the action to subpoena the records should commence. If a waiver of limitations cannot be obtained and outlawing periods have significant tax deficiencies, an estimated billing should also be prepared.~~

Comments regarding contacts and attempts to contact taxpayers, both oral and written, must be documented on Form BOE-414-Z, ~~Assignment Contact History~~. Copies of correspondence referenced on the Form BOE-414-Z should be included in the audit Correspondence subfolder of the audit case folder. ~~as a memo schedule with the AWP.~~ It should be noted in the “books and records” comment of the Field Audit Report or Field Billing Order if any records were withheld or were not available. *The auditor’s comments must clearly state the effect the lack of records had on the amount billed.*

VIDEO AND AUDIO TAPING

0403.11

If the taxpayer insists on video or audio taping the auditor as a condition of making the records available, the BOE may consider issuing a subpoena for the records.

An auditor should not consent to videotaping without discussing the request with his or her supervisor. Although there may be limited circumstances where videotaping is approved, generally if a taxpayer insists on videotaping the auditor as a precondition to the availability of the necessary books and records, the taxpayer has in effect refused to cooperate with the auditor ~~staff~~ and has not made the necessary records available as required by law. Under these circumstances, the subpoena process may be used to obtain the books and records. (See AM Exhibit 34).

Although the taxpayer may not make audio taping a precondition for disclosure of the necessary records, the BOE will allow a taxpayer to audiotape audit discussions with the auditor provided the BOE makes its own audio recording. Depending on the experience of the auditor and/or the nature of the audit issues, the district may want to consider having a supervisor present during the audio taping of the audit discussions.

~~DISCUSSION WITH TAXPAYER~~

ROLE AND RESPONSIBILITIES OF COMPUTER AUDIT SPECIALIST

0403.12

~~When the auditor arrives at the taxpayer’s place of business at the appointed time, the auditor should have a preliminary discussion with the taxpayer or with the person who has charge of the records before starting the audit. A representative tax return should be examined, and the taxpayer should be requested to point out the source of the figures used to compile the return. A discussion about how the ledgers and summary records are maintained is imperative at this time.~~

~~The auditor should determine, by direct questioning of the taxpayer, the exact nature of the business activity for the audit period. Inquiry should be made about changes in key clerks, accountants and/or accounting systems, as variations in the type of business, or in the methods of conducting business will have an effect on the approach to making an audit.~~

The goal of the Computer Audit Specialist (CAS) program is to provide specialized technical support and assistance to field audit staff in dealing with electronic records and in the design, implementation and analysis of statistical samples. By leveraging the

advanced electronic data analysis techniques and tools used by the CAS, field audits can be performed more accurately and efficiently. The CAS enables audit staff and taxpayers to make more informed decisions regarding the population to be tested, sample size, stratification levels, sample representativeness, statistically proper handling of unusual sample units, sample evaluations, etc.

The CAS serves in a consulting capacity and is required to be consulted on all audits where:

- A previous audit exceeded 400 hours and large volumes of electronic data will be utilized;
- There are large volumes of electronic data;
- A prior audit was performed with a CAS;
- Assistance is needed by the auditor to obtain useable data.

The CAS may also be consulted on other complex audits at the discretion of the audit supervisor. In addition, the CAS supplies expert advice on electronic data downloads, statistical sampling procedures, and sample evaluations, as needed by the audit staff and district audit management.

CAS Coordination with District Principal Auditors or Area Administrators

To enhance communication between the CAS and District Principal Auditor (DPA) or Area Administrator, the CAS staff is required to do the following:

- Schedule and attend monthly meetings with the DPA or Area Administrator to review audits with CAS involvement and discuss their progress.
- Provide access to their Outlook calendars to the DPA or Area Administrator of the districts they reside in and support. CAS staff must keep their Outlook calendars up to date (including approved time off).
- Attend district office staff meetings provided they are notified in advance and are available.
- Establish designated office hours (days and hours they will be in the office). Typically in-state CAS have one regularly scheduled office day per week and out-of-state CAS have one office day on non-travel weeks. When exceptions have to be made, the CAS will give the DPA advanced notice.
- The CAS must timely document their work on the BOE-414-Z for each account they are working.
- The CAS will report any delays related to their role in the audit directly to the DPA or Area Administrator, Supervising Tax Auditor, and the auditor.
- The CAS will secure the taxpayer's electronic data consistent with the established security policies for taxpayer's electronic data.

General Audit Roles & Responsibilities of the CAS and Audit Staff

The CAS is a member of the audit team and serves as a technical consultant to the auditor(s). The CAS should be available for consultations and to attend meetings and status conferences upon the request of the Audit Supervisor, the DPA or the Area Administrator.

The auditor is responsible for making decisions regarding the audit approach; however, the CAS may offer suggestions pertaining to electronic records and statistical sampling. As such, the development of an audit plan for an audit utilizing a CAS requires a coordinated effort between the CAS and the auditor with the following principles in mind:

- Request records and data that are relevant to the audit.
- Ensure the transaction data is material to the audit.
- Consider the nature of transactions and the ease with which data can be accessed and analyzed.
- Ensure timely communication between the CAS and the auditor throughout the development of the audit plan and the audit process.

If there is any concern or disagreement between the CAS and the auditor regarding the audit plan or methodology, the CAS should bring these concerns to the attention of the DPA or Area Administrator, Audit Supervisor and the CAS Supervisor. There should be no discussion of concerns in front of the taxpayer.

The CAS's analysis, evaluation and understanding of the taxpayer's electronic records, and processing of the data will be documented by the CAS for inclusion in the audit verification comments. The CAS's documentation should include a detailed log and reconciliation of how the target population(s) was achieved from the original population provided and the taxpayer's data layout.

Pre-Audit Conference

On accounts where a CAS consultation is required, the lead auditor should contact and meet with the CAS before scheduling the pre-audit conference with the taxpayer. See AM section 0401.08 for more information on the *Pre-Audit Conference*. At or prior to the pre-audit conference, the auditor will provide the taxpayer a copy of Publication 147, *What to Expect in a Computer Assisted Audit*.

The CAS will attend the pre-audit conference(s) with other BOE representatives, the taxpayer and their representative along with the taxpayer's appropriate Information Technology (IT) staff. The pre-audit conference must include an explanation and a discussion of the following issues and documents relating to the CAS involvement in the audit.

- Publication 147, *What to Expect in a Computer Assisted Audit*
- Availability and access to records
- What data fields/elements are maintained in the taxpayer's database
- How data is stored in the taxpayer's computer system
- Checklist for electronic data
- Electronic data transfer process
- Security of taxpayer data
- Validation and reconciliation of data
- Relevant sampling issues
- Timeframes for furnishing and reviewing records

- Work to be performed by the CAS, including work to be performed at the taxpayer's location.

The CAS, auditor and taxpayer should work together to establish reasonable timeframes for the taxpayer to furnish the data requested and the CAS to process the data. The auditor is responsible for following up with the taxpayer to ensure all requested data is provided. The Checklist for Electronic Data will be provided to the taxpayer by the CAS to ensure that all requested data is provided.

The CAS should work with the taxpayer's IT staff to achieve a thorough understanding of the taxpayer's electronic books and records. Whenever possible, the CAS should review the extraction query written by the taxpayer for the requested data to ensure the data provided will be complete, correct and unfiltered.

At the pre-audit conference, the taxpayer should be encouraged to perform their own data validation(s) and reconciliation(s) due to their knowledge and expertise with their accounting system. This will minimize the auditor and CAS time required to complete this task.

Initial Data Analysis

After data is provided by the taxpayer, two key steps must be completed before the data can be used for audit purposes:

1. Validation – This refers to reconciling control totals and record counts related to data files provided for use in the audit. Validation is the responsibility of the CAS.

Depending on the volume of data and number of data files, this may take up to several days by the CAS. The auditor will be contacted immediately via email when the initial validation work is complete. If the data is successfully validated, the CAS will provide the auditor with the necessary data files to complete the reconciliation. If the data cannot be validated, the CAS will inform the auditor and audit supervisor so appropriate action may be taken to secure the necessary electronic records.

In the event the CAS cannot complete the validation process timely, notification will be made immediately to the auditor and auditor supervisor.

2. Reconciliation – This refers to the audit procedure of tracing amounts to the books and records to verify the data provided by the taxpayer accurately represents the amounts recorded in the books and records. The taxpayer and the auditor should come to a consensus that the electronic data received is an accurate and complete representation of the transactions requested.

While the CAS will provide guidance and assistance as needed to the auditor and the taxpayer regarding the reconciliation of data, it is the auditor's responsibility to ensure the data is verified for accuracy and completeness.

Sampling and Testing

After the electronic data is validated and reconciled, the auditor and CAS will work in a concerted effort with the taxpayer regarding sampling characteristics, such as:

- Population
- Sample size

- Accounts of interest
- Sample units
- Cost centers
- Locations
- Divisions of interest
- Eliminated transactions
- Handling of credits and offsets (which method will be used)
- Handling of missing invoices

Should agreement not be possible, the auditor will make the final decision on and be responsible for the sampling characteristics and the sampling methodology. Should agreement be reached and based on the sampling plan, the CAS will complete and provide the necessary documents and/or schedules to the auditor for inclusion in the audit working papers.

Form BOE-472, *Use of Sampling in Auditing*, will be used by the auditor (the CAS will assist when necessary) to document the sample selection methodology.

After the electronic data is verified and reconciled, at the request of the auditor, the CAS will:

- Filter the electronic data for selecting the sample or accounts of interest.
- Design statistical sampling plans for appropriate areas of the audit.
- Perform other computer assisted audit procedures as needed.

See AM Chapter 13, section 1305.00, for more information on sample selection and evaluation of sample results.

Exit Conference

As a general rule, the CAS's work will be completed long before the exit conference. Presence of a CAS at the exit conference is not mandatory; however, the DPA or Area Administrator, or Supervising Tax Auditor may request the CAS attend when beneficial.

CONTACTS WITH THIRD PARTY REPRESENTATIVES

0403.14

In order to protect the taxpayer, it is always a good practice to secure written authorization from the taxpayer to discuss their case with a third-party representative, preferably prior to initiating ~~it is imperative that before~~ any discussion or correspondence ~~is initiated~~ with a the person claiming to be a representative of the taxpayer, ~~the auditor secures written authorization from the taxpayer.~~ It is, however, not generally necessary to obtain ~~this written~~ authorization when the taxpayer introduces or refers the auditor to the representative. It is also not necessary to obtain ~~an~~ written authorization when the representative is a professional governed by a code of ethics, e.g., a Certified Public Accountant (CPA) or attorney. However, as stated above, it is a good practice – particularly when contacted unilaterally by a professional – to obtain a written authorization or acknowledge the contact in writing with a copy to the taxpayer. Taxpayers should receive copies of all correspondence between the ~~Board~~ BOE and taxpayer's representative concerning the taxpayer's case(s).

LIMITATIONS ON CONTACTS WITH TAXPAYERS REPRESENTED BY COUNSEL

0403.16

~~BOE~~board employees who are not attorneys are not required to refrain from contacting or speaking with taxpayers who are represented by legal counsel, a CPA, or other representatives, even in those instances where the representative has requested that the employees do refrain. Thus, an auditor may continue to contact the taxpayer but only after consulting with his or her supervisor. Such action should be based, in part, on the representative's degree of cooperation with the auditor and the fact that the taxpayer does not timely comply with the ~~BOE~~board action requested through the representative.

~~If the taxpayer or the taxpayer's representative has requested that no contact with the taxpayer be made without the taxpayer's representative present, the auditor should notify his or her direct supervisor, and fully document the request on Form BOE 414-Z *Assignment Contact His*. In addition, all subsequent contacts with the taxpayer should be documented on Form BOE 414 Z to protect against potential claims or allegations of harassment. A supervisor or lead person may also accompany the employee forin difficult negotiations.~~

~~If the taxpayer or his or her attorney has obtained a restraining order forbidding contact by the Board without the attorney present, the Board employee must comply with the order. In such cases, the Chief, Field Operations Division, Equalization Districts 1 and 2 and Out of State District, or the Chief, Field Operations Division, Equalization Districts 3 and 4 and Centralized Collection Section, Internal Security and Audit Division, and the Chief Counsel should be notified of the order for appropriate action.~~

POWER OF ATTORNEY

0403.15

A taxpayer may be represented by legal counsel, CPA, or other representative as evidenced by a power of attorney document signed by the taxpayer, appointing a representative, which is provided to the BOE. Taxpayers may use Form BOE-392, *Power of Attorney*, to document power of attorney status conveyed to a representative. In lieu of a BOE-392, BOE staff will accept any written document identified as a "power of attorney" containing substantially all of the following information:

1. Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
2. The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);
3. The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative's authority; and the tax period(s) for which the authorization is granted;
4. A statement that the power of attorney revokes all prior powers-of-attorney, with any exceptions to the revocation noted;
5. The time period during which the power of attorney shall be in effect; and
6. The signature(s) and title of all affected taxpayers and the date of signature.

In the event a taxpayer has submitted a power of attorney document appointing a representative, BOE staff must deal with the representative regarding all tax matters identified in the power of attorney document (unless directed otherwise by the taxpayer). However, staff should continue to be responsive to any direct communication from the taxpayer, and copy the taxpayer on all written correspondence sent to the representative, where appropriate.

If the representative has demonstrated a repeated failure to respond to inquiries or requests from staff, especially regarding issues that are time sensitive and require immediate action, staff may, after consulting with a supervisor, contact the taxpayer directly. All actions or correspondence must be fully documented on the BOE-414-Z.

The decision to contact the taxpayer directly should be based on the representative's degree of cooperation with BOE staff and the taxpayer's compliance with the BOE action(s) that are requested through the representative. All subsequent contacts with the taxpayer and the taxpayer's representative must be fully documented on the BOE-414-Z to protect against potential claims or allegations of harassment. In situations requiring personal contact with the taxpayer, a supervisor or lead person may accompany the employee in difficult negotiations.

If the taxpayer or his or her representative has obtained a restraining order forbidding contact by the BOE, staff must comply with the order. In such cases, the Chief, Field Operations Department, Internal Affairs Division, and the Chief Counsel should be notified of the restraining order for appropriate action.

A copy of the written power of attorney must be scanned and placed in the *Forms* subfolder of the audit case folder. In addition, a paper copy of the power of attorney should be submitted and saved in the district file when the auditor transfers the completed audit case folder to the *Audit Control In-Box* on the J:\Drive and initiates the email approval chain in Outlook. See AM section 0213.03. Send the original paper copy of the written power of attorney documents to the Taxpayer Records Unit (MIC 36) to be scanned into Documentum.

WRITTEN CORRESPONDENCE

0403.18

The auditor should confirm in writing any significant verbal contact or agreements with the taxpayer or taxpayer's representative which involve:

- Delays in appointments
- Records that are not available
- Requests for supporting documentation
- Requests for books and records
- Requests for delay of audit work
- Confirmation of meetings to discuss audit findings
- Other contacts significant to the audit

By use of this procedure, the taxpayer will be kept aware of the progress of the audit. When corresponding directly with the taxpayer's representative, a copy should always be sent to the taxpayer.

PRELIMINARY EXAMINATION

0403.20

This is the point at which the auditor takes "inventory" of all potential information sources. Unless the method used in reporting is entirely erroneous, audit time will ordinarily be saved by adapting the audit procedures to the taxpayer's reporting methods. The auditor should ask the taxpayer to produce the desired records. These may be:

- General Ledger
- General Journal
- Sales Journal or Revenue Journal
- Purchase Journal
- Duplicate returns and working papers supporting them
- One or more months original documents, e.g., sales invoices, and purchase invoices

In addition to the above listed records, the auditor should question the taxpayer relating to such specifics as:

- Internal controls
- Systems in use
- Summary records, etc. (Including income tax returns)

If such preliminary examination of records indicates that substantial portions of the necessary documentation are not available (such as resale certificates), the auditor should advise the taxpayer what further data is needed and postpone starting the audit until this information has been obtained. [See AM section 0401.12, *Information Document Requests, for procedures on requesting records, in writing, when the taxpayer fails to respond to verbal request for the same records.*](#) Consideration should be given to securing a *Waiver of Limitation*, Form BOE-122. (See [AM](#) section 0215.15.)

When [conducting](#) larger audits, other information will be helpful, such as:

- The names of employees with whom the auditor will have contact.
- A list of all books and records in use and the name and location of the person in charge of the particular records.
- A list of sources of taxable transactions and how they are accounted for in the records.
- An explanatory chart of accounts.
- An explanation of the physical layout of the plant or the type of operations.
- Outside accountants' reports, if available.
- Minute book, if a corporation.
- Copies of Federal and/or State income tax returns.

Where the taxpayer has not prepared detailed schedules in substantiation of reported amounts, such as, purchases subject to use tax and deductions, the auditor should request they prepare such schedules for the periods to be test-checked. Ordinarily, a listing of the detail in chronological sequence showing invoice numbers and amounts of each transaction will be sufficient. Additional information may be required in some cases and the auditor should advise the taxpayer as to the extent of the required information and the form in which it is to be submitted.

On completion of the above, potential areas of ~~misplaced~~under or overstated tax should now begin to form in the auditor's mind.

SPECIAL CONSIDERATION — FIRE OR NATURAL DISASTER **0403.23**

Occasionally, a taxpayer will have losses of records and merchandise as the result of a fire or natural disaster (e.g., earthquake, flood). If records have been destroyed, the auditor may have to use specialized audit techniques as described in AM section 0407.00 to verify the taxpayer's reported amounts. The auditor should also note changes in business operations as a result of restoration, such as a different product mix or increased/decreased shelf space.

Whenever a fire or natural disaster is relevant to reporting during the audit period, the auditor should document the claimed event and loss. Examples of documentation supporting the claim include:

- A report to the police department giving the date of the event and approximate loss
- A fire department report
- A claim for loss filed with an insurance company

The taxpayer should be made aware that losses of money cannot be offset against taxable sales since the sale has already taken place and thus the tax is owed to the state.

PRELIMINARY TESTING **0403.25**

The auditor has ~~now~~ reached the point where a decision must be made to proceed with the audit or whether the audit should be waived as non-productive.

Informal spot or random tests of records and returns should be made ~~for the purpose of to evaluating~~evaluate each of the components of the reported amounts to determine which areas are likely to contain a material amount of understatement or overstatement of tax measure. To be meaningful, the tests should be short and as widely spread over the audit period as possible, emphasizing periods where there were significant changes in:

- Personnel
- Accounting methods, and
- Types of transactions

Such a test may consist of an examination of one return selected at random, verification of the figures entered thereon, and tracing the figures to the books of original entry. It ~~also~~ should also consist of an examination of a representative number of sales or revenue tickets and the tracing of the amounts shown on the ticket to the appropriate journal. Tests should be made of purchase invoices covering supplies and expense items. A more detailed examination of equipment purchases should be conducted. Tax accrual accounts in the General Ledger should be examined for possible irregularities. Revenue accounts should be

tested for disclosure of possible unreported sales. Similar short tests should be made to verify the accuracy of the amounts claimed as deductions. If the results of these tests indicate the taxpayer has been properly reporting the tax, the audit report should be completed using Form BOE-414-C or Form BOE-596 (see [AM](#) Chapter 2).

The tests may result in a no change audit report or a waiver of [an](#) audit assignment or the verification of certain phases of the assignment (e.g., sales for resale, etc.). The testing techniques ~~result in actually probing into~~ [examine](#) all facets of the taxpayer's business activity relating to the records maintained and the taxpayer's knowledge and understanding of the particular tax act or acts under which they operate. If this preliminary testing does develop an area of ~~misplaced~~ [under or overstated](#) tax, then a more formal and expanded test should be developed as discussed in subsequent sections of this manual.

SURVEY OF PLANT

0403.30

In auditing a small concern, the auditor can usually look over the place of business without making a tour of the premises. In an audit of a large firm, auditors should ask to be shown through the plant and office. This need not be done immediately. In fact, it is preferable to wait until the audit is started and the auditor has become familiar with the accounting system. This survey will help the auditor to understand many features of the operation such as the method of securing and billing orders, the method of making nontaxable sales, the processes in which material is consumed, and the use of equipment and machinery possibly purchased from [an](#) out-of-state source. All of this will enable the auditor to design the audit program more intelligently. In case of widespread complex operations, the extent of the tour may be limited.

RECEIPT FOR TAXPAYER'S RECORDS

0403.35

Whenever a taxpayer leaves his or her records at a ~~Board~~ [BOE](#) office or whenever records are picked up in the field and removed from the taxpayer's premises,* a *Receipt for Books and Records*, Form BOE-945, must be ~~used~~ [completed](#). Receipts will be made in duplicate, the original being given to the taxpayer or representative and the duplicate retained in the working paper file. In preparing the form, care should be taken to adequately describe the books and records.

*California retailers of cigarette and tobacco products are required by Law to keep complete and legible cigarette and tobacco product purchase invoices at each licensed location for at least one year after the date of purchase. Accordingly, auditors may not remove from the taxpayer's facilities the invoices for cigarette and tobacco products purchased during the previous 12 months. The taxpayer may provide copies of such invoices.

Form BOE-945 has a mailing address box to be checked by the taxpayer when signing the form. This ~~new~~ box requests the taxpayer to indicate if the mailing address listed on the form represents a change to the mailing address of record. The auditor must verify that the taxpayer completed the mailing address box. If the taxpayer did not complete the box, the auditor should request the taxpayer to provide the information prior to the auditor signing the form. If the taxpayer indicates there is a change of address of record, the auditor should confirm the correct address, make a copy of the Form BOE-945 and provide it to the appropriate account maintenance staff. If the taxpayer indicates there is no change to the official address of record, no further action is required by the auditor.

~~In accordance with sections 1000.100 and 1000.110 of the Information Security at the Board of Equalization handbook,~~ When taxpayer data is in the possession of the ~~Board~~ BOE it will be stored in secure, lockable areas. Thus, taxpayer books and records must be stored in a locked area when the records are not actually being used.

When the books and records are returned to the taxpayer or representative, the original receipt should be obtained with proper signature of taxpayer or representative affixed thereto indicating their return. If the original receipt is not available, the duplicate copy retained by the staff should be used to obtain receipt for return of the material listed thereon.

If the taxpayer wishes to have the records returned by mail, this should be done in such a way that the ~~Board~~ BOE has the taxpayer's written instructions and a record of the shipment. The taxpayer should be asked to pay the shipping charges if they are excessive.

If the taxpayer does not respond to normal attempts to return the records, a letter should be sent to the taxpayer by certified mail at the address given on Form BOE-945. The letter should notify the taxpayer that the records are no longer needed and unless he or she responds or advises the Board within 15 days where to ship the records, the records will be destroyed as authorized by the taxpayer on Form BOE-945. To allow an ample margin of time there should be no actual destruction of the records until at least 30 days after mailing the certified letter.

After 30 days, if the taxpayer's records can serve no useful purpose in connection with the tax obligation, they should be removed from the files and disposed of in the same manner as other records the destruction of which has been authorized. A record of such destruction, together with copies of Form BOE-945 and the certified letter, should be retained.

AUDIT PROGRAM — PROCEDURE TO FOLLOW

0404.00

PLANNING THE AUDIT

0404.05

This section presumes that as a result of the preliminary probing and testing as described in [AM](#) sections 0403.20 and 0403.25 the auditor has become aware of a potential area of ~~misplaeed~~ [under or overstated](#) tax. It is now the function of the auditor to:

- (a) Determine whether the correct amount of tax has been reported; and
- (b) If not, what is the amount of ~~misplaeed~~ [under or overstated](#) tax.

Any good auditing procedure that will expeditiously achieve this end result is the preferred procedure. The auditor must set up and design an adequate test program.

There are two basic approaches to this problem which may be named and defined as:

- (a) Direct Audit Approach — auditing the formal accounts and records of the taxpayer.
- (b) Indirect Audit Approach — where reliance cannot be placed upon the formal accounts. Illustrative of the indirect audit approach is any method used to impeach the records, e.g., mark-up of purchases, bank deposits, independent sources, etc., whether formal records are kept or not.

Depending upon the audit approach found necessary, the auditor should:

- (a) Establish a test base,
- (b) Establish test periods, and
- (c) Come to an understanding with the taxpayer to the extent possible as to:
 - Reasonableness of test approach
 - Assistance to be furnished by taxpayer in assembling or preparing test data, e.g., sales invoices, vendor's invoices, resale certificates, or EDP runs as necessary

~~AUDIT PROGRAM~~

~~0404.10~~

~~All audits must be guided by an organized plan. A carefully thought out, but flexible, overall plan (audit program) is the first step towards good working papers and a good start. Such a plan forces advance thinking and a proper overview of the assignment as a whole. As such, audit programs are mandatory and must be completed for all audit assignments. Audit programs must be written on a separate schedule and included as a memo in the audit. Much of the information needed to prepare the audit program can be obtained from the BOE 472, Audit Sampling Plan. See Exhibit 11 for sample audit programs for general retailers, manufacturers and wholesalers, and liquor stores. These sample programs may be used as a guideline in developing a program for your audit.~~

~~Audit programs are influenced by the results of the preliminary investigation, surface examination of the records, and limited testing procedures. As such, audit programs need to be flexible and are subject to change as circumstances warrant.~~

REFUNDS OF EXCESS TAX REIMBURSEMENT

0417.07

Regulation 1700, [Reimbursement for Sales Tax](#), provides that refunds ~~of amounts~~ of excess tax reimbursement paid to the ~~Board~~ BOE as sales tax may be refunded to the retailer upon submission of “evidence sufficient to establish that excess amounts have been or will be returned to the customer.”

This has been construed to mean that the retailer must actually refund amounts collected as excess tax reimbursement to their customers rather than give a credit unless they can show one of the following:

- The customer agrees to a credit.
- The customer’s debt to the retailer is acknowledged by the customer or made certain by a court proceeding.
- The amounts to be credited are small and apply to numerous customers.

The retailer should maintain records as provided in Regulation 1700(b)(3) as evidence that the excess amounts have been or will be returned to the customer. [As explained below, staff should encourage retailers to use Form BOE-52-L2, Notice of Pending Refund of Excess Sales Tax Reimbursement, \(Exhibit 13C\) to notify and obtain acknowledgement from customers of the pending refund.](#)

[All audits involving ~~No~~ refunds of excess tax reimbursement must have copies of signed ~~is allowable without~~ acknowledgement forms included in the audit working papers.](#) ~~from customers.~~ Form BOE-52-L2, [Notice of Pending Refund of Excess Sales Tax Reimbursement, \(Exhibit 132C\)](#) is available to assist ~~the~~ retailers in obtaining sufficient evidence from customers [that excess tax reimbursement has been or will be returned to the customer and to assist retailers in notifying and obtaining acknowledgement from customers of the pending refund.](#) ~~to establish the excess tax amount reimbursements have been or will be returned.~~ Form BOE-52-L2 also allows retailers to assign a limited *Power of Attorney* to their customers for purposes of obtaining the status of a claim for refund of excess tax reimbursement. The limited power of attorney is optional and only applies to refunds of excess tax reimbursement of \$300,000 or more.

~~The retailer can simply~~ [Auditors should encourage retailers to complete the BOE-52-L2 letter for each customer affected and retain the customers’ signed responses. When a claim for refund of excess tax reimbursement is \\$300,000 or more, auditors should also encourage retailers to grant the limited power of attorney to their customer. Without the limited power of attorney, the BOE cannot divulge information on the status of a refund to the retailer’s customer.](#)

~~The notice~~ [Form BOE-52-L2](#) informs the customer of the amount of indebtedness in writing and provides a check box for the customer to indicate their preference of a refund or credit to their account for the amount of excess sales tax paid. The retailer must obtain and maintain the signed acknowledgement in their records as proof of the refund or credit being given.

~~Taxpayers~~ [Retailers](#) are not required to use this form, however any other type of ~~acknowledgement~~ [documentation must used by the retailer must](#) satisfy all of the requirements under Regulation 1700 (b)(3) ~~(B)~~ [that show excess tax amounts have been or](#)

will be returned to the customer. Auditors are required to include a signed copy of Form BOE-52-L2 or other documentation in the *Supporting Audit Documents* subfolder of the digital audit case folder for *all* audits involving refunds of excess tax reimbursement, regardless of the amount of refund. ~~It is not necessary to include copies of the signed acknowledgements in the audit working papers, however verification comments should include complete comments or statements regarding the examination of the acknowledgements and their retention by the taxpayer.~~

When BOE staff receives a request from a customer regarding the status of a claim for refund of excess tax reimbursement, staff may provide the status of the claim to the customer after obtaining verification that the customer has been granted limited power of attorney by the retailer to disclose this information to the customer. Staff may obtain verification of the customer's limited power of attorney either from the customer or through the digital audit archive file of the retailer/taxpayer who made the claim.

Form BOE-52-L2 is available on eBOE.

COOPERATIVE AUDITS REASSIGNMENT / TRANSFER OF AUDIT ASSIGNMENTS **0442.00**

The completion of an audit assignment may require reassignment of the audit to another auditor within the district office or transfer of the audit to another district office. The transfer of an audit to another district office may be done with transfer of control, see AM section 0403.07, *Transferring an Audit to Another District* or without transfer of control, see AM section 0442.04, *Interdistrict Cooperative Audits*.

REASSIGNMENT OF AUDITS WITHIN A DISTRICT OFFICE **0442.02**

The reassignment of an audit to another auditor generally occurs when the auditor currently assigned to the audit is not able to complete the audit (e.g., departing auditor). The following procedures are intended to minimize the impact of audit reassignments to taxpayers, representatives, and the audit program.

Upon receipt of notice of an impending employee departure or extended absence, the supervisor and the DPA must immediately review all assignments in process with the departing auditor and assess the likelihood of the completion of the audit assignments.

In the case of an employee promotion or lateral transfer to another district, if the audit assignments cannot be completed prior to the auditor's proposed departure date and district management does not foresee the audits taking an extended period of time to complete, district management will request the auditor be permitted to complete existing assignments after the promotion or lateral transfer date (i.e., loaned back). Each audit assignment should be addressed on a case-by-case basis, as a loan back may not always be feasible. Care should be taken not to delay promotion dates for employees.

If the departing auditor is not able to complete the audit assignments prior to the departure date, the supervisor must immediately reassign the audits to another auditor, taking into account the complexity of the assignments. The departing auditor, the auditor receiving the reassigned audits (new auditor) and the supervisor must discuss the status of the audits, including audit procedures used, records examined, schedules prepared and audit findings to date.

Departing Auditor's Responsibilities

- For each reassigned audit, prepare verification comments discussing in detail the completed areas of the audit and the records or transactions that remain to be reviewed.
- Introduce the new auditor to the taxpayer and/or taxpayer's representative.
- Hold a discussion with the taxpayer and/or the taxpayer's representative regarding the status of the audit. Everyone involved should have a clear understanding of the completed areas of the audit and the tasks that remain to be performed.
- Assist the new auditor as needed.

Responsibility of the New Auditor

The new auditor is responsible for the timely and accurate completion of the reassigned audit and must address the remainder of the audit appropriately. The examinations already completed by the departing auditor are not to be repeated. If the new auditor identifies significant problems with the work completed by the departing auditor, the new auditor should bring them to the attention of the audit supervisor immediately.

Responsibilities of the Supervisor

When an auditor leaves without notice, the audit supervisor must:

- Review all audits to be reassigned.
- Timely reassign the audits and contact the respective taxpayers to explain the necessity of the reassignment.
- Accompany the new auditor to the taxpayer’s location for the initial meeting and discussion.
- Make several subsequent field calls in the initial stages of the reassignment and/or hold meetings with the taxpayer and new auditor to ensure satisfactory progress is being made, discuss any problems that the new auditor may encounter, and give the taxpayer assurance of continuity and someone to contact if there is a problem.

If the departing auditor completes all audit assignments prior to the scheduled departure or promotion/transfer date, the auditor’s remaining time must be augmented by miscellaneous audit activities such as minor investigations, preparing written responses to taxpayer inquiries, or assisting on other audits. The departing auditor must not be assigned new audits.

OVERVIEW INTERDISTRICT COOPERATIVE AUDITS **0442.041**

An audit transferred without transfer of control occurs in interdistrict cooperative audits where the controlling district office assigns a portion of an audit or a related audit to one or more cooperating district offices. In this case, the controlling district office consolidates the audit findings and transmits the completed audit to ADRS.

.....

RESPONSIBILITIES OF THE CONTROLLING DISTRICT OFFICE **0442.020442.06**

RESPONSIBILITIES OF THE COOPERATING DISTRICT OFFICE **0442.040442.09**

[BOE-472](#) Audit Sampling Plan is available on BOE's public web site.

Exhibit to be deleted as the link provided above was added to the text in AM section 0405.23, *Use of Form BOE-472, Audit Sampling Plan.*

INFORMATION DOCUMENT REQUEST -- INITIAL IDR

EXHIBIT 14



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

[UNIT NAME]

[BOE STREET ADDRESS]

[BOE MAILING ADDRESS]

1-[XXX-XXX-XXXX] • FAX 1-[XXX-XXX-XXXX]

www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

May 10, 2013

Mr. Sam Samuelson
QRX Company
5000 Corporate Drive
Denver, CO 80010

SZ OH 110-123456

INFORMATION/DOCUMENT REQUEST

IDR Number 3

Due Date: 6/10/15

Initial IDR Second IDR

Case: 98765

Audit Period: 1/1/10 - 12/31/12

Subject:

Asset Purchases

Requestor: Brittany Auditor

Title: Associate Tax Auditor

Telephone: 916-555-3333

Fax: 916-555-4443]

REQUESTOR SIGNATURE

A block test of asset purchases is being performed. Attached is a list of questioned asset purchases. Please provide an invoice for each asset purchase on the list.

History

Date:	Action:	Due Date:
3/20/13	Verbal request for records made during field visit.	4/30/13
5/10/13	First IDR request.	6/10/13

INFORMATION DOCUMENT REQUEST – SECOND IDR

EXHIBIT 15



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
 [UNIT NAME]
 [BOE STREET ADDRESS]
 [BOE MAILING ADDRESS]
 1-[XXX-XXX-XXXX] • FAX 1-[XXX-XXX-XXXX]
 www.boe.ca.gov

SEN. GEORGE RUNNER (RUT.)
 First District, Lancaster

 FIGINA MA, CPA
 Second District, San Francisco

 JEROME S. HORTON
 Third District, Los Angeles County

 DIANE L. HARKEY
 Fourth District, Orange County

 BETTY T. YEE
 State Controller

 CYNTHIA BRIDGES
 Executive Director

June 10, 2013

Mr. Sam Samuelson
 QRX Company
 5000 Corporate Drive
 Denver, CO 80010

SZ OH 110-123456

INFORMATION/DOCUMENT REQUEST

IDR Number: 3
Due Date: 6/25/13
 Initial IDR Second IDR
Case: 96765
Audit Period: 1/1/10 - 12/31/12
Subject:
 Asset Purchase

Requestor: Christina Supervisor
Title: Supervising Tax Auditor
Telephone: 916-555-4444
Fax: 916-555-4443

 REQUESTOR SIGNATURE

An IDR request was issued on 5/10/13 requesting purchase invoices for questioned asset purchases subject to use tax. These were provided prior to the due date, however, the following invoices were missing:

- Invoice 23594 Rob's Distributing
- Invoice 9988123 Johnson's Supply Co.
- Invoice 40-3323 Atlas Machine Tools Co.

Please provide these invoices by the due date above.

History

Date:	Action:	Due Date:
3/20/13	Verbal request for records made during field visit.	4/30/13
5/10/13	First IDR request.	6/10/13
5/15/13	Taxpayer responded to first IDR, however some invoices were missing.	
5/20/13	Follow-up by auditor informing taxpayer of missing purchase invoices.	
6/10/13	Second IDR request.	6/25/13

**INFORMATION DOCUMENT
REQUEST MASTER LOG**
**QRZ COMPANY 5000
 JANUARY 1, 2010 - DECEMBER 31, 2012**

IDR NO.	SUBJECT	REQUEST DATE	ISSUE DATE	DUE DATE	DATE RECEIVED	COMMENTS
1	Resale Certificate	Verbal Request	04/04/13	04/30/13	None	No response to initial IDR. Full response to second IDR.
		Initial IDR	05/05/13	06/05/13	None	
		Second IDR	06/06/13	06/21/13	06/10/13	
		Formal Notice				
2	Tax Accrual Account	Verbal Request	04/01/13	04/30/13	None	Sufficient alternative documentation was provided.
		Initial IDR	05/01/13	05/30/13	Withdrawn	
		Second IDR				
		Formal Notice				
3	Asset Purchases	Verbal Request	03/20/13	04/30/13	None	No response to verbal request. Initial IDR prepared. Taxpayer responded to initial IDR, however provided incomplete records. Second IDR prepared for missing invoices.
		Initial IDR	05/10/13	06/10/13	06/05/13	
		Second IDR	06/10/13	06/25/13	None	
		Formal Notice				
4	Paid Bills	Verbal Request	04/01/13	04/30/13	None	No response to verbal request. Documentation provided in response to initial IDR.
		Initial IDR	05/10/13	06/10/13	05/15/13	
		Second IDR				
		Formal Notice				

FORM BOE-698-C, IDR MASTER LOG

EXHIBIT 16

Form BOE-698-B, Formal Notice and Demand

Exhibit 17



Completed Example

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

[UNIT NAME]
[BOE STREET ADDRESS]
[BOE MAILING ADDRESS]
[XXX-XXX-XXXX] • FAX [XXX-XXX-XXXX]
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

June 25, 2013

QRX Company 5000
Corporate Drive
Denver, CO 80010

Account: SZ OH 110-123456
Audit Period: 01/01/10 - 12/31/12
Case: 98765

Dear QRX Company 5000:

We have not received responses to our initial and subsequent follow-up requests for Information Document Requests (IDR's) 1 and 3. Copies are attached for your reference. We need the information requested in those IDR's to correctly determine your tax liability or refund and complete our examination.

This is a **formal, legal demand** for the information requested. California Revenue and Taxation Code sections 7053 and 7054 provide that every seller or purchaser of tangible personal property must keep appropriate records and provide those records to the Board of Equalization for examination upon request.

If we do not receive the information requested by July 10, 2013, we will be required to either issue a subpoena requiring that you provide the books and records or prepare a billing for estimated additional taxes due.

To ensure proper handling, attach a copy of this letter to your reply and send it to:

Board of Equalization
Attn: Brittany Auditor
3321 Power Inn Rd., Suite 130
Sacramento, CA 95818

If you have any questions regarding this matter, please call me at 916-555-4444.

Sincerely,

Hannah Principal,
District Principal Tax Auditor

Enclosures

IDR 1 & 3

E-file now, find out how . . . www.boe.ca.gov



BOE-698-B (10-10)

Audit Findings Presentation Sheet

Exhibit 18
Page 1 of 2

BOE-699 (FRONT) (6-10)

AUDIT FINDINGS PRESENTATION SHEET

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

TAXPAYER NAME QRX Company 5000	APPS NUMBER 2
ACCOUNT NUMBER SZ OH 110-123456	DATE 8/10/13
AUDIT CASE 98765	AUDITOR Brittany Auditor
AUDIT PERIOD 1/1/10 - 12/31/12	TELEPHONE 916-555-4444
AUDIT AREA/ISSUE (example: Test of Resales) Asset Purchase	
DUE DATE TO RESPOND (date) 7/10/13	

DESCRIPTION OF FINDINGS	SCHEDULE REFERENCE	ESTIMATED TAXABLE MEASURE
Unreported ex-tax purchases of assets	12B	\$191,500

The audit findings presented are the auditor's proposed recommendation for determination and are subject to further review. Agreement to the audit findings does not preclude the taxpayer from appealing the issue(s) at a later date. Taxpayers may use audit pre-payment form BOE-1 if at any time during the audit they wish to pay all or part of the proposed audit liability. Advance payment of the tax portion will stop the accrual of interest; however, it will not affect the right to appeal portions of the audit with which the taxpayer does not agree.

SUMMARY OF FINDINGS

Capital asset purchases were examined on an actual basis. Unreported ex-tax purchases were scheduled and were noted to be subject to use tax.

LAW/REGULATION SECTION

Sales and Use Tax Law Sections 6201.

AUDITOR'S POSITION

Questioned asset purchases were noted to be purchased from unregistered, out-of-state vendors. The purchases were noted to be consumed in this state in the taxpayer's business. Use tax was not collected by the vendor, nor was it reported on the taxpayer's sales and use tax return.

Audit Findings Presentation Sheet

Exhibit 18

Page 2 of 2

BOE-699 (BACK) (6-10)

TAXPAYER'S POSITION: *(Please indicate your position regarding the audit findings. If you do not agree, please state your reason and attach the necessary documentation to support your position. If you currently don't have any position, please state so.)*

- Agree with Audit Findings Disagree with Audit Findings

PRINT TAXPAYER'S OR REPRESENTATIVE'S NAME	TAXPAYER'S OR REPRESENTATIVE'S SIGNATURE	DATE
RESOLUTION		

**AUDIT FINDINGS PRESENTATION
SHEET MASTER LOG**

**QRZ CORPORATION 5000
January 1, 2010- December 31, 2012**

AFPS NO.	SUBJECT	ISSUE DATE	RESPONSE DUE DATE	DATE RESPONSE RECEIVED	TAYPAYER AGREE/ DISAGREE	COMMENTS
1	Resales	06/01/13	07/01/13	07/01/13	Disagree	Taxpayer provided some supporting documentation. Taxpayer requested 30 additional days to provide additional documentation. Request granted.
1-A	Resales	08/10/13	09/10/13	None	Disagree	No additional documentation was provided. No response to second AFPS.
2	Asset Purchases	06/10/13	07/10/13	06/25/13	Agree	Taxpayer agrees with assessment.
3	Tax Accrual Reconciliation	06/15/13	07/15/13	06/25/13	No Comment	Taxpayer wishes to withhold agreement until further investigation.

AUDITING TRANSPORTATION CHARGES

0419.35

Revenue and Taxation Code section 6012, (see also Regulation 1628, *Transportation Charges*), provides that the amount of transportation charges excluded from the measure of tax shall meet the following requirements:

If transported by a common carrier:

- The transportation charge is separately stated in the invoice, bill, statement, contract, etc.;
- The transportation is from the retailer's place of business or other point from which shipment is made directly to the purchaser;
- The transportation charge does not exceed the cost of the transportation to the retailer.

If transported by the retailer or property sold for a delivered price:

- The transportation charge is separately stated in the invoice, bill, statement, contract, etc.;
- The transportation is from the retailer's place of business or other point from which shipment is made directly to the purchaser;
- The charges are reasonable; and
- Title to the property has passed to the purchaser prior to such transportation.

The exclusion of transportation charges is determined on a transaction by transaction basis. Transportation charges are regarded as separately stated only if they are separately set forth in the contract of sale or other document issued at the same time as the sale. The retailer's records supporting their nontaxable transportation charges must be maintained on a transaction by transaction basis in order to claim an exemption.

When verifying claimed nontaxable transportation charges, auditors should determine whether the taxpayer accounts for these charges on a transaction by transaction basis. If the taxpayer accounts for transportation charges on a transaction by transaction basis, then the auditor may test those charges. The results of the auditor's test may be projected for all periods within the audit for which transportation charges are supported by records on a transaction by transaction basis.

If the taxpayer does not account for transportation charges on a transaction by transaction basis, then the charges should not be tested. The entire claimed nontaxable transportation deduction is subject to tax. If documentary support on a transaction by transaction basis is provided for a limited period, e.g., three quarters of the audit period, only that period will be considered; the deduction for all unsupported quarters will be disallowed.

NOTE: This section does not apply to transportation of landfill material. See Regulation 1628, subdivision (c) if auditing transportation charges involving landfill material.

AUDIT OF ~~FOOD STAMP DEDUCTION~~ ELECTRONIC BENEFIT TRANSFER (EBT) CARD PURCHASES

0419.60

GENERAL

The Electronic Benefit Transfer (EBT) program is the system used for the delivery, redemption, and reconciliation of two types of public assistance benefits:

- Those issued by the United States Government (USG), specifically, CalFresh (formerly, the federal food stamps program); and
- The state-authorized cash aid benefits (state welfare benefits programs, such as CalWorks and General Assistance).

Recipients of public assistance access their issued benefits with an EBT card which is similar to a “debit card.” Paper food stamps have been replaced by the EBT card. The EBT program is administered on behalf of the USG and the state by both the California Department of Social Services and the state’s counties.

EBT PROGRAM

Counties are responsible for administering certain federal and state public assistance benefits programs. The EBT program allows counties to provide cash benefits to recipients via EBT cards. CalFresh and state-authorized cash aid benefit recipients can use their EBT card at point-of-sale terminals at participating retailers that are authorized to process these transactions. At the time of a purchase with the EBT card, the recipient selects either the federal CalFresh account or the state-authorized cash aid benefit account from which payment will be made.

PRODUCTS PURCHASED WITH AN EBT CARD – FEDERAL CALFRESH ACCOUNT

Products which are *eligible* to be purchased with ~~food stamps~~an EBT card federal CalFresh account and *are* so purchased are not subject to the sales and use tax. Products which are normally taxable, but are exempt when purchased with ~~food stamps~~an EBT card federal CalFresh account include among other things: non-alcoholic carbonated beverages and ice. This deduction will normally be found when auditing grocery stores; however, it could be claimed by mini-marts, liquor stores, drugstores with food sections, and other retailers which are eligible to accept ~~food stamps~~an EBT card.

Taxpayers may claim the deduction on an actual basis, as an amount equal to 2% of the EBT card federal CalFresh account purchases made ~~food stamps redeemed~~ during the period of the return, or as a percentage computed by the taxpayer in accordance with Regulation 1602.5(c).

As this deduction will usually be rather small, any large claimed deductions will warrant careful examination.

RESTAURANT MEALS PROGRAM

General

The Restaurant Meals Program (RMP) is an optional county-administered program that allows eligible CalFresh recipients to use their federal CalFresh benefits via their EBT card to purchase hot prepared food products at participating restaurants in certain counties within the state.

The RMP does not apply when recipients use state-issued cash aid benefits to pay for hot prepared food products.

Counties offering the RMP are responsible for certifying the eligibility of recipients of CalFresh benefits and for informing the RMP recipients of names and addresses of participating restaurants. The following counties participate in the RMP as of 2015:

- Alameda,
- Los Angeles,
- San Francisco,
- Sacramento,
- San Diego
- Santa Clara, and
- San Luis Obispo.

New counties join each year; the listing of participating counties is available at <http://www.cdss.ca.gov/foodstamps/PG3665.htm>.

Pursuant to the terms of the RMP, participating restaurants cannot charge sales tax or any other fees to individuals using their federal CalFresh benefits to purchase hot prepared food products. However, the terms of the RMP do not prohibit participating restaurants from charging sales tax on sales of hot prepared food products normally subject to tax, when the sales are made to individuals using state-issued cash aid benefits to purchase the hot prepared food products, and not federal CalFresh benefits.

Ultimately, whether tax applies to the sales of retailers participating under the terms of the RMP depends in part on whether the payment received is authorized pursuant to the federal CalFresh benefits program, and thus, a sale to the United States Government (USG); or the payment received is authorized pursuant to a state-issued cash aid program, which represents a sale to the State of California.

CalFresh – Sales to the USG

The sale of hot prepared food products to a CalFresh benefits recipient who uses an EBT card to authorize payment for the hot prepared food products may qualify as a sale to the USG provided the following conditions are met. To qualify as a sale to the USG:

1. The CalFresh benefits recipient must be an authorized EBT cardholder,
2. Both the CalFresh recipient and the retailer must be eligible to participate in the RMP, and
3. The CalFresh recipient must select the federal CalFresh account to authorize payment for the sale of the hot prepared food products.

Provided all of these conditions are satisfied, the sale of hot prepared food products qualifies as a sale to the USG, and tax does not apply to the sale. To support a claim that tax does not apply to the sale, the retailer is required to obtain evidence of direct payment by the USG. Evidence of direct payment by the USG includes sales receipts which indicate either “Supplemental Nutrition Assistance Program” or “SNAP” or bank statements listing electronic funds transfers to the taxpayer as either “Supplemental Nutrition Assistance Program” or “SNAP.”

State-issued Cash Aid Benefits Program (CalWorks, Public Assistance, etc.)

When a qualifying individual selects the state-issued cash aid benefits account to authorize payment for the sale of hot prepared food products, a sale to the state occurs. There are no general exemptions from tax to sales of tangible personal property to the state. Tax applies to sales of hot prepared food products to the state as the sale of tangible personal property generally, regardless of whether the retailer is eligible to participate in the RMP.

In some cases, qualifying individuals using their public assistance benefits at RMP participating restaurants may combine their federal CalFresh benefits and state-issued cash aid benefits on their EBT card to cover the purchase of hot prepared food products. When payment is made partly with federal CalFresh benefits, and partly with state-issued cash aid, only the portion of the gross receipts that represents a sale to the USG (federal CalFresh benefits) is subject to an exemption from tax. The remaining amount represents a sale to the state and as such is subject to tax. The retailer is required to identify in its records the taxable and nontaxable portions of its sales and maintain written evidence to support an exemption from tax, such as documents showing direct payment by the USG.

APPLICATION OF TAX TO SPECIFIC TRANSACTIONS

0437.00

FOOD SALES AT MOVIE THEATERS

0437.05

GENERAL

In audits of movie theaters, the admission policy of the theater may affect the application of tax to the sale of food products at the theater. Sales and Use Tax Regulation 1603, *Taxable Sales of Food Products*, provides guidance to establishments that make taxable sales of food products.

Regulation 1603, subdivision (d), *Places Where Admission is Charged*, provides in pertinent part that:

Tax applies to sales of food products when sold within, and for consumption within, a place the entrance to which is subject to an admission charge, during the period when the sales are made, except for national and state parks and monuments, and marinas, campgrounds, and recreational vehicle parks.

Regulation 1603, subdivision (f) *Food For Consumption at Facilities Provided by the Retailer*, provides in pertinent part that:

Tax applies to sales of sandwiches, ice cream, and other foods sold in a form for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others.

APPLICATION OF TAX

Movie theaters that require customers to first purchase tickets before entering the area where food is served must report tax on all sales of food and beverages, including popcorn, in accordance with Regulation 1603(d).

In audits of movie theaters, the issue of an “open lobby” policy must be considered. A theater with an “open lobby” is one where a customer may enter the theater lobby area for other purposes, such as playing video games or purchasing food or drink, without requiring the purchase of a theater ticket.

In determining whether or not a movie theater has an “open lobby” policy, auditors should consult with theater management and review written policies, if available, before making the determination. Since customers who patronize movie theaters without the purchase of a ticket to view a movie may be infrequent, auditors should rely on more than the actions of an individual employee in the theater lobby to determine the theater’s admission policy and if the theater has an “open lobby.” Just because an individual employee may require a ticket to enter the theater does not conclusively mean the theater does not have an “open lobby.” Thus, auditors cannot rely solely upon the use of standard observation tests to determine whether or not a ticket is required to enter the theater lobby.

If a movie theater has an “open lobby” policy, the next consideration regarding whether or not tax applies to sales of food is whether or not the movie theater provides facilities for the consumption of the food sold. For example, some theaters may provide tables and chairs for consumption of food and beverages near an arcade or otherwise within the lobby area. As set forth above, under Regulation 1603, subdivision (f), all food and beverages sold for consumption at such facilities are subject to tax. Many theaters provide benches for general seating. These benches do not constitute facilities for consumption of food and beverages.

Additionally, under Regulation 1603, subdivision (f), theater seats do not constitute facilities intended for consumption of food and beverage. Even if the movie theater provides facilities for consumption within the lobby area, sales of cold food “to go,” such as for consumption in the theater, are not taxable.

Thus, when auditing a movie theater, the following applies:

- 1) Sales of all food items are subject to tax in theaters that do **not** have an open lobby policy (Regulation 1603(d)).
- 2) In theaters with an “open lobby” policy,
 - The theater does not constitute a place where admission is charged (Regulation 1603(d)).
 - Sales of cold food items are *not* subject to tax unless the items are for consumption at facilities specifically provided for consumption (i.e., tables and chairs).
 - Seats in the viewing area of a movie theater are **not** considered facilities for consumption of food and beverages. (Regulation 1603(f)).
 - Where tables and chairs are furnished for eating, the theater has the option to elect to separately account and not remit tax on sales of cold food “to go” per Regulation 1603(c)(1)(A).

APPLICATION OF TAX TO MULTI-USE CONTAINERS

0437.10

This section clarifies the application of tax to returnable pallets used to hold both food products and other non-food products, as well as containers used to bake and ship bread. For information on how tax generally applies to returnable or non-returnable containers in other situations, see Regulation 1589, *Containers and Labels*.

FOOD PRODUCT CONTAINERS

Revenue and Taxation Code section 6364(d) (see also Regulation 1589(b)(1)(E)), provides a sales and use tax exemption for the sale or purchase of all containers when sold or leased without the contents to persons who place food products for human consumption in the containers for shipment, provided the food products will be sold. The exemption applies without regard to whether the food products are sold in the same container or not, or whether the food products are remanufactured or repackaged prior to their sale.

PALLETS

Under Regulation 1589(a), pallets, among other items, are included in the definition of “containers.”

Returnable Pallets for Other than Food Products

Tax applies to the initial sale of returnable pallets whereby the pallets are returned for reuse. Tax does not apply to the sale of returnable pallets when the pallets are sold with the contents in connection with the retail sale of the contents, or when resold for re-placement of the contents on the pallets.

For example, a taxpayer purchases pallets to ship its product to its customer. Tax applies to the sale of the pallets to the taxpayer. When the taxpayer sells its product to its customer and requires the customer to return the pallet to the taxpayer, any charge (deposit) for the return of the pallet by the taxpayer’s customer is not taxable, whether or not the charge (deposit) is forfeited.

Returnable Pallets Used For Food Products for Human Consumption

When pallets are sold as containers for the purpose of holding food products for human consumption, the sale or purchase of the pallets is exempt from tax.

When tangible personal property, other than food products for human consumption, is placed in or on the pallets, the use of the pallets is considered to be outside the scope of the exemption and any such sales or purchases of those pallets is subject to tax. The exemption set forth in section 6364(d) does not apply to sales of pallets that are used to hold both food products for human consumption and other tangible personal property (non-food products). Therefore, when pallets are used to hold both food and non-food products the sales of pallets are subject to tax. Taxpayers may not exempt a portion of the pallet sales based upon a percentage of use.

ALUMINUM BREAD PANS

Regulation 1589(a), defines “containers” to mean the articles in or on which tangible personal property is placed for shipment and delivery, such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets, and materials from which such containers are manufactured.

When aluminum bread pans are used to hold food products, i.e., bread, such pans are considered “containers” as defined in Regulation 1589(a). The use of the containers for baking bread does not supersede the use of the containers for shipment of the food products for human consumption.

For example, if the aluminum bread pans are shipped holding raw bread dough via refrigerated trucks and then the bread is baked after delivery, the containers qualify for the exemption and may be purchased ex-tax.

Similarly, baking the bread in the aluminum bread pans prior to shipment does not preclude the use of the aluminum bread pans as containers.

TAXABILITY OF MEAL REPLACEMENT PRODUCTS

0437.15

This section clarifies the interpretation of Revenue and Taxation Code (RTC) sections 6359 and 6369 (see also Regulation 1602, *Food Products*, and Regulation 1591, *Medicines and Medical Devices*) as they apply to meal replacement products.

GENERAL

The exemption for certain sales of meal replacement products is addressed in Regulation 1602(a)(4) and Regulation 1591. Regulation 1602(a)(4), provides that if the meal replacement product sold is a complete dietary food providing the user with the appropriate amounts of vitamins, proteins, and minerals including the minimal count of at least 900 calories per day, the product may be claimed as an exempt food product. If the item does not qualify as an exempt food product, staff may look to whether the product qualifies as an exempt medicine. If the requirements under either Regulation 1602(a)(4) or Regulation 1591 are met, the meal replacement products are exempt from tax.

COMPLETE DIETARY FOODS

Regulation 1602(a)(4), in part, provides that tax does not apply to products which are complete dietary foods and the complete dietary food must provide the user with the following daily minimums:

1. 70 grams of high quality protein
2. 900 calories
3. Minimum daily requirements as established by the regulations of the Federal Food and Drug Administration of the following vitamins: A, B1, C, D, Riboflavin, and Niacin, or Niacinamide; and the following minerals: Calcium, Phosphorus, Iron, and Iodine.

A critical element of the example of a complete dietary food is that the food item contains at least 900 calories per day if taken (consumed) in the recommended daily dosage (e.g. 1 can per day at 900 calories or 3 cans per day at 300 calories each). As provided in Regulation 1602, a product with fewer than 900 calories per day by itself cannot qualify as a complete dietary food.

To determine whether the product being examined is a complete dietary food for purposes of Regulation 1602(a)(4), the daily nutritional content offered by the product is determined by multiplying the nutritional components of a single serving by the number of servings recommended per day on the label. If no such recommendation is noted, a determination will be based on three servings.

Meal Replacement Products May Qualify as Exempt Medicines

RTC section 6369 and Regulation 1591 provide that the gross receipts from the sale or use of medicines furnished by a licensed physician to his or her own patient for treatment of the patient are specifically exempt from taxation. Also, the gross receipts from the sale or use of medicines furnished by a “health facility” for treatment of any person pursuant to the order of a licensed physician are specifically exempt from tax. A “health facility” is defined in Regulation 1591(a)(4).

Meal replacement products are considered medicines when furnished by a physician to his or her patient as part of a medically supervised weight loss or gain program. When a physician furnishes to his or her patient meal replacements as part of a medically supervised weight loss or gain program, the sale of the meal replacement products are exempt from tax under RTC section 6369 and Regulation 1591.

RECORDS

Retailers making exempt sales of food products must maintain proper documentation to support the exemption. Pursuant to Regulation 1591(g)(1), any deduction on account of sales of medicines shall be supported by appropriate records which include, but is not limited to: the name of the purchaser, name of doctor or health facility, date of sale, item sold, and the sales price.

MOTION PICTURE INDUSTRY – RELEASE PRINTS

0437.20

GENERAL

Generally, release prints first exhibited in California are subject to either the sales or use tax. This section provides guidance on the application of tax to release prints first exhibited outside the State of California and is intended to apply to the motion picture industry. Due to the unique nature of transactions pertaining to the motion picture industry, this section applies exclusively to issues pertaining to release prints. See Regulation 1529, *Motion Pictures*, subdivision (d)(11) for a specific definition of “release prints.”

RELEASE PRINTS FIRST EXHIBITED OUTSIDE OF CALIFORNIA

Regulation 1620, *Interstate and Foreign Commerce*, sets forth the conditions which determine whether merchandise brought into this state is subject to sales tax or use tax. As provided in Regulation 1620, subdivision (b)(3), it is presumed that property used outside the state for a period less than 90 days has a continued useful life, hence the deference to the primary use of the property for the following six-month period to determine the proper application of tax.

Release prints first exhibited outside of California are rarely exhibited for more than 90 days. Due to their limited physical life, a release print does not possess a useful life in excess of 90 days. Since release prints are unable to sufficiently meet the 90 day test criteria if returned to California at the end of its useful life, the entry or

reentry of the release print does not automatically render the property subject to use tax. Accordingly, release prints cannot be deemed for use in California merely because they enter or reenter the state within 90 days.

After initial exhibition out-of-state and entry or reentry into California, release prints are often destroyed then shipped out-of-state for recycling; or refurbished for subsequent release into secondary markets. In either scenario, the first functional use via the initial out-of-state exhibition establishes that the release print was purchased for use outside the state and neither the sales nor use tax applies in California. As such, it is not the purchaser's intent to "use" the release prints in California, since their use outside the state generally renders them unfit for further use as release prints upon return to California. Thus, release prints which are initially exhibited outside of California are not deemed purchased for use in California.

RELEASE PRINTS PURCHASED FROM OUT-OF-STATE LABORATORY

In situations where a studio orders a release print from a laboratory that produces the release print and delivers it either directly to an out-of-state theater or a California based service company (who subsequently delivers the release prints to theaters outside California), the application of tax differs depending upon whether the laboratory is located in California or out of state.

The California service company, sometimes referred to as a "depot" by the industry, performs services which may include:

- Transportation of prints from the film laboratory to and from distribution centers, theaters, film warehouses, and salvage facilities.
- Total quality management to assure the highest print quality is delivered to the theaters.
- Complete inventory management from the time the print leaves the film laboratory to the time the print is destroyed.
- Integrated information systems including order entry, print control and tracking, defective print reports, and other management reports.
- Customer service to interface with exhibitors.
- Print rejuvenation services including inspection and cleaning.
- Logistics management for all matters related to shipment, delivery, inspection, retrieval, and storage of prints.
- Storage of used prints.
- Security control procedures to minimize potential for piracy, theft, or other loss of prints.

Tax does not apply to any release prints delivered to the California service company provided the release print is first exhibited out-of-state. The activities associated with the services identified above do not render the tax applicable in cases where the release print is first exhibited outside the State of California.

Upon return to California, the retention and subsequent "destruction" of the release print, including "de-reeling" and "chopping" of the release print for packaging, even when done to protect the intellectual interest of the release print, will not make the

release print taxable in cases where the release print is first exhibited outside the State of California.

When refurbishing prints for subsequent release into secondary markets, it is common for portions of release prints to be spliced and combined to make copies suitable for distribution. This activity may include combining portions of release prints that were first distributed in California, and thus originally taxed with release prints which may have been first distributed outside the State of California. For the purpose of assessing tax on the refurbished release print, it will be presumed that a refurbished release print is tax paid as long as the percentage of all release prints distributed in the secondary market in California does not exceed the percentage of all release prints originally first exhibited in California. As long as this criteria is met, the subsequent distribution of refurbished release prints into the secondary market is exempt from tax. In cases where the release print is originally first exhibited outside the State of California, tax does not apply regardless of the fact that refurbishing of the release print is subsequently done in California.

However, if there is a sale of the refurbished release print, tax will apply to refurbished release prints first distributed in California.

RELEASE PRINTS PURCHASED FROM A CALIFORNIA LABORATORY

When a California laboratory delivers release prints to theaters for first exhibition inside California, such prints are generally subject to sales tax. However, delivery by the laboratory or California service company to an out-of-state theater for first exhibition is not subject to tax provided the release print is first exhibited out-of-state.

There are situations where a laboratory may deliver release prints to a California service company for subsequent delivery to theaters outside California. In cases where the California service company does in fact deliver the prints outside California via common carrier, the transaction qualifies as a sale in interstate commerce. As previously discussed, release prints which are originally first exhibited outside of California are not deemed purchased for use in California. The activities associated with the services identified in the prior section do not render the tax applicable when the release print is first exhibited outside the State of California.

Upon return to California, the retention and subsequent “destruction” of the release print, including “de-reeling” and “chopping” of the release print for packaging, even when done to protect the intellectual interest of the release print, will not make the release print taxable in cases where the release print is first exhibited outside the State of California.

REPORTING

In many cases, there is adequate documentation available to track the movement of the release prints for the purpose of assessing sales tax. However, for administrative ease, we will permit the reporting of tax based upon the use of a pre-approved percentage of release prints first distributed in California in cases where it is in the best interest of both the taxpayer and the State.

If approved, the established percentage may be used for a period of time which must be identified in the request (up to a maximum of three years). Three years was permitted to allow the district to review subsequent requests in conjunction with the taxpayer's eligibility for audit. The use of an approved percentage reporting method will constitute a "safe harbor" from additional assessments for liabilities in excess of the amounts reported based upon the approved reporting method.

The use of a percentage reporting method must be requested by the taxpayer in writing with a detailed description of the calculation of the percentage and computation of the base to which it is to be applied. The District Principal Auditor will forward the request along with a recommendation for approval or denial with explanation to the Chief, Tax Policy Division. After a response is received from the Chief, Tax Policy Division, the District Principal Auditor will send an acknowledgement letter to the taxpayer outlining the terms of agreement (if approved) or an explanation of the denial.

REVIEW AND APPROVAL OF REQUEST FOR RELIEF REQUESTS OF MANDATORY PENALTIES

0501.25

RELIEF REQUESTS IN GENERAL

The Board of Equalization (BOE) may grant relief from penalties, interest, and/or collection cost recovery fees or grant extensions for filing returns or making payments. The Board is empowered to relieve taxpayers of mandatory penalties when it determines that the failure to pay taxes or file a return timely was due to a reasonable cause and circumstances beyond the person's control. Such failure must have occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Taxpayers wishing to request relief from the payment of penalties should do so after receipt of a determination. A request for relief must be presented in a written statement, under penalty of perjury, setting forth the facts upon which the request is based. The use of Form BOE-735, Request for Relief from Penalty (available at www.boe.ca.gov), is recommended but not required.

Requests for relief are generally submitted online at the BOE website. Staff should encourage taxpayers without Internet access to visit a field office or another location with secure Internet access to complete the request. However, if these options are not possible, staff may print and mail the following forms available on eBOE:

- BOE-735, Request for Relief from Penalty, Collection Cost Recovery Fee, and/or Interest
- BOE-135, Declaration of Timely Mailing
- BOE-468, Request for Extension of Time to File a Tax Return

In cases where a paper request is received in a field office, staff should forward the document to the appropriate headquarters section, unit, or branch. For sales and use tax or lumber fee, requests relating to self-assessed liabilities are processed by the Return Analysis Unit (RAU), and requests relating to BOE-assessed liabilities are generally processed by the Petitions Section. For Special Taxes and Fees accounts, requests relating to self-assessed liabilities are processed by the Compliance Branch, and requests relating to BOE-assessed liabilities are generally processed by the Appeals and Data Analysis Branch. The requests are entered in the Difference Subsystem (DIF RR) in the Integrated Revenue Information System (IRIS) by headquarters staff.

Field office staff has a responsibility to make appropriate recommendations to headquarters sections or units processing requests; for example, if they have knowledge that a request is not well-founded. For more information about the processing of penalty relief requests, see the Compliance Policy and Procedures Manual (CPPM) sections 535.010 through 535.017.

~~The following Headquarters sections evaluate requests for relief of mandatory penalties related to their respective areas of responsibility, and recommend either approval or denial of the request:~~

- ~~• Return Analysis Unit (MIC 35) – Late payment, late filing of returns, EFT penalty, etc.~~
- ~~• Petitions Section (MIC 38) – Determinations, audits, etc.~~
- ~~• Consumer Use Tax Section (MIC 37) – Vehicles, vessels, aircraft~~

~~Recommendation to approve or deny a request for relief above \$50,000 is forwarded to the Deputy Director for further review and then submitted to the Board Members for consideration.~~

EXTENSIONS FOR FILING RETURNS

0502.40

The various business tax laws (e.g., RTC section 6459) provide in part:

“The board for good cause may extend, not to exceed one month, the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.”

Requests for an extension of time should be submitted on the BOE website. See AM 0501.25 for more information about how a taxpayer should submit a request. Some requests may be granted automatically if they meet certain criteria.

~~Generally, the taxpayer requests the extension from the district office and the district office will submit a recommendation to the Return Analysis Unit (MIC 35).~~

When an extension is granted for a specific period, a ~~delinquency~~late penalty will not apply if the tax is paid on or before the last day of the period for which the extension was granted. However, when an extension is granted, interest from the date on which tax would have been due must be paid. In cases in which an extension of time has been granted for making a prepayment, interest applies to the unpaid amount of the required prepayment.

~~Form BOE 468, Request for Extension of Time in which to File a Return, is available at the Board's website located at www.boe.ca.gov.~~

Compliance Policy and Procedures Manual (CPPM) Chapter 7, Collections

CONTACT WITH TAXPAYERS REPRESENTED BY COUNSEL OR OTHER REPRESENTATIVE

722.025

In order to protect the taxpayer, it is always a good practice to secure written authorization from the taxpayer to discuss their case with a third-party representative, preferably prior to initiating any discussion or correspondence with the person claiming to be a representative of the taxpayer.

POWER OF ATTORNEY

722.026

A taxpayer may be represented by legal counsel, Certified Public Accountant (CPA), or other representative ~~when a power of attorney appoints a representative and the collector receives a power of attorney~~ as evidenced by a power of attorney document signed by the taxpayer, appointing a representative, which is provided to the BOE. Taxpayers may use a BOE-392, Power of Attorney, to document power of attorney status conveyed to a representative. In lieu of a BOE-392, BOE staff will accept any written document identified as a “power of attorney” containing substantially all of the following information:

1. Taxpayer’s name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
2. The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);
3. The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative’s authority; and the tax period(s) for which the authorization is granted;
4. A statement that the power of attorney revokes all prior powers of attorney, with any exceptions to the revocation noted;
5. The time period during which the power of attorney shall be in effect; and
6. The signature(s) and title of all affected taxpayers and the date of signature.

In the event a taxpayer has submitted a power of attorney document appointing a representative, BOE staff must deal with the representative regarding all tax matters identified in the power of attorney document (unless directed otherwise by the taxpayer). However, staff should continue to be responsive to any direct communication from the taxpayer, and copy the taxpayer on all written correspondence sent to the representative, where appropriate.

If the representative has demonstrated a repeated failure to respond to inquiries or requests from staff, especially regarding issues that are time sensitive and require immediate action, staff may, after consulting with a supervisor, contact the taxpayer directly. All actions or correspondence must be fully documented in the Automated Compliance Management System (ACMS). ~~Although the taxpayer may provide another person with power of attorney to act on the taxpayer’s behalf, the collector is under no~~

Chapter 7, Collections (Cont)

~~obligation to exclusively conduct discussions regarding the taxpayer's case with the assigned representative. Unless the taxpayer or the taxpayer's representative has obtained a restraining order forbidding BOE staff to contact the taxpayer without the representative being present, the collector may contact the taxpayer directly, especially in those cases where compliance is being delayed. However, contacting the taxpayer directly, despite the taxpayer's or the representative's request to the contrary, should only occur after consulting with the collector's supervisor.~~

The decision to contact the taxpayer directly should be based on the representative's degree of cooperation with BOE staff and the taxpayer's compliance with the BOE action(s) that are requested through the representative. ~~Such requests must be fully documented in the appropriate file or record. In addition, A~~all subsequent contacts with the taxpayer and the taxpayer's representative must be fully ~~should be~~ documented in ACMS case notes to protect against potential claims or allegations of harassment. In ~~circumstances~~ situations requiring personal contact with the taxpayer, a supervisor or lead person may participate in a conference call with the collector and the taxpayer or may accompany the collector when meeting with the taxpayer to assist in conducting difficult negotiations.

If the taxpayer, or his or her representative, has obtained a restraining order forbidding contact by the BOE ~~without the taxpayer's representative being present, staff must comply with~~ the order ~~must be complied with and.~~ In such cases, the Chiefs of ~~the~~ Field Operations ~~Divisions~~ Department, the Internal ~~Security and~~ Affairs Division, and the Chief Counsel ~~must~~ should be notified of the restraining order for appropriate action.