

**Memorandum**

**To** : Mr. David J. Gau  
Executive Director (MIC 73)

**Date:** June 22, 2016

**From** : Susanne Buehler, Deputy Director  
Business Tax and Fee Department (MIC 43)



**Subject** : **Board Meeting July 14, 2016**

**Item N: Administrative Agenda**

**Proposed Revisions to Audit Manual (AM) Chapter 1, *General Information*,  
AM Chapter 4, *General Auditing Procedures*, Compliance Policy and Procedures  
Manual, (CPPM), Chapter 1, *General* and CPPM Chapter 7, *Collections***

I am requesting approval to forward the attached revisions to the Board Proceedings Division to be placed as a consent item on the Administrative Agenda at the July 2016 meeting. The proposed revisions incorporate current policies and procedures to the following AM and CPPM Chapters:

- AM Chapter 1, *General Information*
- AM Chapter 4, *General Audit Procedures*
- CPPM Chapter 1, *General*
- CPPM Chapter 7, *Collections*

The revisions have been reviewed and approved by Business Tax and Fee Department and Field Operations Department 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.

We received one comment from a member of the public suggesting we include guidance to staff on how to obtain information on Exchange of Information agreements the Board of Equalization (BOE) may have with other agencies in the proposed revisions to AM section 0101.65 and CPPM section 722.028. Both sections contain the same information and are titled, *Disclosure of Confidential Information to a Taxpayer Representative Without Written Authorization*. Based on the comment received, a sentence was added to AM section 0101.65 and CPPM section 722.028 directing staff to CPPM section 140.000, *Exchanges of Confidential Information*. CPPM section 140.000, provides staff with direction on how to obtain information on agreements the BOE has entered into for reciprocal exchange of confidential information. Additionally, staff receives guidance on exchange of confidential information, which covers Exchange of Information Agreements, in their annual Disclosure Training.

If you have any questions, please let me know or contact Ms. Lynn Whitaker at 916-324-8483.

SB:ljm

Attachment

**STATE BOARD OF EQUALIZATION**



BOARD APPROVED

At the July 14, 2016 Board Meeting

Joann Richmond  
Joann Richmond, Chief  
Board Proceedings Division

Approved:

David J. Gau  
Mr. David J. Gau  
Executive Director

- cc: (all with attachment)
- Mr. Wayne Mashihara (MIC 47)
- Chief, Tax Policy Division (MIC 92)
- Mr. Richard Parrott (MIC 57)
- Mr. Kevin Hanks (MIC 49)
- Mr. John Thiella (MIC 73)
- Mr. Marc Alviso (MIC 73)
- Mr. Chris Lee (MIC 73)
- Ms. Leila Hellmuth (MIC 43)
- Ms. Lynn Whitaker (MIC 50)

## Audit Manual Chapter 1, General Information

### DISCLOSURE OF CONFIDENTIAL INFORMATION TO A TAXPAYER REPRESENTATIVE WITHOUT WRITTEN AUTHORIZATION

0101.65

The Information Practices Act (IPA) (Civil Code § 1798 et seq.), Government Code section 15619, Revenue and Taxation Code (RTC) section 7056, as well as other ~~and most of the~~ business tax ~~laws-statutes~~, generally prohibit BOE staff from disclosing confidential taxpayer and feepayer information ~~contain provisions making it illegal to divulge~~ to any unauthorized persons ~~information~~ regarding a taxpayer's affairs obtained through audit investigation or from returns or reports. (This includes information contained in ~~Forms~~ BOE-1164, Audit Memorandum of Possible Tax Liability, and BOE-1032; see AM section 0401.20.) In limited circumstances, the IPA provides for the disclosure of confidential information to either the taxpayer to whom it pertains, or to an authorized representative of the taxpayer. An authorized taxpayer representative is an individual or organization that is selected by the taxpayer to represent their interests before the BOE. [See Compliance Policy and Procedures Manual (CPPM) section 135.074 for detailed information on the IPA.]

~~Confidential Information-information~~ of this nature contained in ~~Board~~ BOE records must be treated in strict confidence. The only exception is when the Governor, by general or special order, authorizes other state officers, tax officers of another state, the Federal Government (if a reciprocal agreement exists), or any other person to examine the records maintained by the ~~Board~~ BOE. Requests for information of a confidential nature should be referred to a supervisor. (See CPPM, section 140.000, Exchanges of Confidential Information.)

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, status of permit (i.e., active/inactive), and tax area code. This information is generally available to the public. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides in part that the ~~Board~~ BOE may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the ~~Revenue and Taxation Code~~ RTC.) Account numbers for individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) are considered confidential because an individual's account number when input into the resale verification function on BOE's website would reveal an individual's name and address, which is considered confidential. ~~You~~ Staff should be aware that nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.

The procedures for handling public requests for information, ~~(including requests for Statements of Economic Interests (SEI) — Form 700,)~~ are addressed ~~on—in~~ Publication BOE-20, What You Need to Know About Requests for Information, available ~~in on~~ eboe BOE, ~~located at~~ <http://eboe/docs/Forms/boe20.pdf>.

Requests by a taxpayer's representative for information and records under the ~~Information Practices Act (IPA)~~ and the California Public Records Act (PRA) will be guided by the following policy:

A taxpayer's representative may examine and/or receive copies of the same information the taxpayer is entitled to, provided the representative presents a written authorization from the taxpayer. This includes copies of all correspondence and, if involved with an audit, petition for redetermination or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized.

### **Conditions for Disclosure of Information**

Generally, a written authorization such as a valid power of attorney (see AM section 0403.15) is required to provide information about a taxpayer's account or to discuss a taxpayer's account with an authorized taxpayer representative. However, there are some situations where exceptions to this general rule are permitted.

In all cases of providing confidential taxpayer information to an authorized taxpayer representative, the name of the representative and the information provided must be documented in IRIS and, if applicable, the Automated Compliance Management System (ACMS). Only information that would otherwise be disclosed to the taxpayer can be disclosed to an authorized taxpayer representative.

### **Verbal Authorization by the Taxpayer**

Verbal authorization by a taxpayer to discuss his or her case with an authorized representative may be accepted by BOE staff over the telephone or in person. In either situation, proper identification must be furnished by the taxpayer to the BOE.

If the authorization is by telephone, staff must first verify the identity of the taxpayer by use of a driver's license or social security number through IRIS and/or ACMS before accepting the verbal authorization. If the authorization is in person, staff must ask for identification such as driver's license, Department of Motor Vehicles identification card, or any other document which establishes his or her identify.

At the time the verbal authorization is given, the following must be addressed with the taxpayer and the information documented in IRIS and, if applicable, ACMS:

- Name, address, telephone number of the authorized representative,
- Specific subject matters that may be discussed with the representative, and
- Duration of the authorization.\*

**\*NOTE:** Staff should inform the taxpayer that the verbal authorization will be limited to 30 calendar days, unless the taxpayer requests a shorter period of time. Staff should advise the taxpayer that a written authorization is necessary if the taxpayer wants the authorization for longer than 30 calendar days.

It is important to clearly establish what subject matter may be disclosed to the authorized representative. For example, if a taxpayer that has a seller's permit as a sole proprietor calls a BOE staff member regarding a bank levy that attached community property funds in the spouse's separate bank account and authorizes staff to discuss the circumstances relating to the levy with the spouse, staff may explain the reason for the levy and general information regarding levies and community property laws but may not provide any other confidential information to the spouse

(e.g., the accounts receivable balance, payment history, delinquencies) without specific authorization by the taxpayer.

Before providing confidential taxpayer information to an authorized representative over the telephone, staff should verify the identity of the caller by requesting the name, address, and telephone number and matching it with the information provided by the taxpayer and noted in IRIS and, if applicable, ACMS. When the authorized taxpayer representative appears in person at a BOE office, their identity must be verified by examining their driver's license, Department of Motor Vehicles identification card, or other such identification document and compared to the information noted in IRIS and, if applicable, ACMS.

### **Authorization by Possession of Agency Forms, Documents, or Correspondence**

Pursuant to Civil Code section 1798.24(c), confidential taxpayer information for accounts registered to individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) may also be provided to a person representing the taxpayer if it can be proven with reasonable certainty through the representative's possession of agency forms, documents, or correspondence that this person is the authorized representative of the taxpayer. Agency forms, documents, or correspondence may include, but are not limited to notices of determination, collection or delinquency notices, taxpayer's copy of a notice of levy, or other forms or correspondence addressed to the taxpayer.

However, before releasing confidential taxpayer information, staff should attempt to verify the person in possession of the forms, documents or correspondence is the taxpayer's authorized representative. This verification can be done through a review of BOE records (e.g., IRIS, ACMS) or by telephoning the taxpayer. If staff is unable to contact the taxpayer and is unsure whether a person is in fact an authorized representative, including the spouse of a taxpayer, staff should request that the person provide written authorization from the taxpayer. If there is any doubt, confidential taxpayer information should not be provided. The following two scenarios are provided as examples:

1. A person visits a BOE office claiming to represent a taxpayer that is a sole proprietor and presents a statement of account issued by the BOE in the taxpayer's name. The person states that certain payments made by the taxpayer were not credited to the taxpayer's account and requests a record of all payments made during the last three months on the taxpayer's account. If, there is no record in IRIS or ACMS indicating the person is an authorized representative of the taxpayer, a telephone call must be made to the taxpayer to verify the person is an authorized representative. If the taxpayer states that the person is not an authorized representative, or if the taxpayer cannot be contacted, staff should not provide the information.
2. The same situation as above, except BOE staff is unable to contact the taxpayer by telephone. The person claiming to represent the taxpayer presents additional documentation, such as copies of recent bank statements, cancelled checks issued and signed by the taxpayer and/or copies of recently filed tax returns. In this situation, the requested information may be provided, as the person has

knowledge of the account and the documentation is sufficient to indicate the person is the authorized representative of the taxpayer (sole proprietor).

Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter of the taxpayer's issue(s), their business name and/or account number, but who may not have been asked by the taxpayer to represent them. An example of a speculative inquiry is a caller who knows the taxpayer's account number, but asks to verify the taxpayer's address or reported gross sales for the previous quarter. Assuming there is no record the taxpayer is being represented by the caller, the reported gross sales information cannot be provided, and if the account is coded S (Sole Proprietorship), M (Husband and Wife Co-ownership), or N (Registered Domestic Partnership), the address information also cannot be provided to that person.

Confidential taxpayer information should not be provided in response to questions that are unrelated to the actual forms, correspondence or documentation in the possession of the person, without written or verbal authorization of the taxpayer. For example, information relating to amounts reported on tax returns or matters related to an audit cannot be provided to a person claiming to be an authorized representative based on the person's possession of a delinquency notice addressed to a taxpayer. All requests should be carefully examined and/or analyzed before inferring with reasonable certainty that the person is the authorized representative of the taxpayer.

### **Information Requiring Written Authorization**

Requests by taxpayer representatives to examine or receive copies of taxpayer account information, correspondence, or other documents require written authorization by the taxpayer, except under the following circumstances:

1. A written request for documents by a certified public accountant (CPA) or attorney which clearly states that the CPA or attorney is the authorized representative of the taxpayer. Before releasing the information, however, staff should check IRIS or ACMS to ensure the representative was not terminated by the taxpayer.

### **Exceptions to the written authorization rule:**

2. Taxpayer directed — Written authorization is not required when supplying copies of audit working papers to the taxpayer's bookkeeper or accountant when the taxpayer directed the ~~Board~~ BOE to contact the taxpayer's bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.
3. Oral inquiries — Attorneys and ~~accountants~~ CPAs may examine and/or receive copies of information without having written authorization if the person is known by the ~~Board~~ BOE to represent the taxpayer. Most oral requests are for an informal review of working papers before the audit is transmitted to Headquarters — generally when the representative has been working with district staff. Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer's business name or account number, but have not been asked by the taxpayer to represent them. Staff should check the taxpayer's file and the appropriate ~~Integrated Revenue and Information System~~ (IRIS) screens to verify

the person has represented the taxpayer in the past. (APL MH and TAR AI have fields for the name of the taxpayer's accountant or representative; audit subsystem screens can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)

- Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney's or ~~accountant's~~ CPA's relationship with the taxpayer. If the only information available on IRIS involves a prior audit, or the representative has recently been added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or ~~accountant~~ CPA is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff should ask the person to put the request in writing and state specifically that he or she represents the taxpayer in question. Attorneys and ~~accountants~~ CPAs have an ethical responsibility not to misstate their authority to represent their clients.
- Requests for copies of district, appeals, and central files must be obtained in writing.

~~4. Written inquiries — Attorneys and accountants may examine and/or receive copies of information without having written authorization from the taxpayer if they request the information in writing and clearly indicate that they are authorized to represent the taxpayer. When copy requests are made for file information, the supervisor should review the appropriate IRIS screen printout indicating the representative's name before the request is approved and copies mailed. As explained in (2) above, staff should review IRIS and the taxpayer's file to screen for speculative inquiries. If staff still has doubts, they should contact the taxpayer to confirm authorization.~~

Without written authorization from the taxpayer, a person purporting to represent the taxpayer should not be permitted to close a taxpayer's account or change a taxpayer's address or ownership information. Only under limited circumstances may federal tax information be provided to a taxpayer representative with a power of attorney. Staff must consult with the Disclosure Office to determine if the necessary circumstances are present before any federal tax information is released.

## **AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA**

**0101.67**

The BOE collects and stores confidential taxpayer or feepayer information and has a responsibility to protect this information from unauthorized access, use, and disclosure. BOE employees with a business need to transmit confidential or personal information electronically outside the BOE may not do so without protection (encryption) of that information. However, the taxpayer or feepayer may consent to the electronic transmission of confidential or personal information without encryption by signing a completed ~~f~~Form BOE-82, *Authorization for Electronic Transmission of Data* ([BOE-82](http://www.boe.ca.gov/sutax/staxformsn.htm)), ~~available at <http://www.boe.ca.gov/sutax/staxformsn.htm> (Sales and Use Tax Forms and Applications web page).~~ ~~Form~~ The BOE-82 may be obtained only by BOE employees with a business need to transmit unencrypted confidential or personal taxpayer or feepayer information outside the BOE. The form must be completed and

signed by the taxpayer or fee payer, or an authorized representative who holds a power of attorney, before any confidential information is transmitted.

The completed ~~Form~~ BOE-82 must be maintained in the taxpayer or fee payer's ~~current assignment file or the audit working papers for which it was obtained.~~ For audit cases, the receipt of ~~Form the~~ BOE-82 must be documented on ~~f~~Form BOE-414-Z, *Assignment Activity History* using the 414-Z Program and a scanned copy maintained in the Forms subfolder of the audit case folder (See AM section 0302.20). The authorization will remain in effect, until rescinded in writing, for the current assignment only and not future or prior assignments.

In addition, the following statement must be included at the top of each electronic transmission of confidential information:

Confidential information of the California State Board of Equalization (BOE) – unauthorized use or disclosure is strictly prohibited by law. If you receive this e-mail in error, please immediately notify the BOE by return e-mail and delete this message from your computer, without printing the message, and without disclosing its contents to any person other than the sender or recipient. Persons who copy or disclose such confidential information are subject to applicable legal penalties.

Confidential information includes, but is not limited to, the Audit Engagement series of letters (BOE-80s), and any other form that may indicate a taxpayer or fee payer is under audit. Confidential data also includes email correspondence during an audit. For example: Form BOE-122, Waiver of Limitations, references audit, but does not specifically say the taxpayer or fee payer is under audit. Although not specifically referenced, this form is used almost exclusively for audit purposes and should be considered confidential.

If a BOE-82 is not on file, emails with confidential information can be sent by encrypting the email prior to transmitting to a taxpayer or fee payer. However, BOE ~~employees~~ staff must not encrypt files before transmitting via e-mail if the taxpayer or fee payer's internal policies prohibit the download, installation, or execution of any unauthorized software. In this situation, BOE employees must either obtain ~~Form the~~ BOE-82 or provide the data to the taxpayer in hard copy.

Additionally, BOE staff, taxpayers and/or their representatives can transfer large amounts of data (i.e. audit data, statistical sample data, sales data, payables data, etc.) using Secure File Transfer (SFT). SFT is a way to share documents with someone inside or outside the BOE without using email to send it. It is encrypted and secure. By using SFT two users with two separate logins can access the same secured folder and can securely upload and download files. There is a Take 5 video available that explains how to use the SFT service at <http://eboe/eboe3/sutd/training/sft.cfm> and an information sheet.

For assistance in encrypting files, BOE employees must contact their PC or LAN Coordinator.

**REPORTING SUSPECTED COUNTERFEIT GOODS****0103.05****GENERAL**

This section outlines procedures for staff to follow when they encounter a business that appears to be selling counterfeit goods during an audit, field call, or visit to a business. Pursuant to Revenue and Taxation Code sections 6007 and 6009.2, when a person is convicted of trafficking counterfeit goods, all of their sales and purchases of those goods are considered taxable. The BOE may bill the convicted seller for unpaid sales or use tax within one year after the last day of the calendar month following the date of conviction.

**PROCEDURES****REPORTING SUSPECTED SALES OF COUNTERFEIT GOODS**

When an auditor encounters a person who appears to be selling counterfeit goods, they must report the suspected activity to the Tax Recovery and Criminal Enforcement Task Force (TRaCE) by completing the *Report a Crime* electronic form available on the BOE's TRaCE webpage. Auditors must check the *Other* box and identify themselves as "BOE Staff" in the *What is your relationship to the suspect? Check all that apply* section located at the bottom of report form. TRaCE will use this information to bill the counterfeit goods traffickers for the unpaid sales or use tax once they are convicted.

**REPORTING CONVICTED TRAFFICKERS OF COUNTERFEIT GOODS**

When an auditor receives information that a person was convicted of trafficking counterfeit goods (for instance, through news media) they must send a referral directly to the Investigations Division. Staff should address the referral memo to the Chief of Investigations and Special Operations Division and include, at a minimum:

1. Auditor's name and contact information.
2. Any pertinent information about the convicted trafficker (e.g., taxpayer's name, business DBA, permit information if available), and
3. The source of the information.

**GENERAL**

During audits or investigations of bars, liquor stores, mini-marts, or other retail establishments, undercover purchases may be necessary to substantiate a taxpayer's selling prices. Generally, the purchase(s) consists of soda, alcohol, cigarettes, over-the-counter medication, etc. If State funds are used to make the evidence purchase or an employee's out-of-pocket expenses are reimbursed, the evidence must be destroyed using the following procedures.

**PROCEDURES**

In most cases, the receipt is used as evidence in the audit or investigation and not the item itself. However before destruction, a photograph should be taken of the items purchased and retained with the purchase receipt if warranted. The receipt and photograph (if applicable) should be scanned and included in the digital audit report.

Once the items of evidence are no longer needed, a BOE employee will destroy the evidence while a supervisor or manager witnesses, documents, and retains documentation of the destruction. The destruction should result in the item(s) no longer being edible or usable. *For example*, alcohol or soda should be poured down a sink drain, cigarettes should be crushed and thrown away, and items not suitable for pouring down the drain should be appropriately disposed of in a trash receptacle. The supervisor or manager should document the destruction of the evidence on the BOE-414-Z for the respective audit.

**DIGITAL SIGNATURES****0103.15**

This section clarifies the policy for accepting digital signatures on documents received by BOE staff. The California Government Code allows the use of digital signatures provided they meet certain requirements. As long as the requirements below are met, BOE staff may accept digital signatures on documents such as waivers of limitation, claims for refund, powers of attorney and resale certificates.

**California Government Code Requirements**

A "digital signature" is an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. California Government Code section 16.5 explains that a digital signature has the same force and effect as a manual signature if it has the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
5. It conforms to regulations adopted by the Secretary of State.

The Secretary of State regulations state that for a digital signature to be valid, it must be created by an acceptable technology. The regulations list the acceptable technologies, which currently include Public Key Cryptography and “Signature Dynamics.” (See California Code of Regulations, Title 2, Sections 22000-22005.)

### **Accepting Digital Signatures**

Staff should be aware of who is authorized to sign a document.

For example:

A taxpayer emailed form BOE-122, *Waiver of Limitation*, to the auditor that was digitally signed using Adobe Acrobat software. The digital signature includes the date, time, name of signer, email of signer and company name. The file, once digitally signed by the taxpayer, cannot be changed. The auditor has verified the signer is authorized to sign the waiver and the email address is valid. The auditor also followed-up with a phone call and recorded the contact on the BOE-414-Z. Therefore, the auditor may accept the waiver with a valid digital signature.

## **STATE ISSUED CELLULAR TELEPHONES**

**0103.20**

This section provides guidelines for the use of state issued cellular telephones (cell phones) which includes BOE issued smartphones. SUTD’s policy is that the use of cell phones for text messages is prohibited. However, exceptions may be made for emergency text messaging as warranted.

BOE employees with state-issued cell phones must follow Board of Equalization Administrative Manual (BEAM) section 5363.3, *Cellular Telephone Guidelines*, and the data security provisions in BEAM 8670, *Encryption of Electronic Storage and Computing Devices* and BEAM 8605, *Active Content (Mobile Code)*.

Additionally, the following guidelines should be observed:

- Music should not be downloaded to the device from any source, this includes ring tones.
- 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 auditor’s computer and then moved to the LAN. Pictures of taxpayer records are allowed. The taxpayer must be informed and agree to the pictures being taken. 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.
- The state-issued cell phone is to be used for BOE email only. Staff must not place personal email accounts on the device.
- Instant messaging between BOE employees is not allowed because these messages are not securely maintained.

- Do not connect to Wi-Fi using the state-issued cell phone as it is not a secure connection. All connections to the state-issued cell phone must be through secure means.

## Audit Manual Chapter 4, *General Audit Procedures*

### USING THIRD-PARTY PROPRIETARY DATA IN AUDITS

0405.32.

#### GENERAL

The BOE obtains information about taxpayers from various sources including, but not limited to, other state agencies, businesses, wholesalers, and data houses. Some of this information may include third-party proprietary data that cannot be shared with the taxpayer.

In many industries, a third party compiles data about individuals and companies based on their financial transactions for the purpose of selling the data. “Proprietary data” is the data not owned by the BOE and marked by a third-party contractor or provider with restrictive language asserting intellectual property rights. The data, including certain data provided to the BOE in a subscription based service, may be copyrighted and distribution is prohibited without the third-party’s prior consent.

#### PROCEDURE

When audit staff relies upon third-party proprietary data in an audit, they must inform the taxpayer they are doing so at the time the audit is being conducted. Audit staff must also provide the taxpayer information (i.e., the third-party source) on where the taxpayer can obtain the data, when available. Staff should document the source of data and the date of the discussion with the taxpayer in the BOE-414-Z Program (see AM section 0221.00) and in the audit working papers.

### USE OF SUCCESSOR OR PREDECESSOR INFORMATION IN AN AUDIT 0405.34

BOE employees may access confidential taxpayer information to perform their duties. However, Revenue and Taxation Code (RTC) section 7056, prohibits BOE employees from divulging in any manner, whether directly or by inference, to a third party business affairs, operations, or any other information pertaining to any taxpayer.

When a closed-out business retains no books and records for audit, BOE auditors may have to use other reliable sources of information to verify the taxpayer’s reporting. In some cases, the only reliable source of information available is from the business of the predecessor or successor. BOE auditors may use successor information in the audit of the predecessor’s business, or vice versa, under either of the following two conditions:

1. The auditor obtains written permission from all parties involved; or
2. The auditor uses the information without divulging the source, whether directly or by inference.

When obtaining permission from both the predecessor and the successor, the auditor must first get written permission from the taxpayer of the business being audited. Once permission is received, the auditor may request written permission from the taxpayer of the other business. This procedure applies even if the predecessor and successor are related, as in a closely-held family business.

For example: if the auditor would like to use a site test of the successor's business in the audit of the predecessor's business, the auditor must first obtain written permission from the predecessor to use this procedure. This is necessary because while engaging the successor for permission, the auditor will disclose, either directly or by inference, to the successor that the predecessor is being audited. Once written permission is received from the predecessor, the auditor must then obtain written permission from the successor to use a site test of its business in the audit of the predecessor.

If obtaining written permission from both the predecessor and the successor is unlikely, staff may not use information from one taxpayer's business in an audit of another business while disclosing the source of the information. Staff should not complete an audit without clear explanation of the basis for the audit result. In situations where taxpayers maintain no books and records, staff must consider other alternative methods, such as the use of industry averages or the prevailing regional averages of similar businesses.

## CPPM Chapter 1, *General*

### STATE ISSUED CELLULAR TELEPHONES

130.027

This section provides guidelines for the use of state issued cellular telephones (cell phones) which includes BOE issued smartphones. SUTD's policy is that the use of cell phones for text messages is prohibited. However, exceptions may be made for emergency text messaging as warranted.

BOE employees with state-issued cell phones must follow Board of Equalization Administrative Manual (BEAM) section 5363.3, *Cellular Telephone Guidelines*, and the data security provisions in BEAM 8670, *Encryption of Electronic Storage and Computing Devices* and BEAM 8605, *Active Content (Mobile Code)*.

Additionally, the following guidelines should be observed:

- Music should not be downloaded to the device from any source, this includes ring tones.
- 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 auditor's computer and then moved to the LAN. Pictures of taxpayer records are allowed. The taxpayer must be informed and agree to the pictures being taken. 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.
- The state-issued cell phone is to be used for BOE email only. Staff must not place personal email accounts on the device.
- Instant messaging between BOE employees is not allowed because these messages are not securely maintained.
- Do not connect to Wi-Fi using the state-issued cell phone as it is not a secure connection. All connections to the state-issued cell phone must be through secure means.

## AUTHORIZATION FOR ELECTRONIC TRANSMISSION OF DATA

130.035

The BOE collects and stores confidential taxpayer or feepayer (taxpayer) information and has a responsibility to protect this information from unauthorized access, use, and disclosure. BOE employees with a business need to transmit confidential information or personal information electronically outside the BOE may not do so without protection of that information (i.e., encryption). However, the taxpayer may consent to the electronic transmission of confidential or personal information without encryption by providing a BOE-82, *Authorization for Electronic Transmission of Data* (BOE-82). The form must be completed and signed by the taxpayer or an authorized representative who holds a power of attorney before any confidential information is transmitted. The completed BOE-82 must be maintained in the taxpayer's file, and is in effect until rescinded in writing for the current assignment only and not for future or prior assignments.

Additionally, the following statement must be included at the top of each electronic transmission of confidential information:

Confidential information of the California State Board of Equalization (BOE) – unauthorized use or disclosure is strictly prohibited by law. If you receive this email in error, please immediately notify the BOE by return email and delete this message from your computer, without printing the message, and without disclosing its contents to any person other than the sender or recipient. Persons who copy or disclose such confidential information are subject to applicable legal penalties.

If a BOE-82 is not on file, emails with confidential information can be sent by encrypting the email prior to transmitting to a taxpayer. However, BOE staff must not encrypt files before transmitting via e-mail if the taxpayer's internal policies prohibit the download, installation, or execution of any unauthorized software. In this situation, BOE employees must either obtain the BOE-82 or provide the data to the taxpayer in hard copy.

Additionally, BOE staff, taxpayers and/or their representatives can transfer large amounts of data (e.g., audit data, statistical sample data, sales data, payables data) using Secure File Transfer (SFT). SFT is a way to share documents with someone inside or outside the BOE without using email to send it. It is encrypted and secure. By using SFT two users with two separate logins can access the same secured folder and can securely upload and download files. There is a Take 5 video available that explains how to use the SFT service at <http://eboe/eboe3/sutd/training/sft.cfm> and an information sheet.

For assistance in encrypting files, BOE employees must contact their PC or LAN Coordinator.

## **DIGITAL SIGNATURES**

**150.050**

This section clarifies the policy for accepting digital signatures on documents received by BOE staff. The California Government Code allows the use of digital signatures provided they meet the following requirements. As long as the requirements are met, BOE staff may accept digital signatures on documents such as waivers of limitation, claims for refund, powers of attorney and resale certificates.

### **California Government Code Requirements**

A "digital signature" is an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. California Government Code section 16.5 explains that a digital signature has the same force and effect as a manual signature if it has the following attributes:

1. It is unique to the person using it.
2. It is capable of verification.
3. It is under the sole control of the person using it.
4. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
5. It conforms to regulations adopted by the Secretary of State.

The Secretary of State regulations state that for a digital signature to be valid, it must be created by an acceptable technology. The regulations list the acceptable technologies, which currently include Public Key Cryptography and "Signature Dynamics." (See California Code of Regulations, Title 2, Sections 22000-22005.)

### **Accepting Digital Signatures**

Staff should be aware of who is authorized to sign the document.

#### For example:

A taxpayer emailed form BOE-101, *Claim for Refund or Credit*, to staff that was digitally signed using Adobe Acrobat software. The digital signature includes the date, time, name of signer, email of signer and company name. The file, once digitally signed by the taxpayer, cannot be changed. Staff has verified the signer is authorized to sign the document and the email address is valid. Staff also followed-up with a phone call and recorded the contact in IRIS and/or ACMS. Therefore, staff may accept the BOE-101 with a valid digital signature.

## CPPM Chapter 7, Collections

### DISCLOSURE OF CONFIDENTIAL INFORMATION TO TAXPAYER REPRESENTATIVES WITHOUT WRITTEN AUTHORIZATION

**722.028**

The Information Practices Act (IPA) (Civil Code § 1798 et seq.), Government Code section 15619, Revenue and Taxation Code (RTC) section 7056, as well as other business tax statutes, generally prohibit BOE staff from disclosing confidential taxpayer and feepayer information to any unauthorized persons regarding a taxpayer's affairs obtained through audit investigation or from returns or reports. In limited circumstances, the IPA provides for the disclosure of confidential information to either the taxpayer to whom it pertains, or to an authorized representative of the taxpayer. An authorized taxpayer representative is an individual or organization that is selected by the taxpayer to represent their interests before the BOE. (See CPPM section 135.074 for detailed information on the IPA.)

Confidential information contained in BOE records must be treated in strict confidence. The only exception is when the Governor, by general or special order, authorizes other state officers, tax officers of another state, the Federal Government (if a reciprocal agreement exists), or any other person to examine the records maintained by the BOE. Requests for information of a confidential nature should be referred to a supervisor. (See CPPM, section 140.000, *Exchanges of Confidential Information*.)

Under the Sales and Use Tax program, all but the following information is confidential: account number, business name, names of general partners, business and mailing addresses, business code, ownership designation, start and close-out dates, status of permit (i.e., active/inactive), and tax area code. This information is generally available to the public. However, disclosure of the name and address of an individual may be prohibited by Civil Code section 1798.69. (Civil Code section 1798.69 provides in part that the BOE may not release the names and addresses of taxpayers except to the extent necessary to verify resale certificates or administer the tax and fee provisions of the RTC.) Account numbers for individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) are considered confidential because an individual's account number when input into the resale verification function on BOE's website would reveal an individual's name and address, which is considered confidential. Staff should be aware that nonconfidential information in other business tax and fee programs differs from that in the Sales and Use Tax program.

The procedures for handling public requests for information, including requests for Statements of Economic Interests (SEI) — Form 700, are addressed in Publication BOE-20, *What You Need to Know About Requests for Information*, available on eBOE.

Requests by a taxpayer's representative for information and records under the IPA and the California Public Records Act (PRA) will be guided by the following policy:

A taxpayer's representative may examine and/or receive copies of the same information the taxpayer is entitled to, provided the representative presents a written authorization from the taxpayer. This includes copies of all correspondence and, if involved with an audit, petition for redetermination or claim for refund, a copy of the report findings. It is not necessary that the written authorization be notarized.

## **Conditions for Disclosure of Information**

Generally, a written authorization such as a valid power of attorney (see CPPM section 722.026) is required to provide information about a taxpayer's account or to discuss a taxpayer's account with an authorized taxpayer representative. However, there are some situations where exceptions to this general rule are permitted.

In all cases of providing confidential taxpayer information to an authorized taxpayer representative, the name of the representative and the information provided must be documented in IRIS and, if applicable, the automated Compliance Management System (ACMS). Only information that would otherwise be disclosed to the taxpayer can be disclosed to an authorized taxpayer representative.

### **Verbal Authorization by the Taxpayer**

Verbal authorization by a taxpayer to discuss his or her case with an authorized representative may be accepted by BOE staff over the telephone or in person. In either situation, proper identification must be furnished by the taxpayer to the BOE.

If the authorization is by telephone, staff must first verify the identity of the taxpayer by use of a driver's license or social security number through IRIS and/or ACMS before accepting the verbal authorization. If the authorization is in person, staff must ask for identification, such as a driver's license, Department of Motor Vehicles identification card, or any other document which establishes his or her identity.

At the time the verbal authorization is given, the following must be addressed with the taxpayer and the information documented in IRIS and, if applicable, ACMS:

- Name, address, telephone number of the authorized representative,
- Specific subject matters that may be discussed with the representative, and
- Duration of the authorization.\*

**\*Note:** Staff should inform the taxpayer that the verbal authorization will be limited to 30 calendar days, unless the taxpayer requests a shorter period of time. Staff should advise the taxpayer that a written authorization is necessary if the taxpayer wants the authorization for longer than 30 calendar days.

It is important to clearly establish what subject matter may be disclosed to the authorized representative. For example, if a taxpayer that has a seller's permit as a sole proprietor calls a BOE staff member regarding a bank levy that attached community property funds in the spouse's separate bank account and authorizes staff to discuss the circumstances relating to the levy with the spouse, staff may explain the reason for the levy and general information regarding levies and community property laws but may not provide any other confidential information to the spouse (e.g., the accounts receivable balance, payment history, delinquencies) without specific authorization from the taxpayer.

Before providing confidential taxpayer information to an authorized representative over the telephone, staff should verify the identity of the caller by requesting the name, address, and telephone number and matching it with the information provided by the taxpayer and noted in IRIS and, if applicable, ACMS. When the authorized taxpayer representative appears in person at a BOE office, their identity must be verified by

examining their driver's license, Department of Motor Vehicles identification card, or other form of valid identification and compared to the information noted in IRIS or ACMS.

### **Authorization by Possession of Agency Forms, Documents, or Correspondence**

Pursuant to Civil Code section 1798.24 (c), confidential taxpayer information for accounts registered to individuals (sole owners, husband/wife co-ownerships, and domestic partnerships) may also be provided to a person representing the taxpayer if it can be proven with reasonable certainty through the representative's possession of agency forms, documents, or correspondence that this person is the authorized representative of the taxpayer. Agency forms, documents, or correspondence may include, but are not limited to, notices of determination, collection or delinquency notices, taxpayer's copy of a notice of levy, or other forms or correspondence addressed to the taxpayer.

However, before releasing confidential taxpayer information, staff should attempt to verify the person in possession of the forms, documents or correspondence is the taxpayer's authorized representative. This verification can be done through a review of BOE records, (e.g., IRIS, ACMS) or by telephoning the taxpayer. If staff is unable to contact the taxpayer and is unsure whether a person is truly an authorized representative, including the spouse of a taxpayer, staff should request that the person provide written authorization from the taxpayer. If there is any doubt, confidential taxpayer information should not be provided. The following two scenarios are provided for example:

1. A person visits a BOE office claiming to represent a taxpayer that is a sole proprietor and presents a statement of account issued by the BOE in the taxpayer's name. The person states that certain payments made by the taxpayer were not credited to the taxpayer's account and requests a record of all payments made during the last three months on the taxpayer's account. If there is no record in IRIS or ACMS indicating the person is an authorized representative of the taxpayer, a telephone call must be made to the taxpayer to verify the person is an authorized representative. If the taxpayer states that the person is not an authorized representative, or if the taxpayer cannot be contacted, staff should not provide the information.
2. The same situation as above, except BOE staff is unable to contact the taxpayer by telephone. The person claiming to represent the taxpayer presents additional documentation, such as copies of recent bank statements, cancelled checks issued and signed by the taxpayer, and/or copies of recently filed tax returns. In this situation, the requested information may be provided, as the person has knowledge of the account and the documentation is sufficient to indicate that the person is the authorized representative of the taxpayer.

Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter of the taxpayer's issue(s), their business name, and/or account number, but who may not have been asked by the taxpayer to represent them. An example of a speculative inquiry is a caller who knows the taxpayer's account number, but asks to verify the taxpayer's address or reported gross sales from a previous quarter. Assuming there is no record the taxpayer is being represented by the caller, the reported gross sales information cannot be provided, and if the account is coded S (Sole Proprietorship), M (Husband and Wife

Co-ownership, or N (Registered Domestic Partnership), the address information also cannot be provided to that person.

Confidential taxpayer information should not be provided in response to questions that are unrelated to the actual forms, correspondence, or documentation in the possession of the person, without written or verbal authorization from the taxpayer. For example, information relating to amounts reported on tax returns or matters related to an audit cannot be provided to a person claiming to be an authorized representative based on the person's possession of a delinquency notice addressed to a taxpayer. All requests should be carefully examined and/or analyzed before inferring with reasonable certainty that the person is the authorized representative of the taxpayer.

### **Information Requiring Written Authorization**

Requests by taxpayer representatives to examine or receive copies of taxpayer account information, correspondence, or other documents require written authorization by the taxpayer, except under the following circumstances:

1. A written request for documents by a certified public accountant (CPA) or attorney which clearly states that the CPA or attorney is the authorized representative of the taxpayer. Before releasing information, however, staff should check IRIS or ACMS to ensure the representative was not terminated by the taxpayer.
2. Taxpayer directed – Written authorization is not required when supplying copies of audit working papers to the taxpayer's bookkeeper or accountant when the taxpayer directed the BOE to contact the taxpayer's bookkeeper or accountant to conduct an audit and the audit was made based on information supplied by the bookkeeper or accountant.
3. Oral inquiries – Attorneys and CPAs may examine and/or receive copies of information without having written authorization if the person is known by the BOE to represent the taxpayer. Most oral requests are for an informal review of working papers before the audit is transmitted to Headquarters — generally when the representative has been working with district staff. Staff should screen for situations that may involve speculative inquiries by persons who may be aware of the general subject matter and a taxpayer's business name or account number, but have not been asked by the taxpayer to represent them. Staff should check the taxpayer's file and the appropriate IRIS screens to verify the person has represented the taxpayer in the past. (APL MH and TAR AI have fields for the name of the taxpayer's accountant or representative; audit subsystem screens can be used to access the audit report or prior audit report to view comments indicating who maintained the records and who was involved in the discussion of audit findings.)
  - Preferably, a stream of correspondence exists for the current audit which clearly establishes the attorney's or CPA's relationship with the taxpayer. If the only information available on IRIS involves a prior audit, or the representative has recently been added, the file should be carefully reviewed to determine what event created the authorization. If staff is still unsure as to whether the attorney or CPA is in fact a representative of the taxpayer, staff may contact the taxpayer by telephone to confirm the authorization. Alternatively, staff should ask the person to put the request in writing and

state specifically that he or she represents the taxpayer in question. Attorneys and CPAs have an ethical responsibility not to misstate their authority to represent their clients.

- Requests for copies of district, appeals, and central files must be obtained in writing.

Without written authorization from the taxpayer, a person purporting to represent the taxpayer should not be permitted to close a taxpayer's account or change a taxpayer's address or ownership information. Only under limited circumstances may federal tax information be provided to a taxpayer representative with a power of attorney. Staff must consult with the Disclosure Office to determine if the necessary circumstances are present before any federal tax information is released.

## **REPORTING SUSPECTED SALES OF COUNTERFEIT GOODS**

**749.025**

This section outlines procedures for staff to follow when they encounter a business that appears to be selling counterfeit goods during a field call or other taxpayer contact. Pursuant to Revenue and Taxation Code sections 6007 and 6009.2, when a person is convicted of trafficking counterfeit goods, all of their sales and purchases of those goods are considered taxable. The BOE may bill the convicted seller for unpaid sales or use tax within one year after the last day of the calendar month following the date of conviction.

### **Procedure for Reporting Suspected Counterfeit Goods**

When a collector encounters a person during a field call who appears to be selling counterfeit goods, he or she must report the suspected activity to the Tax Recovery and Criminal Enforcement Task Force (TRaCE) by completing the *Report a Crime* electronic form available on the BOE's TRaCE webpage. Collectors must check the *Other* box and identify themselves as "BOE Staff" in the *What is your relationship to the suspect? Check all that apply* section located at the bottom of the report form. TRaCE will use this information to bill the counterfeit goods traffickers for the unpaid sales or use tax once they are convicted.

### **Procedure for Reporting Convicted Traffickers of Counterfeit Goods**

When BOE staff receives information that a person was convicted of trafficking counterfeit goods (for instance, through news media), they must send a referral directly to the Investigations Division. Staff should address the referral memo to the Chief of Investigations and Special Operations Division and include, at a minimum:

1. Staff's name and contact information,
2. Any pertinent information about the convicted trafficker (taxpayer's name, business DBA, permit information if available, etc.), and
3. The source of the information.

## REVOCATIONS — FIELD CALLS

751.076

CPPM 749.000 covered some of the basics of making effective field calls. It is essential to prepare before making any field call, but even more so when working a revoked account. Operating without a valid seller's permit is a misdemeanor and the account cannot be "partially" reinstated. The taxpayer's revoked account can only be reinstated through full compliance with all the conditions imposed upon the taxpayer by the BOE.

When working to reinstate a revoked account, devise a step-by-step plan when performing the initial case evaluation. For example, such a plan might look like the following:

Account appears on ACMS worklist on 01/01/XX:

1. Review the cause for the revocation, the account history in ACMS and IRIS and determine what is needed to reinstate the permit or license.
2. Make phone calls to the business location, the residence(s) of owners, partners, officers, nearby neighbors or businesses, personal references, landlord, etc., and note the results of the telephone calls in the case notes.
- ~~3. Prepare and mail Form a BOE-420, Notice to Appear, to the address of record and any other addresses available from IRIS records or ACMS case notes. If the taxpayer has moved, the BOE-420 may be returned by the post office with a forwarding address.~~
- 4.3. On 01/05/XX, mail a Form BOE-465, Notice of Withhold, or Form BOE-425-LA, Notice of Levy, to financial institutions if taxpayer has not responded to telephone calls.
- 5.4. If appropriate, request liens to be filed with the Secretary of State and appropriate counties where the taxpayer resides or has real property.
- 6.5. Send the taxpayer's suppliers ACMS Form BOE-570-A, Notice of Revocation to Principal's Suppliers. This letter serves as notification that the taxpayer's permit is revoked, and the supplier may not take a resale certificate from the taxpayer for purchases that the taxpayer may place with the supplier, and that any sales to the taxpayer must include tax reimbursement on the invoice until the permit is reinstated.
- 7.6. On 01/15/XX, conduct a field call if the above measures are unsuccessful. Personally serve the taxpayer with a copy of Form BOE-433-S, Notice of Revocation Permit Cancellation (available by reprinting from the DEL BV screen in IRIS), and remove the permit or license from the taxpayer's premises. Advise the taxpayer of the penalties for operating with a revoked permit or license and gather any information that might assist in compelling the taxpayer to comply. Ensure that a change of ownership has not occurred. If the business is under new ownership or is not operating, close out the account in IRIS to clear the revocation.
- 8.7. Obtain payment in full and reinstate the account. If payment in full is not possible, obtain a commitment from the taxpayer to enter into an installment a short-term payment agreement plan.
8. If reinstatement does not appear forthcoming and a taxpayer continues to operate without a valid permit, the purchase of an item from the taxpayer's business may be made to obtain evidence of sales after revocation. If State

funds are used to make the evidence purchase, or the employee is reimbursed by the State for the purchase, the evidence must be handled in the following manner:

- In most cases, the receipt is used as the evidence and not the item itself. The item purchased should be photographed and the receipt and photograph should be scanned and retained with the other documentary evidence to be used in support of a potential prosecution.
- Once the items of evidence are no longer needed, a BOE employee must destroy the evidence while a supervisor or manager witnesses, documents, and retains documentation of the destruction. The destruction should result in the item(s) no longer being edible or usable. For example, soda should be poured down a sink drain, cigarettes should be crushed and thrown away, and items not suitable for pouring down the drain should be appropriately disposed of in a trash receptacle.
- The supervisor or manager should document the destruction in ACMS.

~~This is~~ The list of actions above outlines a very basic plan for working a revocation and illustrates only a portion of the collection activities that may need to be taken to obtain compliance. Often a plan will not survive first contact with the taxpayer and will need to be adjusted according to the circumstances. However, having a plan allows staff to make appropriate and timely follow up calls and actions and, should the need arise to have the case transferred to another person, acts as a map for the person receiving the case to follow.