



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

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August 22, 2016

Mr. Jesse W. McClellan, Esq.  
McClellan Davis LLC  
Sales and Use Tax Consultants  
508 Gibbon Drive, Suite 120  
Roseville, CA 95678

Dear Mr. McClellan:

Thank you for your participation in the Board of Equalization's (BOE's) May 24, 2016 Taxpayers' Bill of Rights Hearings held in Sacramento. I appreciate you taking the time to present your suggestions to the Board. You suggested that taxpayers be provided with an explanation when their Board hearing is postponed, and be given a time frame for when the hearing is expected to be rescheduled or the matter otherwise resolved. You also suggested that when an administrative protest is denied, the denial be reviewed at a second level to ensure the decision is correct.

My office has been working with the BOE's Business Tax and Fee Department (BTFD) to address your suggestions. The following is a summary of the department's response.

**Postponement of Board Hearing**

Effective immediately, when BTFD requests a case to be removed from the calendar, they must provide Board Proceedings Division (BPD) with a reason for the request, in order that they may include it in their correspondence to the tax or feepayer. The section handling the case must provide the tax or feepayer a written status update every 90 days until the case is resolved or BPD is notified to place the case back on the calendar for Board hearing.

**Administrative Protest**

The BTFD has issued guidance to staff clarifying when to accept an invalid petition as an administrative protest. Generally, the department will accept the invalid petition as an administrative protest when there is reason to believe that there may be an error with the Notice of Determination (NOD) that contributed to the reason why the tax or feepayer failed to file a timely petition. Reasons for generally accepting the invalid petition as an administrative protest also include the tax or feepayer having another pending case for a similar issue or having an active petition that was filed timely for a different period or on a related account.

BTFD will now allow tax or fee payers to request a reconsideration when their administrative protest is not accepted. If upon reconsideration, the section continues to reject the administrative protest, the reconsideration request will be submitted to the Deputy Director, BTFD for final review and decision.

When an invalid petition is not accepted for an administrative protest, adjustments to the final liability can be made by the section which issued the NOD if the tax or fee payer submits information that supports the amounts listed on the NOD are overstated. The tax or fee payer can also pay the liability and file a claim for refund.

Thank you again for sharing your ideas and suggestions as part of the annual hearing process. If you have any further questions about this matter, please do not hesitate to contact me at 1-916-324-2798. You may also contact Mr. Irving Buford IV at 1-916-445-8321.

Sincerely,

Todd C. Gilman, Chief  
Taxpayers' Rights and  
Equal Employment Opportunity Division

TCG: ib

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cc: Honorable Fiona Ma, CPA, Chairwoman  
Honorable Diane L. Harkey, Vice Chair  
Honorable George Runner, First District  
Honorable Jerome E. Horton, Third District  
Honorable Betty T. Yee, State Controller  
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Mr. David Gau, Executive Director (MIC 73)  
Mr. Randy Ferris, Chief Counsel (MIC 83)  
Ms. Susanne Buehler, Deputy Director, Business Tax and Fee Department (MIC 43)  
Ms. Joann Richmond, Chief, Board Proceedings Division (MIC 80)  
Mr. Jefferson Vest, Assistant Chief Counsel, Appeals Division (MIC 85)  
Mr. Robert Tucker, Assistant Chief Counsel, Tax and Fee Programs Division (MIC 82)  
Mr. Richard Parrott, Chief, Special Taxes Policy & Compliance Division (MIC 57)  
Mr. Kevin Hanks, Chief, Headquarters Operations Division (MIC 49)  
Mr. Wayne Mashihara, Chief, Field Operations Division (MIC 47)  
Mr. Dan Leddy, Manager, Taxpayers' Rights Advocate Office (MIC 70)  
Ms. Lauren Simpson, Technical Advisor to the Advocate (MIC 70)  
Mr. Irving J. Buford IV, Taxpayers' Rights Advocate Office (MIC 70)