



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70  
450 N STREET, SACRAMENTO, CALIFORNIA 95814-0070  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0070  
916-324-2798 • FAX 916-323-3319  
TOLL-FREE 888-324-2798  
www.boe.ca.gov

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September 10, 2015

Mr. Marc Brandeis, CPA

Dear Mr. Brandeis:

Thank you for your participation in the Board of Equalization's (BOE's) June 23, 2015, Business Taxpayers' Bill of Rights Hearings held in Culver City. I appreciate you taking the time to explain your concerns regarding a number of audit policies and procedures, including the use and acceptance of electronic signatures; waiving the penalty for collecting and not timely reporting tax reimbursement; and the use of undercover purchases prior to the start of an audit. You also recommended that Audit Manual Chapter 8, *Restaurants*, be updated to address point-of-sale systems. In addition, the issue of procedures used to audit taxpayers' electronic records was a matter of discussion during your presentation.

My office has been working with the BOE's Sales and Use Tax Department and Legal Department to address your suggestions and concerns. Following is a summary of our findings and the BOE's plans to address these issues.

***Use and Acceptance of Electronic Signatures***

In your presentation, you explained that you have not been successful in obtaining answers to questions you have about the BOE's policy in accepting electronic signatures from taxpayers. Immediately following your presentation on June 23, 2015, Assistant Chief Counsel Robert Tucker discussed with you your request for a legal opinion on the BOE's acceptance of electronic or digital signatures and explained the Legal Department's position on this matter. Subsequently, on July 29, 2015, a letter was sent to you by Mr. Lawrence Mendel, Tax Counsel IV, regarding *Tax Opinion Request 14-628, Electronic Signatures*. A copy of the letter is enclosed for your reference.

I have been informed that the topic of the BOE's policy on the acceptance of electronic signatures will be scheduled for discussion at a future meeting of the Board's Customer Service and Administrative Efficiency Committee. I have requested that your name be added to the Committee's mailing list of interested parties for this topic. In addition, you may view the Committee's agenda on the BOE website, [www.boe.ca.gov](http://www.boe.ca.gov).

***Waiving Penalty for Collecting and Not Timely Reporting Tax Reimbursement***

You explained to the Board your recommendation that the BOE waive the 40 percent penalty imposed by Revenue and Taxation Code (RTC) section 6597 in cases where the taxpayer voluntarily comes forward and provides information to the BOE about their collection and

subsequent failure to timely report tax reimbursement. You mentioned this matter was an issue in an upcoming appeal hearing for one of your clients. The Members stated their intention to table discussion of the BOE's policy on this until the time of your client's hearing, in order to place the matter into the context of the circumstances of your client's case. I understand this hearing, originally scheduled for August 26, 2015, was postponed.

You may view the guidelines available to audit staff for recommending the imposition of the RTC section 6597 penalty in Audit Manual Chapter 5, *Penalties*. Please see section 0509.65, *Failure to Remit Tax*, and Exhibit 3, *Examples – Application of 40 Percent Penalty*, at [www.boe.ca.gov/sutax/manuals/am-05.pdf](http://www.boe.ca.gov/sutax/manuals/am-05.pdf).

### ***Point of Sale (POS) Systems***

You stated that Audit Manual Chapter 8, *Bars and Restaurants*, needs to be updated to provide guidance on auditing businesses with point of sale (POS) systems for processing retail sales transactions. The Tax Policy Division of the Sales and Use Tax Department has indicated its agreement, and informed me that detailed guidance to audit staff has been drafted and is currently in review.

In addition, I note that proposed amendments to update Regulation 1698, *Records*, is scheduled to be considered by the Business Taxes Committee on October 27, 2015, and that you participated in the interested parties meetings on this topic, held on June 17 and August 11, 2015. BOE staff is proposing to add to the regulation a definition of "Electronic Cash Register," which includes a reference to integrated point of sale systems.

### ***Pre-Buys (Undercover Purchase Tests)***

You expressed your concerns about BOE staff making purchases at taxpayers' businesses prior to sending out the audit engagement letter, and then making use of those purchases in the audit calculations without providing copies of the purchase receipts to the taxpayer.

I have been informed that the topic of the BOE's policy on pre-buys or undercover purchases will be scheduled for discussion at a future meeting of the Board's Customer Service and Administrative Efficiency Committee. I have requested that your name be added to the Committee's mailing list of interested parties for this topic.

### ***Audit Procedures in Regard to Electronic Records***

During the course of your presentation, Board Members expressed concerns about potential violations of privacy in regard to access to taxpayers' electronic records by BOE auditors. This topic will also be scheduled for discussion at a future meeting of the Board's Customer Service and Administrative Efficiency Committee, and I have requested that your name be added to the Committee's mailing list of interested parties for this topic.

Thank you again for sharing your ideas and concerns as part of the annual hearing process.

Sincerely,

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

TCG: ls  
Brandeis response 091015.docx

Enclosure: 7/29/15 letter from Lawrence Mendel, *Electronic Signatures*

cc: Honorable Jerome E. Horton, Chairman  
Senator George Runner (Ret.), Vice Chair  
Honorable Fiona Ma, CPA, Second District  
Honorable Betty T. Yee, State Controller  
Ms. Yvette Stowers, Deputy State Controller  
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Mr. James C. Kuhl, Sr., Board Member's Office, Second District  
Mr. Russell Lowery, Board Member's Office, Fourth District  
Ms. Cynthia Bridges, Executive Director (MIC 73)  
Mr. David Gau, Chief Deputy Director (MIC 101)  
Mr. Randy Ferris, Chief Counsel (MIC 83)  
Ms. Lynn Bartolo, Acting Deputy Director, Sales and Use Tax Department (MIC 43)  
Ms. Joann Richmond, Chief, Board Proceedings Division (MIC 80)  
Mr. Robert Tucker, Assistant Chief Counsel, Tax and Fee Programs Division (MIC 82)  
Mr. Jefferson Vest, Assistant Chief Counsel, Appeals Division (MIC 85)  
Ms. Susanne Buehler, Chief, Tax Policy Division (MIC 92)  
Mr. Kevin Hanks, Chief, Headquarters Operations Division (MIC 49)  
Mr. Marc Alviso, Office of the Chief Deputy Director (MIC 101)  
Mr. Dan Leddy, Taxpayers' Rights Advocate Office Manager (MIC 70)  
Ms. Laureen Simpson, Technical Advisor to the Advocate (MIC 70)