



STATE BOARD OF EQUALIZATION

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July 13, 2015

Mr. Jesse W. McClellan
Principal, McClellan Davis LLC
Sales and Use Tax Consultants
8928 Volunteer Lane
Sacramento, CA 95826

Dear Mr. McClellan:

Thank you for participating in the May 22, 2014 Taxpayers' Bill of Rights Hearings, held in Sacramento. Please accept my apology for taking so long to respond to your comments. I appreciate you taking the time to express concerns and make suggestions regarding two matters:

1. The need for instruction to audit staff on the standard of proof guidelines, which were added to the Audit Manual in April 2014 as Section 0101.22.
2. Delays in obtaining requested documents from the Board of Equalization (BOE).

Thank you for your patience while the Taxpayers' Rights Advocate (TRA) Office worked with the appropriate areas of the BOE to seek resolution of these concerns. Following are summaries of actions and findings on these matters.

Standard of Proof Guidelines

In 2014 you worked with the Sales and Use Tax Department on the development of guidelines for auditors on the standard of proof. On April 25, 2014, Tax Policy Division Chief Susanne Buehler sent an email message to Sales and Use Tax Department staff informing them that "Audit Manual (AM) Chapter 1, *General Information*, was revised to add Section 0101.22, *Standard of Proof*, to clarify that for sales and use tax cases where civil tax fraud is not involved, the Board of Equalization applies the preponderance of evidence standard of proof. The updated chapter is available at <http://www.boe.ca.gov/sutax/manuals/am-01.pdf>."

At the May 22, 2014 Taxpayers' Bill of Rights Hearings you explained that, based on your experience, it appeared that many BOE auditors were not yet familiar with the provisions of AM Section 0101.22. To address your concern, on September 25, 2014, Ms. Buehler followed up with an additional email message to Sales and Use Tax Department staff reminding them about new Section 0101.22 and asking them to read it if they had not already done so. Subsequently, on October 30, 2014 Ms. Buehler sent an email to District Administrators, District Principal Auditors (DPAs), and Headquarters Section Supervisors to ensure that DPAs and Supervisors review the policy in AM Section 0101.22 with auditors in their next staff meetings.

Delays in Obtaining Documents

You expressed your concern about delays in receiving requested records from BOE and explained that staff will often forward your request for specific records to the BOE's Disclosure Office, who will respond to your request; however, the response can take anywhere from a few weeks to a month or more. You suggested the BOE consider a "certification" process for certain

documents, such as memos that do not contain confidential information, which would enable BOE staff to provide the document directly to the requestor.

The TRA Office researched this matter and consulted with the Disclosure Officer regarding your concern and suggestion. Following is a summary of our findings.

As you know, there are two sets of statutes covering requests from the public to inspect and obtain records maintained by the BOE, the Information Practices Act (IPA) and the Public Records Act (PRA). A request for individual taxpayer or feepayer (“taxpayer”) records made by the taxpayer or their representative is an IPA request. The PRA provides for public access to any records of a state agency that are not legally exempt from disclosure, allowing the public to obtain copies of BOE records that do not identify a particular taxpayer or from which taxpayer identifiers have been redacted prior to public release.

IPA requests are processed by the district or headquarters unit that maintains the records. It is the BOE’s policy that all correspondence, including IPA requests, be acknowledged within 12 working days. In accordance with the IPA, the actual records must be provided to the requestor within 30 days of receipt of the request for active records, and within 60 days if the records are geographically dispersed or are inactive and in storage.

PRA requests are processed by the Disclosure Office, and by law must be acknowledged within 10 working days of receipt. Thus, if a PRA request is received by field office staff it is immediately forwarded to the Disclosure Office. If the requested records are not readily available, BOE must provide the records within a reasonable period of time, along with an estimate of the date that the records will be available.

There are a number of valid reasons for centralizing the processing of PRA requests:

Access to Boardwide records. Records related to a PRA request generally do not involve records maintained by a district office. Such records pertain to all tax programs administered by the BOE and may include older rulemaking files, legislative files, Decision and Recommendations, legal opinions, and administrative documents such as contracts and expense reports.

Expertise. The Disclosure Office has trained staff that have experience with the many statutes pertaining to the disclosing of documents. Statutes are found in the California Civil Code, Government Code, Evidence Code, Code of Civil Procedure, Corporations Code, Public Resource Code, and Contract Code, in addition to the Revenue and Taxation Code.

Coordination of multiple requests. Taxpayer representatives may send the same or similar request for records to multiple areas of the BOE. Centralizing the responsibility for responding to all PRA requests in the Disclosure Office avoids duplication of work.

Efficiency. If a document has been requested before by a different taxpayer or representative, it is easy and fast for the Disclosure Office to provide it when a new request is received.

My office looked into your suggestion of a “certification” process for specific documents that would enable district or headquarters unit staff to respond to a PRA request directly. Many types of documents are already pre-approved for public disclosure, and are directly available on the BOE’s website. Links to many of the most requested types of documents are found on the Disclosure Office’s web page, www.boe.ca.gov/info/publicrecords.htm, and include Operations Memos, Sales and Use Tax Memorandum Opinions, rulemaking files for regulations, annotation backup materials, etc. When publically available documents are included in a PRA request, the Disclosure Office typically provides copies within 10 days. In addition, as stated above, if the Disclosure Office has already provided a document pursuant to another request, it is able to

locate and provide it without delay. Therefore, it appears that instituting a process to routinely pre-review certain documents in order to certify them for public release would have limited value.

I hope you find this information helpful. Please let me know if you have any additional questions or suggestions regarding these matters. Thank you again for sharing your suggestions regarding BOE employee education and customer service.

Sincerely,

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

TCG: ls
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