

Business Taxpayers'
BILL OF RIGHTS
2002-03
ANNUAL REPORT

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Sacramento
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Executive Director

 **STATE BOARD OF EQUALIZATION**

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Letter to Executive Director

September 2003

Mr. Timothy W. Boyer
Interim Executive Director

Dear Mr. Boyer:

The Taxpayers' Rights Advocate Office (TRAO) staff and I are pleased to present the 2002 - 2003 Business Taxpayers' Bill of Rights Annual Report for the Board's and your consideration. This report highlights our past year's accomplishments, current issues being developed for solutions, and emerging issues recommended for consideration.

Problem resolution and public education to increase voluntary tax compliance and avoid potential problems continues to be the primary focus of the TRAO. We have continued our education and outreach with the Advocate Offices of the Franchise Tax Board, Employment Development Department, and the Internal Revenue Service in seminars for Enrolled Agents, Certified Public Accountants (CPAs), as well as the public. In addition, we continue to meet with district and headquarters staff to provide further education of the TRAO's roles and responsibilities and how staff can make referrals to our Office.

Because this is my last report, I want to personally thank the outstanding staff of the TRAO, both present and past. Their devotion to conflict resolution has provided a voice for taxpayer expression. Due to their perseverance and with the assistance of program staff, during my tenure as the Taxpayers' Rights Advocate, the following changes to the Board's laws, policies and procedures were implemented:

- Increased lien threshold from \$100, to \$1,000 to \$2,000;
- Proposed and implemented legislation to conform with the IRS Restructuring and Reform Act including abatement of interest due to unreasonable error or delay; and release or subordination of a lien when the board determines that it will facilitate tax collection or it will be in the best interest of the state and the taxpayer;
- Developed publication 54, *Tax Collection Procedures*;
- Proposed and implemented legislation to modify reimbursement of bank fees;
- Included Taxpayer Bill of Rights and TRAO information and procedures in board Manuals; and
- Developed a new publication *California Advocates, We're Here for You*.

TRAO staff looks forward to continuing to work with staff and the public to identify trends and issues, develop viable solutions, and strive to better serve our customers.

Respectfully submitted,



Jennifer L. Willis
Taxpayers' Rights Advocate

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TAXPAYERS' RIGHTS ADVOCATES OFFICE

In January 1989, the original Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. Approximately 994,000 taxpayers are currently provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights was established expanding the Bill of Rights statutory authority to the special taxes programs administered by the Board of Equalization (Board), currently impacting approximately 149,000 tax and fee payers. Since these programs primarily affect business owners, they will be referred to generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The Morgan Property Taxpayers' Bill of Rights was added in January 1994, governing the assessment, audit and collection of property taxes, with the goal of ensuring taxpayers receive fair and uniform treatment under the property taxation laws.

The Taxpayers' Rights Advocate Office (TRAO):

- facilitates resolution of taxpayer complaints or problems;
- monitors various Board tax and fee programs for compliance with the Taxpayers' Bill of Rights;
- recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;
- participates on various task forces, committees and public forums;
- holds mandated Taxpayer Bill of Rights hearings to provide the public with an opportunity to express their concerns, suggestions, and comments to the Board Members.

The TRAO generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there appear to be rights violations in either the audit or compliance areas. Taxpayers also call to convey their frustration, seeking assurance or confirmation that staff action is lawful and just.

When a customer or Board employee alleges discrimination or harassment, the TRAO staff works with the Equal Employment Opportunity Office, Internal Security and Investigations Division (ISAD), and program managers to resolve the complaint. Allegations of misconduct or threats by taxpayers or Board staff are referred to ISAD for investigation. Working together with program management, these offices support the Board's commitment to a discrimination/harassment-free taxpayer environment by investigating complaints and ensuring that Board staff are properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment toward Board staff is appropriately addressed.

In cases where the law, policy, or procedures do not allow any change to the staff action, but a change appears justified, the TRAO is alerted to a potential area that may need clarification or modification. Several of the past suggestions for *Taxpayer Information Bulletin* articles, recommendations for policy or procedural changes, and legislative proposals have resulted from these types of contacts with taxpayers.

The TRAO provides assistance to taxpayers and Board staff to facilitate better communication between both parties and eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff.

ACCOMPLISHMENTS

The primary function of the TRAO is to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes, and to identify changes in policies, procedures and statutes to improve and/or ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights (TBOR) hearings, and issues identified by the TRAO, suggestions are presented to the program staff for evaluation. With the cooperation of Board staff, the following are changes that were accomplished this past year.

- **Collection Withheld While in Appeal** —

Taxpayers have contacted TRAO when they have paid all the taxes, filed a claim for refund, and were in the appeal process. The prior procedures required them to continue to make payments on the remaining interest and penalty. After discussion with SUTD, it was agreed that a stay of collection would be granted during the appeal process when the tax portion of the liability was paid in full. This change has been administratively implemented and Compliance Policy and Procedures Manual (CPPM) Section 712.030 was revised January 28, 2003 to reflect this change for all board tax programs.

- **Lien Procedures** — TRAO has received contacts from concerned taxpayers regarding the filing of liens. When it is determined that a lien was filed in error (against the “wrong entity”), the lien is released. However, the taxpayers’ credit history may be directly affected by the lien action. There appears to be some inconsistency over responsibility and procedures for assisting the taxpayer to correct the error on their credit report. The Special Procedures Section provides taxpayers a “wrong entity” letter to share with credit agencies; however, County

Recorders cannot file this letter (because it is not an official document) and the taxpayer still has difficulty officially removing the error from their credit report. CPPM Chapter 763.090 was drafted to clarify the responsibilities of District and Centralized Collection staff (collection staff) and Special Procedures Section staff on this issue. The revisions will be presented to the Board in the next manual revision.

- **Developed New Publication — California Advocates We’re Here to Help You**

— This new publication, used at Taxpayer Service Days and other taxpayer and practitioner outreach venues, provides contact information with focus on the common responsibilities of the Taxpayer Advocates from all four agencies. The TRAO spearheaded this joint effort between the California Advocates of the Board of Equalization, Franchise Tax Board, Employment Development Department, and the Internal Revenue Service, and it was designed by the Board’s Customer and Taxpayer Services Division.

CURRENT ISSUES

The following issues are currently being reviewed with program management to develop solutions.

- **Modify Liens Policies that Affect Third Parties** — Normally the Board requires full payment from a third party in exchange for a release of lien, where the third party is associated with the tax debtor through common ownership of a property encumbered by the Board's tax lien. The demand is made without regard to the interest held or previously held by the tax debtor. The TRAO along with the Offer in Compromise (OIC) Section recommend changes that will consider the debtor's contribution to equity or lack thereof in contemplation of issuing a partial release of lien. This would include special consideration for Innocent Spouses and ex-spouses who are not on the Board's lien but are affected by it, consistent with Franchise Tax Board (FTB) and Internal Revenue Service (IRS) policies. Administrative or legislative solutions need to be developed to allow the Board greater flexibility on these issues.
- **Implement Property Searches for Liens on Discharged Liabilities** — In last year's *TRAO Annual Report* the TRAO identified several cases involving bankruptcies where a lien was filed. The Legal Division determined that liens filed on liabilities discharged from a bankruptcy are valid and enforceable but restricted to pre-petitioned property. Currently, the Special Procedures Section requires the taxpayer to provide a certified or guaranteed property search to prove the taxpayer did not own property, or fraudulently transfer property, from the recording of the lien to the petition date of the bankruptcy. The lien will then be released if it attaches only to post-petition property. There is a cost to obtain the property

search, which can be considerable. More and more taxpayers are reporting that they are unable to find a title company that will issue such a guarantee.

In order to provide better customer service, on a case-by-case basis, TRAO proposed and SUTD agreed to the feasibility of conducting property searches in-house to ensure that the lien attaches to pre-petitioned property only. SUTD is in the process of looking at several sources for software that would provide the appropriate information. Upon receipt of the software, staff will be able to readily determine whether the lien attaches to pre- or post-petition property and issue appropriate lien releases. In the long run, this should minimize future taxpayer complaints, reduce the taxpayer's compliance burden, save staff time in researching "old" liens and bankruptcy cases, demonstrate the Board's reasonableness, maintain consistency with the intent of the Bankruptcy Code, and address a long standing issue the TRAO has been attempting to resolve.

- **Statute of Limitations — California Purchasers** — TRAO has received contacts from anonymous taxpayers and representatives of anonymous taxpayers who have been acquiring untaxed merchandise from out-of-state retailers for a period of time and have not been remitting their use tax liability properly. These contacts have suggested they would voluntarily come forward to register if the statute of limitation was three versus the current eight years of potential liability. Voluntary compliance is the cornerstone of the Board's collection program and some of these taxpayers are part of the underground economy.

This past year, the Board sponsored a legislative suggestion made by the Sales and Use Tax Department (SUTD). AB 1741, Assembly Revenue and Taxation Committee, would shorten the statute of limitations from eight to three years with respect to use tax due from California purchasers incurring use tax liabilities on purchases from out-of-state retailers. This bill would also allow relief of penalty when the person's failure to report the use tax liability is due to reasonable cause.

- **Relief from Penalty Requests** — Existing statute requires the assessment of penalties for taxpayers who fail to comply with the statutory requirements to remit taxes by Electronic Fund Transfer (EFT), file a return timely, and remit taxes timely. In cases where the taxpayer believes that the failure was the result of circumstances beyond their control, a request for relief of penalty may be made through the Return Analysis Section (RAS) of the Return Analysis and Allocation Division. RAS staff reviews and considers the approval or denial of these taxpayer requests based on established criteria in accordance with the statutes. If relief is not granted, the taxpayer may submit additional information and request to have the decision reconsidered by management. To appeal beyond this level, the taxpayer must pay the penalty, file a claim for refund, and go through the legal appeal process. The TRAO recommended modification of this process to allow for further appeal without requiring the taxpayer to pay the penalty and file for a claim for refund. TRAO will work with Program Departments to further explore whether changes are necessary related to the relief of penalty requests on EFT accounts.

- **Centralize Updates for Accountant, Attorney and Taxpayer Representatives** — Taxpayer representatives periodically contact the TRAO regarding lack of notification to their representative. In addition, the representatives often do not know whom to contact when changes are required on their client's account. It was suggested that the Board have one centralized location to contact for these updates to the taxpayer's account or develop a systemized method to link account changes. SUTD has clarified one procedure; however, this administrative change was limited to relief of penalty requests. Further exploration is underway.
- **Out-of-State Corporations Applying for California Temporary Sellers Permits** — It has been brought to TRAO's attention that when an out of state corporation applies for a Temporary Seller's Permit to operate as a business in California, the corporation is subject to an \$800.00 annual franchise tax for corporations. The Board's current publication BOE-400-MT does not provide the out of state taxpayer with any information on this tax. Without prior knowledge of this requirement, taxpayers are exposed to years of potential penalties and accrued interest. The TRAO recommends inclusion of this information in Publication BOE-400-MT in order to be consistent with the information requirements already included regarding authorization from California's Secretary of State when registering as a corporation to conduct business in California.

EMERGING ISSUES

As a result of taxpayer contacts and review of trends, policies and procedures within the Board, the TRA0 recommends consideration of the following issues:

- ***Questionable Successors and Determinations*** — Three cases were brought to TRA’s attention where there may be insufficient information to support the original assessment. Evidence should be established (purchase price, assumption of indebtedness, willfulness, etc.) to support these types of actions. While the Board can legally require the taxpayer to pay the amount in full and request a refund, it does not seem equitable to follow this logic. In some of these cases, the Board has no evidence to support the determination.

In other cases, when a determination is issued pursuant to an audit assessment, and the taxpayer provides records, or additional information not available while the audit was in process, the Board routinely allows the taxpayer to enter into a “late protest” status while Board staff considers evidence presented by a taxpayer. If the taxpayer presents an argument or evidence as to why an adjustment should be made and substantiates their claim, the Board will adjust the account. In an effort to appropriately handle cases, TRA0 recommends that determinations for these types of liabilities be adjusted when insufficient information is available to support the assessment.

- ***State Application and Information for Offers in Compromise (OIC)*** — Practitioners and taxpayers have come to the California Advocates of the three state agencies (BOE, FTB, and EDD) and

indicated their interest in filing one OIC application where they have a liability with two or more agencies. The OIC Managers and the California Advocates of the three state agencies are working together to develop options for consideration by management.

TAXPAYER CONTACTS WITH TRA OFFICE

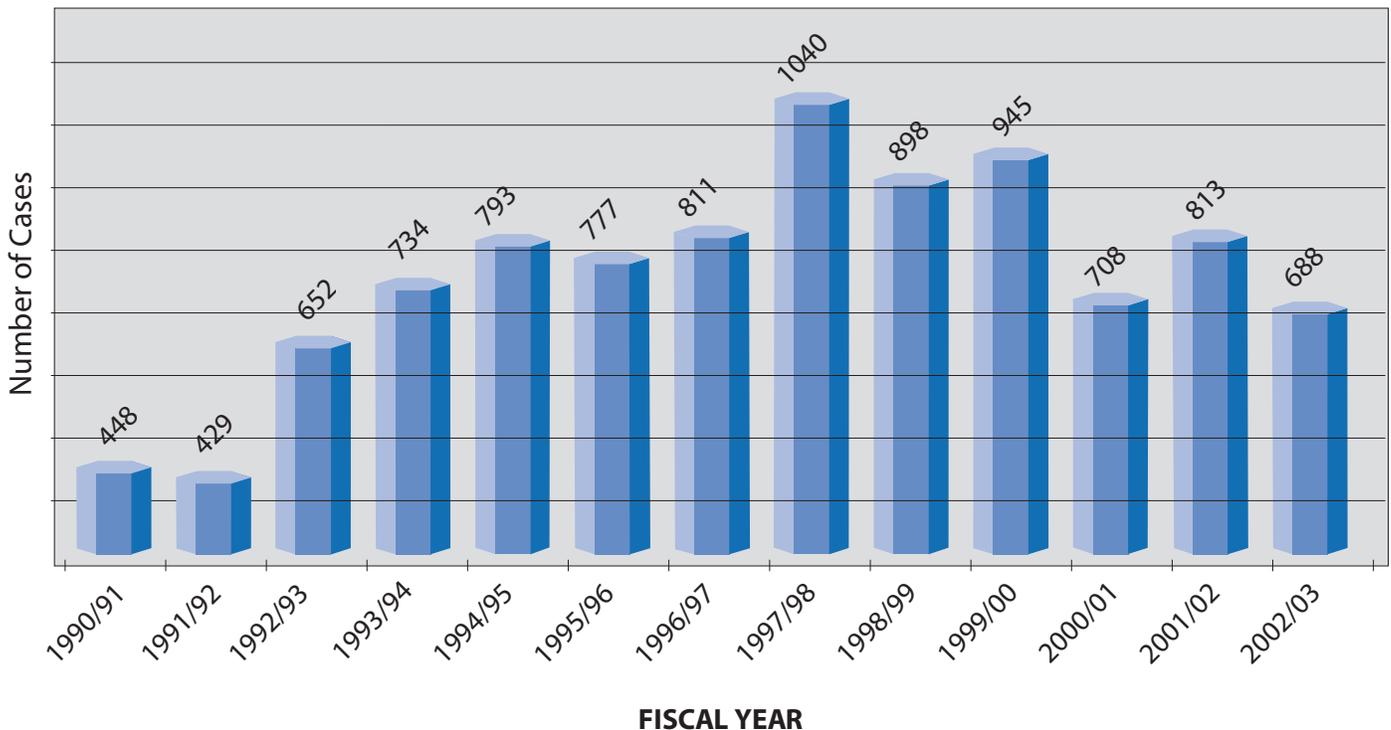
Historical Caseload

During Fiscal Year 2002/03, the TRA0 handled 688 new Business Taxes cases. As indicated, Business Taxes contacts have shown a relatively persistent growth pattern in the past ten years. Growth in previous years has been attributable to increased public awareness of taxpayer rights and the existence of the Taxpayers' Rights Advocate Office. The reduction of cases in this past fiscal year may be partially attributed to staff vacancies. This resulted in some taxpayers having to be referred to headquarters staff, and/or district staff for initial review and resolution. The decrease may also be partially attributed to better taxpayer understanding through taxpayer education through Taxpayer Service Days/Small Business Fairs in addition to the distribution of *Publication 54 Collection Procedures*. In recent months, the TRA0 has seen a significant increase in taxpayer contacts, which may be due to the state's continued sluggish

economy, which can be attributed as to why taxpayers are still showing signs of being unable to meet their tax obligations.

Appendices 1 and 2 provide a breakdown of contacts by district and headquarters offices. Cases were assigned to a specific district or headquarters office if the taxpayer contacted the TRA0 regarding an action taken by a specific office. Taxpayers who wanted information and guidance regarding a Board process or procedure were assigned to the TRA0 as the office of origin.

When reviewing these appendices, it should be noted that there are many contributing factors that may cause certain districts to reflect a higher number of cases than other districts. For example — characteristics related to population, especially size, growth, and density of taxpayers within the district, the type and size of business operations, and geographic proximity to headquarters.



Taxpayer Inquiries Cover a Wide Range of Issues

Of the 688 cases received, 69 percent involved sales tax compliance-related issues, 16 percent involved sales tax audit-related issues, and 15 percent involved other issues, such as consumer use tax, special taxes and fees and FTB appeal matters.

During the fiscal year 2002/03, TRAO tracked the reasons that taxpayers made contact and allowed for up to three reasons per contact in the statistics.

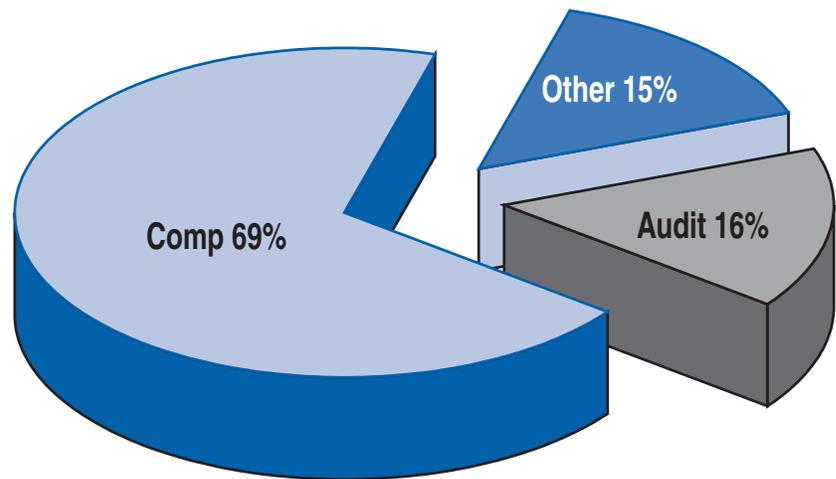
The most common reason taxpayers contacted TRAO was to obtain information and guidance on a particular process, or to determine if an action taken by the Board staff was appropriate and in compliance with law and procedures. The remaining issues in descending order were: Levy/Earnings Withhold Order (EWO), Question Liability, Lien, Penalty, Payment Plan, Audit Procedures, Interest, Refund, Account Maintenance, Offers in Compromise, Consumer Complaint, Appeals, Tax Collection, Reimbursement of levy, Petition, Security, Revocation and Innocent Spouse.

Customer service issues are divided into four broad categories:

1. *Communication*: misinformation; refusal to allow the taxpayer to talk to a supervisor; failure to answer specific taxpayer questions; and not receiving a communication or notice.
2. *Board delay*: slow response to inquire; issuing refunds or resolving the taxpayer's case.
3. *Staff courtesy*: complaints about staff demeanor; manner of handling the taxpayers' case.
4. *Education*: Tax law, Board policy and procedures.

Approximately 7 percent of the total TRAO contacts were customer service issues, the majority being education. The TRAO believes that these statistics reflect positively on the Board's efforts to become more customer focused and responsive to the need of the public and to provide clear, timely, and courteous treatment of taxpayers.

Note: the customer service statistics were captured solely based on the taxpayers'



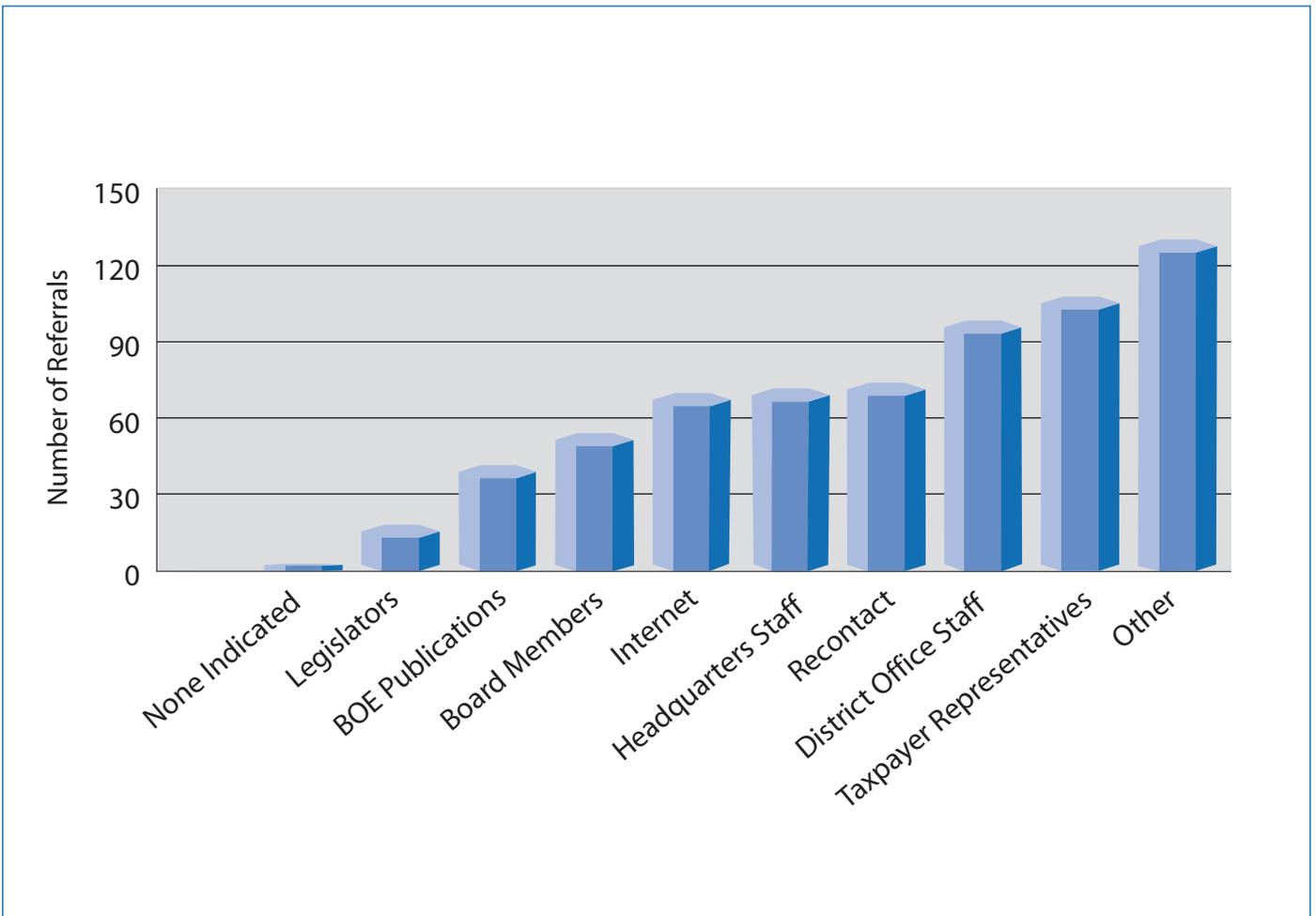
statements or impressions of the situation; therefore, these statistics are not necessarily verified problems but reflect the taxpayers' perceptions of the situation. For example, if a taxpayer states that collection staff made a rude comment, a "staff courtesy" complaint would be recorded. However, oftentimes the taxpayer's contentions did not match staff's recollection of the situation or were portrayed in a different perspective.

How Taxpayers Were Referred to the Advocate Office

In an effort to improve our service to the public, TRAO attempts to identify the source of referrals. Of those accounts that identified a referral source, the majority are other, reflecting a 118 percent increase over last year. The TRAO attributes these increases to the efforts we have made in taxpayer out-

reach in both written publications and oral presentations at Taxpayer Service Days/ Small Business Fairs.

The following chart reflects the breakdown of how taxpayers were referred to our office based on those accounts that identified a referral source.



TAXPAYERS' RIGHTS ADVOCATES OFFICE CASE SUMMARY
(FY 2002/03)

APPENDIX 1

Entity Working Case	Cases by Issue Type			Total Cases	Confirmed Staff Case Handling		Case Handling Changed		Satisfied with Outcome		Referred To		
	Audit	Compliance	Other		Yes	No	Yes	No	Yes	No	District	HQ	Other
Norwalk (AA)	3	7	0	10	6	1	5	2	7	1	6	4	0
Torrance (AB)	2	9	0	11	5	1	6	4	8	0	7	2	1
Van Nuys (AC)	4	18	1	23	6	3	8	6	10	4	13	3	3
Industry (AP)	1	12	1	14	4	2	6	4	10	1	11	0	2
Ventura (AR)	4	28	5	37	14	10	19	8	19	7	24	8	2
Culver City (AS)	2	9	2	13	8	0	6	4	9	0	6	1	2
San Francisco (BH)	5	23	1	29	10	7	15	5	20	2	21	2	4
Oakland (CH)	1	20	2	23	13	2	15	3	15	1	15	4	2
Santa Ana (EA)	10	24	2	36	13	3	21	4	21	2	27	6	0
Riverside (EH)	9	28	3	40	14	5	18	9	25	2	25	5	4
San Diego (FH)	5	12	3	20	2	2	3	3	11	1	13	3	2
San Jose (GH)	2	15	6	23	8	2	7	8	15	1	18	2	0
Santa Rosa (JH)	4	11	0	15	6	2	8	3	6	3	10	3	0
Sacramento (KH)	6	37	6	49	13	9	21	11	38	4	33	6	4
Out-of-State (OH)	3	5	1	9	4	1	4	1	4	1	3	2	1
Appeals Section	6	4	0	10	2	0	1	1	4	1	2	3	2
Board Members' Offices	0	14	2	16	5	1	6	3	11	0	5	3	5
Centralized Collection	9	60	1	70	25	10	27	19	37	5	7	46	8
Consumer Use Tax	0	16	3	19	6	3	0	11	12	1	1	13	3
Environmental Fees	0	5	4	9	1	4	2	4	5	1	0	6	4
Excise Taxes Division	0	2	1	3	1	1	1	0	1	0	0	2	1
Franchise Tax Board	0	3	8	11	0	0	1	0	5	0	0	0	11
Fuels Tax Division	0	5	1	6	4	0	2	3	2	1	0	1	2
HQ—General	4	6	9	19	3	4	2	6	8	4	2	11	3
Offer In Compromise	2	17	2	21	8	1	4	7	10	1	5	14	1
Petition Section	6	5	1	12	2	0	2	4	8	0	0	11	0
Refund Section	8	8	3	19	4	1	13	4	19	2	0	9	5
Return Analysis	3	19	2	24	13	0	2	6	11	1	2	18	1
Special Procedures	3	25	1	29	7	5	12	4	17	3	0	18	4
Taxpayer's Rights Adv.	3	13	4	20	0	1	0	0	12	2	0	3	2
Other	3	17	28	48	3	1	1	12	19	2	8	7	28
Total	108	477	103	688	210	82	238	161	399	54	264	216	107

Note: The columns "Confirmed Staff Case Handling," "Case Handling Changed," "Satisfied with Outcome" and "Referred To" will not always equal the total cases since they are not applicable in all cases.

APPENDIX 2

TAXPAYER CONTACTS BY BUSINESS TAXES OFFICE

