

# Taxpayers' Rights Advocate's

*Annual Report 2009-10*

## Property and Business Taxes

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# LETTER TO THE EXECUTIVE DIRECTOR

February 2011

Ms. Kristine Cazadd  
Interim Executive Director

Dear Ms. Cazadd:

I am pleased to present the Taxpayers' Rights Advocate's 2009-10 Property and Business Taxes Annual Report. This report:

- Highlights accomplishments of the Taxpayers' Rights Advocate Office during the past year;
- Describes our involvement in important new projects to assist taxpayers;
- Identifies current issues we are working to resolve;
- Provides an update on the expansion of the Tax Appeals Assistance Program; and
- Contains examples of cases illustrating the services our office provides.

As California's economy continues to struggle, as evidenced by an increasing number of bankruptcies, business owners and individuals are challenged to just "hang on" in order to stay in business while meeting their monthly obligations. With increased collection efforts by Board of Equalization staff, it is more important than ever to ensure taxpayers' rights are protected during the assessment and collection of tax. The Taxpayers' Rights Advocate Office will continue to work with Board of Equalization staff and the public to be sure the rights of individuals are protected while the interests of the state are served.

Respectfully submitted,



Todd C. Gilman  
Taxpayers' Rights Advocate

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**TAXPAYERS' RIGHTS  
ADVOCATE OFFICE**

## VISION

To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers<sup>1</sup> and the government.

## MISSION

To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection of taxes.

## GOALS

- To ensure that taxpayers coming to the Taxpayers' Rights Advocate Office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed.
- To identify laws, policies, and procedures that present barriers or undue burdens to taxpayers attempting to comply with the tax laws; to bring those issues to the attention of Board of Equalization (BOE) and county management; and to work cooperatively on making changes to laws, policies, and procedures where necessary.
- To meet taxpayer needs by opening appropriate channels of communication, providing education, and finding creative solutions to unresolved problems.
- To promote BOE staff's commitment to honor and safeguard the rights of taxpayers.

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<sup>1</sup> The term "taxpayers" in this publication means payers of sales and use taxes, special taxes and fees, and property tax.

## PROFILE

### Taxpayers' Bills of Rights Mandate a Taxpayers' Rights Advocate

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* (see [Appendix 1](#)) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits, which currently include approximately 1,046,000 taxpayers, are provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax programs administered by the BOE, currently affecting approximately 227,000 taxpayers in 20 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights 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* (see [Appendix 2](#)) was added in January 1994, governing the assessment, audit, and collection of property tax, with the goal of ensuring that millions of taxpayers receive fair and uniform treatment under the property tax laws.

Each Taxpayers' Bill of Rights provides for a Taxpayers' Rights Advocate (Advocate). For instance, the designation of an Advocate for sales and use tax matters is found in Revenue and Taxation Code section 7083 (see [Appendix 1](#)), and beginning with section 5904 for property tax issues (see [Appendix 2](#)).

### Legal Responsibilities of the Taxpayers' Rights Advocate

The responsibilities of the Advocate are specifically delineated in the law. Consistent with the Taxpayers' Bills of Rights, the Advocate:

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by BOE employees;
- Monitors various BOE tax and fee programs for compliance with the Taxpayers' Bill of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;
- Ensures taxpayer educational materials are clear and understandable; and
- Coordinates statutory Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members.

### How Legal Responsibilities Are Fulfilled

The Taxpayers' Rights Advocate (TRA) Office fulfills its legal responsibilities by taking the following actions:

#### *Facilitates resolution of taxpayer complaints or problems*

The TRA Office 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 or to seek assurance or confirmation that staff action is lawful and just. The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps to 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.

Occasionally a taxpayer or a BOE employee contacts the TRA Office complaining about discrimination or harassment. TRA Office staff work with appropriate BOE management to resolve the complaint. The

BOE is committed to a discrimination/harassment-free environment and the Advocate confirms that BOE staff are properly trained in these areas. Likewise, alleged taxpayer discrimination or sexual harassment toward BOE staff is not tolerated and is appropriately addressed.

### ***Monitors programs and recommends policy or procedural changes***

In cases where the law, policy, or procedures do not currently allow any change to the staff's actions, but a change to the law, policy, or procedure appears warranted, the TRA Office actively works toward clarification or modification. Several of the past recommendations for policy or procedural changes, suggestions for enhancements to staff training materials, and proposals for legislative change have resulted from direct contacts with taxpayers.

### ***Ensures information and guidance provided is easy to understand***

The TRA Office suggests new legislation, participates in task forces and committees charged with procedure and regulation revisions, and routinely reviews proposed revisions to taxpayer educational materials to ensure they are easy to understand. TRA Office staff assist in providing information to the public at large through participation in public forums and business fairs.

### ***Coordinates Taxpayers' Bill of Rights hearings***

The TRA Office is responsible for making arrangements, in cooperation with the Board Proceedings Division, for yearly property tax and business taxes hearings in both Northern and Southern California, including publicizing the hearings. Immediately after the hearings, the TRA Office works with appropriate areas of the BOE or counties to address issues and concerns conveyed to the Board Members by presenters and provides follow-up reports to the Members when requested.

## **Cooperation with Advocates of Other Government Agencies**

The BOE's Advocate meets on a regular basis with the Advocates from the Employment Development Department, the Franchise Tax Board, and the Internal Revenue Service to discuss common problems and systemic issues facing California taxpayers. These meetings, along with close working relationships among the advocate offices, have allowed all the agencies serving California taxpayers to have a better understanding of taxpayer issues. California taxpayers also benefit from the TRA Office's ongoing relationships with the other California advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the advocates.

## **Differences Between Implementation of the Business and the Property Taxpayers' Bills of Rights**

The major difference for the TRA Office between the Business Taxpayers' Bill of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints, as outlined below.

### ***Business taxes***

The BOE is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Executive Director has administrative control over these functions and the staff carrying them out. The Advocate reports directly to the Executive Director and is independent of the business and property taxes programs. When complaints relating to the BOE's business taxes programs are received in the TRA Office, the office has direct access to all BOE information and staff involved in the taxpayers' issues. The TRA Office acts as a liaison between taxpayers and BOE staff in resolving problems. If the Advocate disagrees with actions taken by BOE staff and is unable to resolve the situation satisfactorily with program management, the issue is brought to the Executive Director for resolution.

### Property tax

In contrast, the TRA Office works with county assessors, tax collectors, and auditor-controllers (most of whom are elected officials), plus clerks to the county boards of supervisors when responding to property taxpayers' concerns. The TRA Office also works cooperatively with the California Assessors' Association on statewide issues. Although the TRA Office does not have the legal authority to overturn local actions, TRA Office staff are generally successful in soliciting cooperation and ensuring that taxpayers receive proper treatment under the law. In cases where there is no procedural or legal authority to remedy a problem – and a change does appear justified – the TRA Office recommends specific policy, procedural, and/or legislative changes.

Please see the Business Taxes Issues and Property Tax Issues chapters of this report for examples of how taxpayers' complaints are resolved in each of these areas.

## PUBLIC OUTREACH

The public becomes aware of the services offered by our office in a number of ways. For instance, information is included about the TRA Office in many BOE publications and standard correspondence, the public can learn about and contact the office via the BOE website or by telephone, and TRA Office staff members make presentations at public events.

### Publications and Standard Correspondence

- Information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights is contained in [publication 70](#), *Understanding Your Rights as a California Taxpayer* (November 2005), which is available in all BOE offices and on the BOE's website.

- [Publication 145](#), *California Taxpayer Advocates-We're Here for You* (March 2010), provides contact information for the Advocates from the Board of Equalization, Franchise Tax Board, Employment Development Department, and Internal Revenue Service. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center, [www.taxes.ca.gov](http://www.taxes.ca.gov) (search for "California Taxpayer Advocates").
- The TRA Office's toll-free number (888-324-2798) is printed on the BOE's permits and licenses.
- An article about the services provided by the TRA Office is published each year in the newsletters provided to taxpayers.

### Email and Telephone Contacts

- The TRA Office's webpage, [www.boe.ca.gov/tra/tra.htm](http://www.boe.ca.gov/tra/tra.htm), can be accessed from the BOE's home page. The webpage contains a video introduction to the TRA Office and provides a means for taxpayers to communicate with the TRA Office directly via email.
- The TRA Office's toll-free number is included as an option on the automated phone tree for all field offices in the Second and Third Equalization Districts.

### Public Events

The public learns about the services of the TRA Office at the following types of events:

- **Board hearings:** The Advocate or TRA Office staff is present and available to answer questions or assist taxpayers arriving for their hearings before the Board Members. Publications 70 and 145 (described above) are also available to those attending the Board hearings. Due to BOE budget constraints in fiscal year 2009-10, rather than incurring the expense of traveling from Sacramento, the Advocate was available to assist taxpayers at the Culver

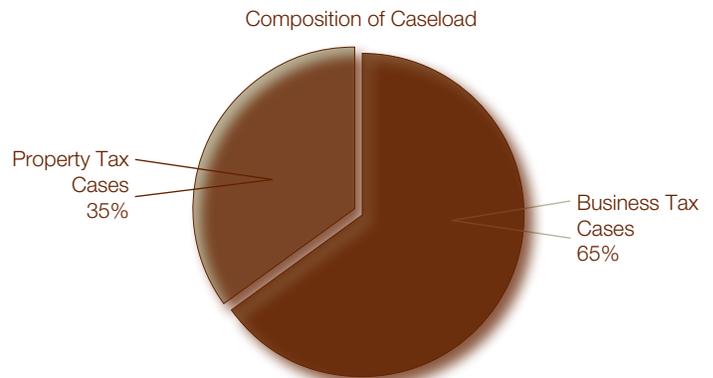
City Board hearings by telephone, thanks to the cooperation of the Board Proceedings Division staff and the Culver City Office.

- **Board Member-sponsored events:** The Advocate or designee attends all of the Small Business Fairs and Nonprofit Seminars throughout the state. At these Board Member-sponsored events, the TRA Office interacts with business owners and charitable organization representatives, makes presentations, and provides written materials about the TRA Office.
- **Non BOE-sponsored events:** Direct contacts with the public are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the Professional Business Women's Conference, the IRS Nationwide Tax Forum, and the California Small Business Day in Sacramento. The BOE Advocate also partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals. For example, in 2009 the Advocate participated in the California Tax Policy Conference in San Diego. The conference was held as part of the Annual Meeting of the California Tax Bar and is sponsored by the State Bar Taxation Section in partnership with the Franchise Tax Board and Board of Equalization. The Advocate provided comments about taxpayer advocate services in California. In 2010, the BOE Advocate was contacted by Albany Law School, through its Government Law Center and Low-income Taxpayer Clinic, to speak at a national conference entitled, "Taxpayer Advocacy: Addressing Systemic Tensions During Tight Budget Times." The conference featured a number of high-profile speakers, including the National Taxpayers' Advocate with the Internal Revenue Service. The BOE Advocate was invited to the conference due in part to the National Taxpayers' Advocate's recognition of his efforts to develop a low income tax clinic for California taxpayers with Franchise and Income Tax and

Sales and Use Tax appeals. The BOE Advocate also addressed the topic of "what does an established advocate's office in California look like?"

## CONTACTS RECEIVED IN 2009-10

TRA Office cases totaled 1,043 in fiscal year 2009-10, a four percent increase from the 1,001 cases the previous fiscal year. This year's composition of cases was similar to last year's. The TRA Office caseload was comprised of 65 percent business taxes cases and 35 percent property tax cases; last year the mix was 64 percent business taxes cases and 36 percent property tax cases.



Increasing each year for the past four years, the BOE website accounted for the largest source of referrals for all TRA Office cases. In fiscal year 2009-10, taxpayers indicated they learned about the TRA Office via the BOE website in 26 percent of the property tax cases and in 31 percent of the business taxes cases (a three percent increase). Please refer to the Property Tax Issues and Business Taxes Issues chapters for listings of other important means by which taxpayers learned about the TRA Office.

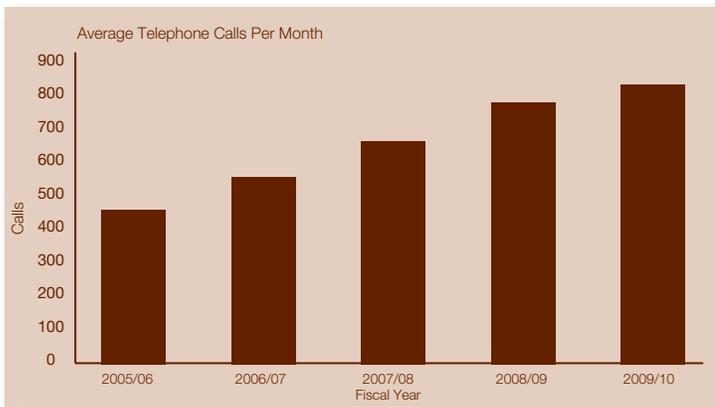
Telephone call volume increased again this year. The average number of telephone calls per month (not including calls that resulted in new cases) increased nearly seven percent, to 841 calls per month in fiscal year 2009-10 from 787 calls per month in fiscal year 2008-09. Due to the broad

availability of the TRA Office's toll-free telephone number, as described above, the office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their disagreements with the BOE through normal channels. Some callers have questions or concerns that need to be addressed by another state agency such as the Franchise Tax Board. TRA Office staff responds by directing the caller to the appropriate BOE section, individual, information resource such as the BOE website, or to the appropriate state agency.

We observed that the common interest the TRA Office shares with BOE staff in ensuring a consistent treatment of taxpayers in line with the Taxpayers' Bills of Rights would be well served by agency-wide training sessions.

Due to California's current economic challenges, the TRA Office's plans for providing statewide staff training could not be implemented in fiscal year 2009-10. The TRA Office intends to provide training as soon as economic conditions allow. We plan to work with all BOE departments to arrange for TRA Office staff to deliver training over the course of a few years that will cover:

- The role and responsibilities of the TRA Office;
- The contributions that each BOE employee can make in the course of their individual work assignments toward the protection of taxpayers' rights; and
- The processes by which the TRA Office, BOE staff, and management can work cooperatively as a team to resolve taxpayer concerns.

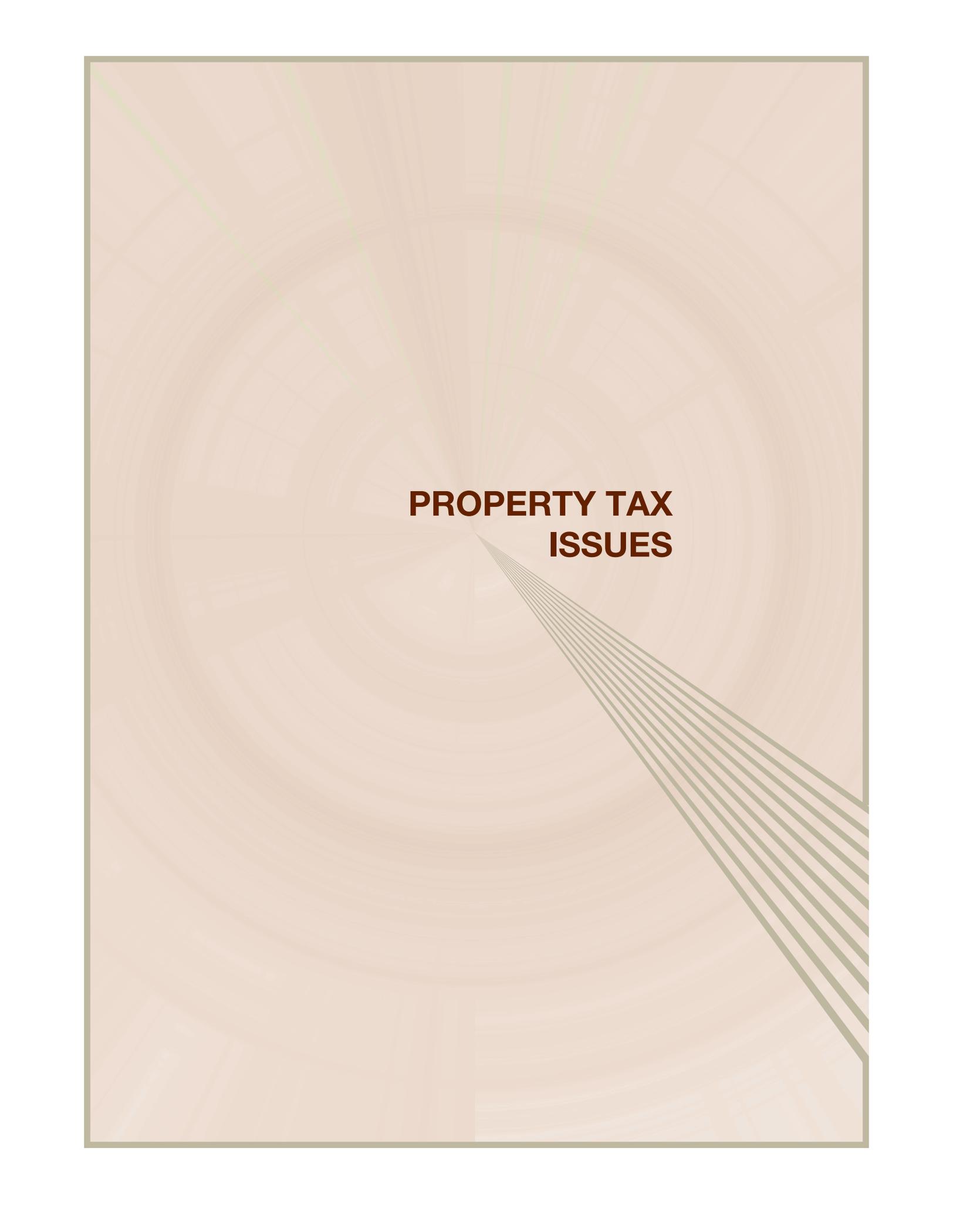


## MAJOR PROJECT IN PROCESS

### Training BOE Staff on Safeguarding Taxpayers' Rights

The safeguarding of taxpayers' rights is the responsibility of all BOE employees. However, at those times when there is miscommunication or the taxpayer cannot find a resolution through normal channels, the TRA Office can provide mediation or a fresh viewpoint. Last year we reported that the TRA Office has noted that, although BOE staff generally observes the rights of taxpayers during the assessment and collection of taxes and fees, not all staff have a good understanding of when it is appropriate to refer a taxpayer to the TRA Office.

In the interim, the TRA Office is in the process of developing web-based training to augment BOE training needs. In addition, in fiscal year 2008-09, the TRA Office created a Power Point presentation to use as a training tool. This tool was used by the Advocate in 2009 for a presentation to new BOE attorneys about the TRA Office's responsibilities.



**PROPERTY TAX  
ISSUES**

## CASE RESOLUTION

Property owners throughout the state contact the Taxpayers' Rights Advocate (TRA) Office for assistance and information. Although primary contact is with individual taxpayers, cases also originate from contact with attorneys, brokers, lenders, title and escrow companies, and government officials such as assessors, tax collectors, recorders, auditor-controllers, county supervisors, Board Members, and legislators.

The variety of issues represented by the cases requires that technical advisors in the TRA Office have broad knowledge and experience in property assessment and taxation. Since the technical advisors are appraisers by profession with experience in a county assessor's office or at the Board of Equalization (BOE), they can quickly determine how an issue should be resolved.

### About the Property Tax Case Statistics

#### County of Origin

The TRA Office worked 365 property tax cases in fiscal year 2009-10 compared to 361 cases in the previous fiscal year. The TRA Office tracked the number of cases by county of origin and found for the most part, the population of the county tends to determine the number of cases from each county.

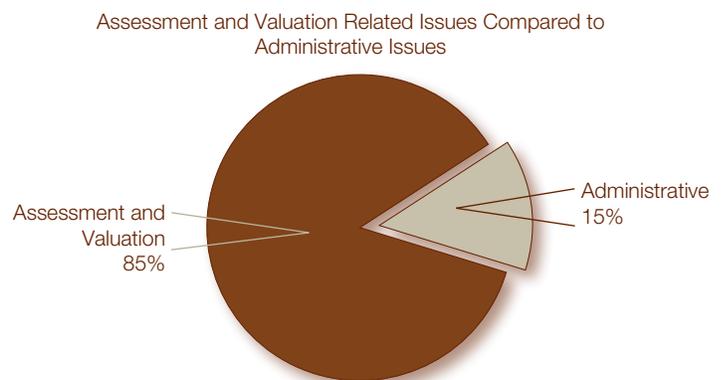
Ten counties represented 61 percent of the cases while those ten counties represent 68 percent of the state's population. Those counties were Los Angeles, Marin, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo and Santa Clara. Most counties had at least one contact with the TRA Office.

The overwhelming majority of property tax cases are resolved in conjunction with local county assessors, tax collectors, and assessment appeals boards. The remaining cases are resolved through

state agencies such as the BOE or the State Controller's Office. Multiple offices are often involved in the resolution of taxpayers' cases.

#### Types of Cases

In fiscal year 2009-10, 85 percent of property tax cases were in the assessment and valuation category which includes topics such as value reductions, changes in ownership, appraisal methodology, exclusions, exemptions, assessment appeals, new construction, general property tax information and definitions, and actual enrollment of values. The administrative category, making up the remaining 15 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.

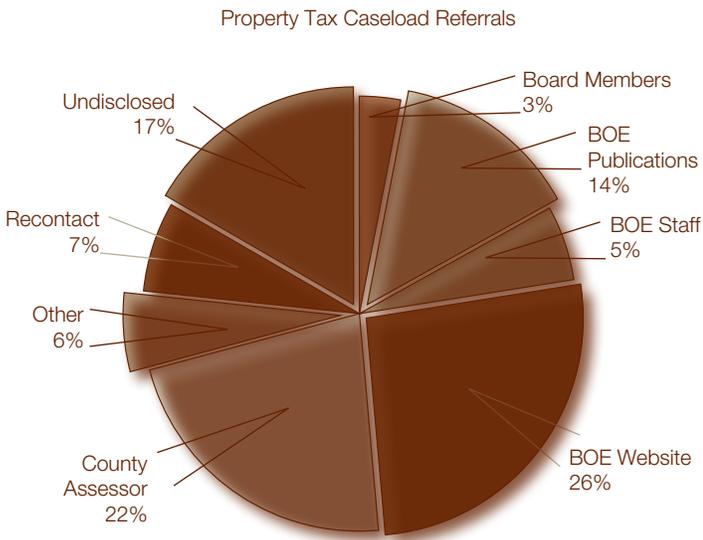


Issues related to the decline in the real estate market were again the primary reason that taxpayers contacted our office. The declining market was a component of almost all assessment and valuation cases.

Two specific change in ownership exclusion issues that we track each year, base year value transfers between parents and children and base year value transfers for senior citizens (Revenue and Taxation Code sections 63.1 and 69.5 respectively) accounted for only eight percent of the total cases in fiscal year 2009-10 compared to 12 percent of the total caseload last fiscal year.

**How Taxpayers Were Referred to the TRA Office**

In an effort to improve public service, the TRA Office attempts to identify the source of referrals. As in the past, this year the BOE website was the largest source of referrals, accounting for 26 percent of the property tax cases. County assessors accounted for 22 percent—similar to last year’s 24 percent. The other important source of referrals was BOE publications at 14 percent—up four percent over last year.



**Examples of Property Tax Cases**

The following cases illustrate how taxpayers’ issues are resolved by the TRA Office staff and indicate the range of services provided by the property tax technical advisors.

**Mortgage Impound Accounts and the Declining Real Estate Market**

When a property sells for less than its value on the assessment roll, a refund, instead of a bill, is issued. The value that lenders use for impounding taxes is typically the amount existing on the roll immediately prior to the new owner’s purchase. While this is adjusted in the supplemental assessment process, the burden of the higher amount impounded for property taxes is often difficult for new owners to pay.

A person bought a home for \$51,000. The value on the roll for the prior owner was \$195,000. Since the new value was significantly less than the old value, the supplemental assessment created a refund. For the purchase date however, the new owner’s lender set up an impound account to cover the taxes based on the existing roll value of \$195,000. The monthly expense for property taxes that were impounded were much higher than they would have been if the sale price was used when the impound amount was determined.

TRA office staff was able to help expedite the refund to the taxpayer. Lenders, however, have different policies on when they adjust impound accounts and since they impound funds based on assessments that are to be paid, the amount they need to impound is often difficult to estimate. We explained this to the taxpayer and what the lender would likely need to make the adjustments.

Until market values start to increase, and bills instead of refunds are generated, we expect property tax impound accounts to continue to be a source of frustration for taxpayers.

**New Construction**

Assessors’ Offices are relying more and more on technology to assist with the assessment process. Without the benefit of computer programs employed by most of the counties, the large number of re-assessments made to recognize the declining market would not have been possible. However, it is important to carefully monitor automated processes.

A taxpayer received a supplemental assessment for completion of new construction dated for the day before she purchased the property. This can occur when a property has just been constructed but in this case the home was built in 1981. The problem was with the assessor’s computer system. TRA Office staff identified the problem quickly. The home was never shown as complete on the assessor’s computer system, although it had been valued as if it were complete. The computer made

the assumption the home was completed just prior to the sale and created a supplemental assessment for new construction. The data stored in the computer since 1981 was not accurate but didn't create any problems for 28 years. The assessor was asked to see if they could locate other potential situations like this and no other problems were found.

## OTHER ACTIVITIES

Each year, in addition to resolving cases, the TRA Office tries to improve the property tax system by participating in a variety of other activities. These additional activities enable the office to benefit more taxpayers than just those helped through case resolutions. In 2009-10, the TRA Office staff was involved in the following activities:

### In-Person Contact with County Officials

TRA Office staff attended California Assessors' Association (CAA) conferences this year to maintain contact with the 58 assessors and their key staff. The confidence and trust developed through these relationships allows the Advocate and the TRA Office staff to more effectively assist all taxpayers with their local issues and to find out about emerging issues developing at the county level.

### Dissemination of Information

Real estate professionals need prompt information on various property tax issues. The TRA Office submitted articles to the quarterly newsletter of the Department of Real Estate, which is distributed to over 500,000 real estate professionals. These real estate professionals are involved in the majority of real estate transactions and if they have more knowledge of property taxation issues, taxpayers are better served. The TRA Office will continue to look for additional outreach opportunities in the future with other professional groups.

### Review of BOE-Prescribed Forms

The TRA Office participates in an annual review of BOE-prescribed forms used by all counties. As part of this process, TRA Office staff ascertains if taxpayers are having trouble with the various forms and, if so, makes recommendations on improvements.

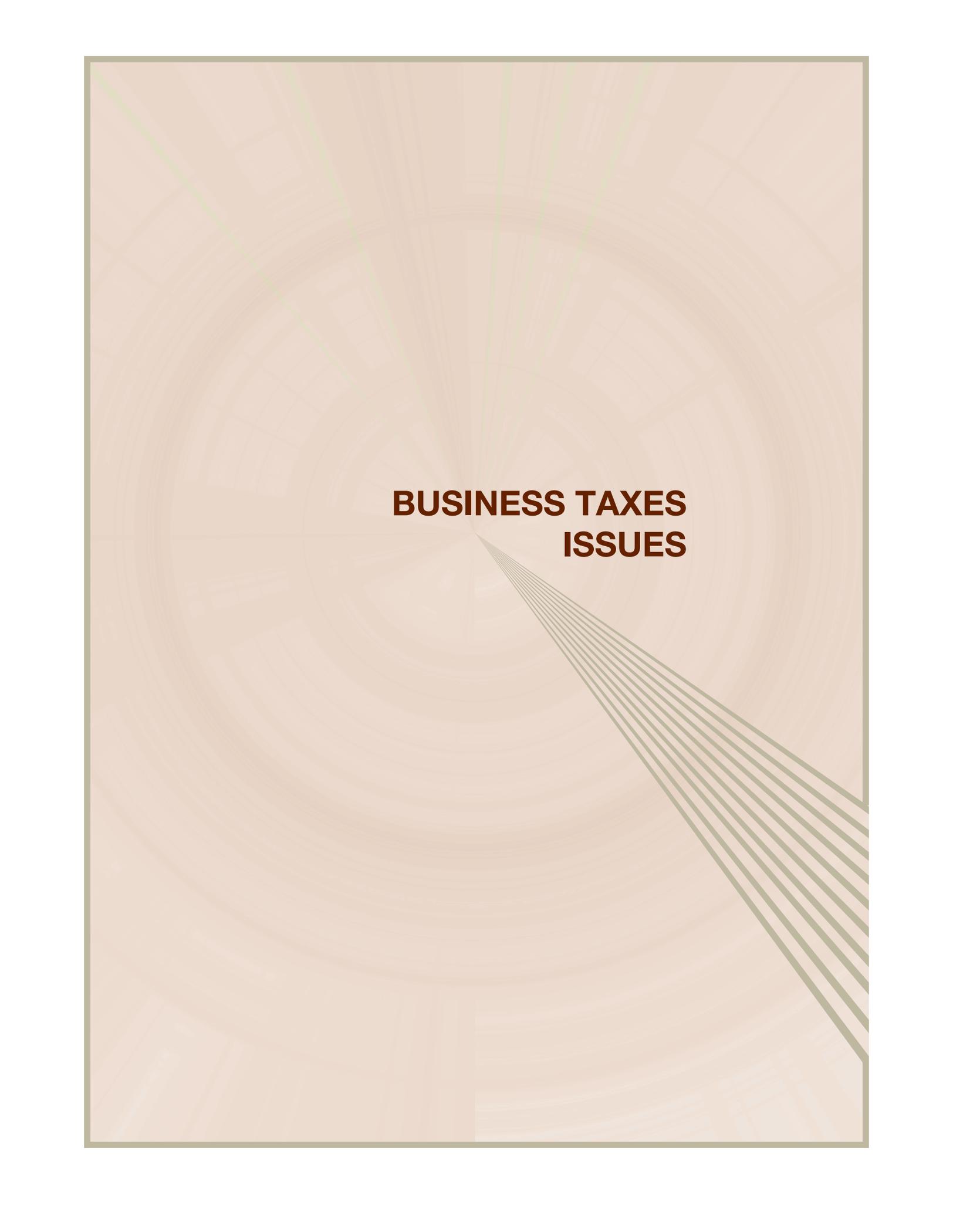
Forms completed by taxpayers are a critical source of information for assessors in making the proper valuation of property. It is important that the forms are user-friendly so that taxpayers can easily and accurately provide the information requested.

### Review of County Websites

The TRA Office continues to examine county websites for the breadth and depth of information that taxpayers need. Since laws and procedures are ever-changing, this office's review process is ongoing. By gaining knowledge of what information is available, the TRA Office is better able to direct taxpayers to the resource that will most efficiently satisfy their information needs. Most counties have websites, and we hope to see the remainder of the counties employ this indispensable tool for providing information in a manner that allows the assessors to make better use of their diminishing resources.

### Development of Instructional Video for Property Tax Bills

With the success of the video on assessment appeals, the TRA Office began the process of developing a video that will explain property tax bills to the public. This video is being developed with input from all 58 counties, the Department of Real Estate, California Association of Realtors, State Controller's Office and California Treasurer Tax Collector Association. Although production has been delayed due to lack of funding, the TRA Office will revive it once funding is available.

The background features a series of concentric circles and lines radiating from a central point, creating a sense of depth and focus. The lines are thin and light-colored, blending into the overall beige and brown tones of the design.

**BUSINESS TAXES  
ISSUES**

## CASE RESOLUTION

The majority of the Taxpayers' Rights Advocate (TRA) Office's contacts consists of individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the Board of Equalization (BOE). All of these tax and fee programs are collectively referred to as "business taxes." Legislators and Board Members also contact the TRA Office on behalf of their constituents who have not been able to resolve a sales and use tax or special tax problem through normal channels.

A primary goal of the TRA Office is to ensure that taxpayers contacting this office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed. The Advocate and his staff have extensive knowledge of BOE programs, policies, and procedures. This knowledge enables them to advise taxpayers of their rights and obligations, explain the tax law and BOE policy, and seek out creative and appropriate solutions that are acceptable to taxpayers and BOE staff. The TRA Office's independent status allows this office to focus on assisting taxpayers within the framework of the law with the cooperation of BOE management and staff.

Following is information regarding the business taxes cases the TRA Office worked on this year and some examples of cases that illustrate the services this office offers its customers.

### About the Business Taxes Case Statistics

During fiscal year 2009-10, the TRA Office recorded 678 new business taxes cases, a six percent increase from last year.

#### *Outcome of business taxes cases*

[Appendix 3](#) provides important information about the cases, categorized by office of origin. A specific BOE field or Headquarters office or the Franchise

Tax Board was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "TRA Office" was normally designated as the office of origin in cases where individuals wanted general information and guidance regarding a BOE process or procedure or if the case was a result of testimony at a Taxpayers' Bill of Rights hearing. The TRA Office tracked broad issue types (see below) and critical outcomes of the cases.

**Customer Service Concerns.** The TRA Office closely monitors the number and type of customer service concerns that taxpayers bring to its attention. The Advocate and TRA Office staff view the manner in which taxpayers are treated as an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers' Bill of Rights. Customer service concerns that are tracked include:

- *Communication:* providing misinformation, not acknowledging a taxpayer's concerns, not referring the taxpayer to a supervisor when requested, failing to answer specific taxpayer questions, or not providing information or a notice;
- *BOE Delay:* slow response to an inquiry, or delay in issuing a refund or resolving the taxpayer's case;
- *Staff Courtesy:* lack of courtesy or respect shown to taxpayer indicated by staff demeanor, manner of handling the taxpayer's case, or comments made by staff; and
- *Education:* lack of information provided regarding tax law, BOE policy, or BOE procedures; or staff training issues.

The number of customer service complaints increased three percent this year but still remains relatively low (see [Appendix 3](#)). Ten percent of the Business Taxes cases in fiscal year 2009-10 expressed concerns related to customer service,

compared with seven percent in fiscal year 2008-09, five percent in 2007-08, and two percent in 2006-07. Although these increases may indicate the need for staff training, it seems likely that taxpayer difficulties related to the sluggish economy played a part as well. BOE collection staff has seen an increase in its workload as more taxpayers struggle to meet their obligations. In addition, based on contacts received by the TRA Office in fiscal year 2009-10, it appears that a higher than average percentage of taxpayers are experiencing financial hardships, leading to stressful discussions with BOE collection staff.

*Note: The customer service statistics were captured based solely on the taxpayers' statements or impressions of their situations. Therefore, these statistics do not necessarily indicate verified problems but reflect the taxpayers' perception.*

**Agreed/Disagreed with Staff Case Handling.** After investigating the taxpayer's concerns or contentions, the TRA Office is often able to confirm that staff's handling of the situation was consistent with legal, regulatory and procedural mandates. However, based on the results of the TRA Office investigation and communication with staff and the taxpayer, it is possible that staff handling of the case could change as additional information comes to light or the TRA Office recommends a different approach to produce a resolution that is satisfactory to both the BOE and the taxpayer. Occasionally, however, the TRA Office disagrees with one or more aspects of how BOE staff handled a case. These instances typically comprise a small percentage of the business taxes cases—for example, only two percent in fiscal year 2009-10 (see Appendix 3). A case is recorded as "not agreed with staff handling" only in those cases where the TRA Office finds that:

- Staff has not adhered to the law or approved policies or procedures;
- Staff acted contrary to what the taxpayer was told by staff;
- There were unreasonable delays by staff; or

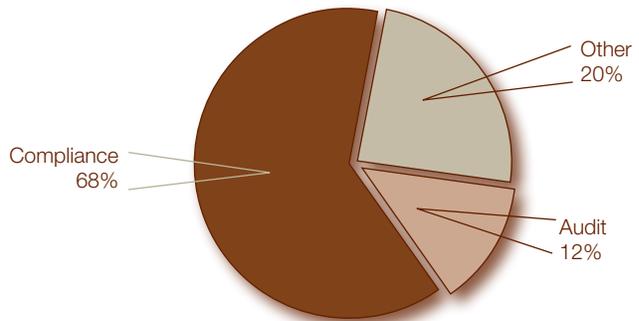
- Staff violated the taxpayer's rights.

In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate department head and division manager containing the details of these cases to provide management with the opportunity to address specific training needs.

**Taxpayer inquiries cover a wide range of issues**

**Types of Cases.** Business taxes cases are sorted broadly into "compliance," "audit," or "other" categories. Of the 678 cases opened, 68 percent were compliance cases, 12 percent were audit cases, and 20 percent were categorized as "other," such as consumer use tax exemptions, general information, and Franchise Tax Board matters.

**Specific Issues Leading to TRA Office Contacts.**



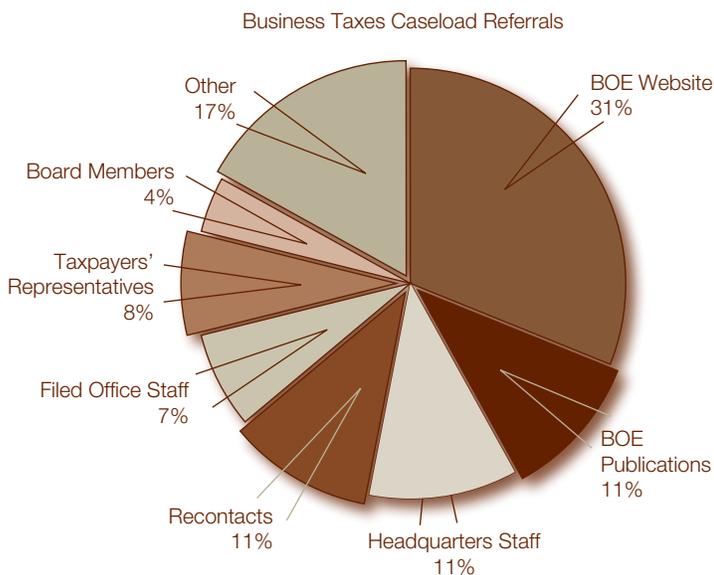
Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. The top three issues in each case were tracked and the 20 most common are displayed in Appendix 4.

Not surprisingly, many of the business taxes cases include the need for information and guidance as one of the issues. Taxpayers often seek information on a particular procedure or process or to determine if an action taken by BOE staff was appropriate and in compliance with the law and BOE policy. TRA Office staff provide guidance by recommending specific courses of action. The remaining most common issues in descending order were: Levy or

Wage Garnishment, Payment Plan, TRA Intervention Requested, Questioning Liability, Refund, Policy/ Procedure, Tax Collection, Revocation, Audit Procedures, Lien, Returns, Penalty, Bank Fee Reimbursement, Offers in Compromise, Petition, Account Maintenance, Appeals, Consumer Complaint, and Interest.

**How taxpayers were referred to the TRA Office**

In an effort to improve public service, the TRA Office attempts to identify the source of referrals. As in the past, this year the BOE website was the largest source of referrals, accounting for 31 percent of the business taxes cases. BOE publications accounted for 11 percent. Other important sources of referral were BOE headquarters staff (11 percent), field office staff (seven percent), taxpayers’ representatives (eight percent), and Board Members (4 percent). Eleven percent of the business taxes cases were recontacts.



**Examples of Business Taxes Cases**

The following cases illustrate how taxpayers’ issues are resolved by TRA Office staff and indicate the range of services provided by the Advocate and the business taxes technical advisors.

**Notice of Determination was not received prior to collection actions**

**Issue.** The TRA Office was contacted regarding a financial hardship caused by an earnings withholding order placed on the caller’s wife’s paycheck. He explained his wife is the sole wage earner for their family of five and they recently filed for bankruptcy, lost their home, and were falling behind on their rent. Furthermore, he claimed his wife never received a Notice of Determination (billing) prior to collection action being taken.

In researching this matter, TRA Office staff learned that the husband and wife had been separately billed as responsible persons for the liabilities of a closed corporation for which they were corporate officers. The wife’s personal Notice of Determination had been sent to an address from which they had moved over a year earlier, even though the BOE had a record of the current address on the primary (corporate) account. Therefore, the wife did not have an opportunity to timely petition the billing. Collection action had commenced following one telephone message left by the collector, in which the reason for the call was not stated.

**Resolution.** The TRA Office brought this situation to the attention of the field office, which agreed the billing was not valid because it was not sent to the current address of record. The field office released the earnings withholding order and a levy. The TRA Office alerted the field office when the bank sent the captured funds despite the levy release, and the field office intercepted the funds and mailed them back to the bank. The field office intended to re-issue the determination; however, it was found that the statute of limitations under Revenue and Taxation Code section 6829(f) did not allow a new Notice of Determination to be issued, as the period had expired.

**Summary-Services Provided.** The TRA Office worked on the taxpayer’s behalf with the field office and the Audit Determinations and Refunds Section to ensure the invalid Notice of Determination

nation was canceled, all collection actions were stopped, and funds captured through the bank levy were returned to the taxpayer.

### ***Liability Discharged in Bankruptcy***

**Issue.** A taxpayer contacted the TRA Office because his employer received a wage garnishment for him related to an outstanding BOE liability. However, the taxpayer believed the issue regarding the liability had been resolved in his favor. The TRA Office's research disclosed that the taxpayer had been billed for use tax as a member of a limited liability corporation (LLC) and that he had not prevailed in his petition for redetermination. However, the TRA Office noticed that one of the other members of the LLC filed bankruptcy and was granted a discharge on this liability. Additional independent research disclosed that the taxpayer who contacted the TRA Office also underwent a bankruptcy. After gathering all the relevant facts surrounding both bankruptcies, the TRA Office requested that an analysis be performed by the BOE's Bankruptcy and Specialized Audit Section in regard to this taxpayer's bankruptcy.

**Resolution.** Based on the specific facts of the case, the Bankruptcy and Specialized Audit Section concluded that the taxpayer's debt to BOE was discharged. The TRA Office then advised the taxpayer to file claims for refund for all amounts collected by the BOE.

**Summary-Services Provided.** As the TRA Office reviews a case, often aspects of law, policy or procedure or other important facts that had not been noted previously are brought to light. Here, the TRA Office staff's research abilities and knowledge of the bankruptcy law led to questions about the dischargeability of the liability that were resolved in the taxpayer's favor.

### ***Taxpayer Helped by Extensive Information and Advice***

**Issue.** A taxpayer contacted the TRA Office, concerned that his permit was going to be revoked and his liquor license suspended. The taxpayer

explained he had recently filed the delinquent returns requested in the revocation proceedings notice, but could not afford to pay his liability in full. The TRA Office learned that the taxpayer also was in the process of appealing a non-final audit determination and had an open escrow for the sale of his business. The taxpayer was concerned that the BOE intended to place a demand in escrow for both the final liabilities (unpaid self-reported amounts from returns) and the audit liabilities still under appeal.

**TRA Office Actions.** The TRA Office confirmed with the field office collector's supervisor that the cause of the revocation—delinquent returns—had been cleared, but that a keeper had been requested to be stationed in the business to collect sales receipts for the delinquent taxes. The TRA Office informed the taxpayer of the possibility of an installment payment plan and ensured the taxpayer understood what documentation was needed to request a payment plan. The TRA office also secured an extension of time on the suspension of the liquor license. In addition, the TRA Office consulted with the Special Operations Branch regarding the escrow demand; discussed with the appeals attorney the status of the appeal and what documentation had been requested from the taxpayer to prove his contentions; and spoke to staff in the Settlement Section to confirm that the taxpayer could still apply for settlement if desired. The TRA Office then provided all of this information to the taxpayer.

**Summary-Services Provided.** The taxpayer stated the TRA Office advisor had made the processes he was involved in much easier by explaining collection and appeals procedures as they related to his business and the steps he needed to take to resolve his concerns. He also expressed gratitude for the advisor's unsolicited follow-up contacts to ensure the taxpayer had all the information he needed.

## ISSUE RESOLUTION

The two primary functions of the TRA Office are to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and laws to improve and ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, suggestions received from BOE staff, and issues identified by TRA Office staff, recommendations are presented to the program staff for evaluation. The TRA Office then works with BOE staff to assist in the development and implementation of policy, procedure or law changes to address any identified areas of concern.

### Accomplishments—Changes Implemented, Concerns Resolved

The following changes to business taxes policies and procedures were accomplished this past year. In some cases, TRA Office concerns were resolved through improvements to the training and education provided to BOE staff and the public.

#### *Guidelines needed on providing copy of levy to taxpayer*

**Area of Concern.** BOE collectors are required to provide a copy of a Notice of Levy to the taxpayer after issuing it. Prior to July 2009, *Compliance Policy and Procedure Manual (CPPM) 753.205, Notice of Levy*, provided in part:

*The "Notice of Levy" is a two-page document. The first page of the form is sent to the entity being levied, i.e., a bank, savings and loan association, etc., who is known as the "garnishee." The second copy is sent directly to the tax debtor informing them of the levy.*

*Taxpayers are entitled to the exemptions provided in Code of Civil Procedure (CCP) section 704.010<sup>2</sup>. Therefore, BOE-425, Exemptions*

*from the Enforcement of Judgments, and BOE-425-L3, Notice of Levy—Information Sheet, must accompany the copies of the levy notice sent to the garnishee and the tax debtor. Centralized banks can take from ten (10) to twenty (20) days to acknowledge receipt of a "Notice of Levy" or to attach funds in a taxpayer's account. The tax debtor's copy, including the instruction sheet and exemptions list shall be mailed to the tax debtor. This mailing is required by CCP section 700.010. Per CCP section 703.520, the taxpayer has ten days from the date of receipt of the "Notice of Levy" to file a claim of exemption with the office that issued the levy.*

The TRA Office had received complaints on a number of occasions from taxpayers claiming they never received a copy of BOE's Notice of Levy and only learned of the levy from their bank. When a taxpayer does find out about the levy and contacts the collector to file a claim of exemption, the bank may have already sent the funds or is in the process of doing so.

The TRA Office understands that it is prudent for the collector to avoid sending a copy of the Notice of Levy to the taxpayer concurrent with issuing the levy to the financial institution, and that a delay is warranted so that the purpose of the levy is not thwarted. However, the TRA Office recommended consideration of procedural changes to ensure that the copy of the Notice of Levy and required informational material is sent to the taxpayer promptly after the levy is issued.

**Concern Addressed.** Various possible procedural revisions were discussed with the Sales and Use Tax Department (SUTD) to ensure that a collector sends a copy of the levy to the taxpayer in time to enable the taxpayer to timely avail him or herself of the right to file a claim of exemption. The SUTD expressed a concern regarding the variability of banking operations and they surveyed field offices to determine the range of time that banks take to

<sup>2</sup> The reference should be to CCP sections 703.010 through 704.995, which allow tax debtors to claim exemptions from levy. See also CPPM Section 753.260, *Exemptions Available to Taxpayers*.

process levies. It was noted that banks generally send their notice to their customers immediately; however, the concern was that the customer (taxpayer) may not get the list of exemptions timely.

On March 24, 2010, the SUTD's Tax Policy Division sent a memo to staff, reminding them that they are required to send copies of the Notice of Levy, list of exemptions, and an information sheet to the tax debtor after service of the levy. Staff was instructed to send these documents to the taxpayer within ten calendar days after service of the levy. If the taxpayer asserts they qualify for an exemption from enforcement of the levy, staff was also directed to provide an additional three days for the taxpayer to file a claim of exemption and to request that the financial institution place a hold on any funds captured for an additional three days before sending the funds to the BOE. Additionally, staff was reminded that procedures for handling a claim of exemption are detailed in the CPPM, section 753.205 et. seq.

In order to implement a long-term solution for this concern, SUTD is seeking resources for the development of processes that will centralize mailing exemption notices to taxpayers and to automate this function. If funding for this project is approved, the processes and automation will apply to both Sales and Use Tax and Special Taxes accounts. Programming is expected to be considered for implementation in fiscal year 2011-12.

***Need for procedural changes to prevent unauthorized disclosure of social security number on Notice of Levy***

**Area of Concern.** CPPM 753.200, Levy Policy, provides in part:

*Staff will delete the taxpayer's social security number from all copies of the Notice of Levy when the levy is being sent to entities other than financial institutions. In ACMS [Automated Collection Management System], click on the drop down menu near the bottom of the first page of the levy just after the statement, "You are notified in the capacity of a", select "person*

*in possession of monies owed to tax debtor," and then delete the populated taxpayer's social security number in the Identification of Taxpayer window on the original levy notice.*

The TRA Office was contacted by two different taxpayers complaining that their social security numbers had been disclosed by BOE staff to their customers or competitors. In both cases the BOE had issued Notices of Levy to suppliers and/or customers but staff had failed to delete the social security numbers from the Notices as required by CPPM 753.200. In addition, staff failed to change the capacity of the recipient indicated on the Notices from a financial institution to a "person in possession of monies owed to tax debtor."

The TRA Office requested revisions to BOE's existing procedures and/or ACMS programming to ensure that social security numbers are not disclosed to other financial institutions. Possible options considered were to add a pop-up box to remind the collector to choose the correct type of recipient; add a function in ACMS to automatically delete the social security number from the Notice of Levy when the collector selects the "person in possession of monies owed to tax debtor" as the recipient; and require the collector to manually enter the social security number as needed, instead of having the number automatically printed on the Notice.

**Concern Addressed.** The Sales and Use Tax Department (SUTD) has requested programming to suppress population of the social security number on the levy notice if the collector selects a recipient other than a financial institution. Programming is expected to be implemented in fiscal year 2011-12. In the interim, the SUTD's Tax Policy Division sent a memo to staff in February 2010 providing a reminder regarding adhering to provisions of CPPM 753.200.

***Staff guidance needed for assisting taxpayers facing financial difficulties***

**Area of Concern.** A tax professional submitted written comments to the Board Members about BOE installment payment agreements in connection with

the June 15, 2010 Taxpayers' Bill of Rights Hearings. The tax professional expressed concern about a number of instances in which BOE compliance staff have been unwilling to negotiate reasonable payment plans with his clients to allow the taxpayers to pay their accounts receivable "without being put out of business by unreasonable and unrealistic payment demands."

During the Board's discussion of this concern at the June 15 hearings, it was noted that in the current economy more taxpayers are requesting payment plans. The TRA Office was directed to work with Sales and Use Tax Department staff to develop consistent guidance to BOE staff relative to consideration of taxpayer requests for payment plans. It was suggested that it may be possible to develop a checklist of factors that staff could refer to, to assist them in deciding when to grant a taxpayer's request for a payment plan and to ensure a consistent response to taxpayers.

**Concern Addressed.** The Advocate actively discussed this matter with the Sales and Use Tax Department and Board Member staff. The goal of the TRA Office was to assist in ensuring staff is responding appropriately and with flexibility in granting requests for installment payment agreements, considering the current economic realities faced by taxpayers, while upholding the law and making decisions in the best interests of the state. In October 2010, the Sales and Use Tax Department issued a memorandum to staff reminding them of the need to be flexible when dealing with taxpayers who have been affected by the economic downturn facing California and the nation, and to inform such taxpayers of all of their options. The TRA Office will continue to monitor this area of concern, and will work with department management to appropriately address any continuing issues.

## Work in Process—Issues Identified

As a result of taxpayer contacts and review of trends, policies, and procedures within the BOE, the TRA Office has recommended consideration of the following issues and is working with staff to develop solutions:

### *Guidance to staff needed when accepting returns filed in response to compliance assessments*

**Issue.** If an active business with a seller's permit fails to file a return and does not respond to staff's inquiries concerning the nonfiling, staff may estimate the amount due and issue a billing for the amount, a compliance assessment (CAS). Often, the taxpayer files the missing return after the CAS becomes final. If the amounts on the post-CAS return differ from the estimated amounts on the CAS, the return is processed as a Pending Taxpayer Original return. Collection staff then reviews the post-CAS return to determine if the taxpayer reported correctly, and may request supporting documentation for the amounts reported. If the information on the post-CAS return is accepted, the taxpayer's liability for the period is adjusted accordingly.

Sales and Use Tax Department staff asked whether there was a statute of limitations governing when a taxpayer would be allowed to submit a late return intended to replace a CAS. The TRA Office's research disclosed no statute that sets the timeframe whereby a taxpayer must take action to enforce their rights to correct a billing when the BOE has assessed an estimated tax for failing to file a return.

In considering the question from field staff, the TRA Office realized there does not appear to be written guidance for staff on how to proceed when a taxpayer sends a late return or other information to refute the amount billed through a CAS. For instance, TRA Office staff could find no written directions or guidelines to be used in verifying information provided on a post-CAS return.

**Work in Process.** The TRA Office recommended that written policy and procedures be developed for collection staff to follow upon the receipt of a post-CAS return. The Sales and Use Tax Department indicated they were drafting an Operations Memo that will disseminate approved policies and procedures regarding compliance assessments, including guidelines for staff when post-CAS returns are received. The Operations Memo will include guidelines for use by special taxes programs as well as the sales and use tax program. The TRA Office will participate in the clearance of the new Operations Memo, in order to ensure the policies address taxpayer rights concerns and the procedures give clear and complete guidance to staff.

***Guidance to staff needed for when a taxpayer is making court ordered restitution payments***

**Issue.** The TRA Office was contacted by a taxpayer who claimed she was harassed by a BOE collector. The taxpayer had been criminally prosecuted, was incarcerated, and ordered to pay restitution to three state tax agencies, including the BOE. The county probation department was charged with prorating the restitution payments between the three agencies. The taxpayer stated that, after making payments for about five years, her probation officer approved a reduction in the payments to BOE when she claimed she was no longer able to make the designated payments. The taxpayer objected when the BOE collector requested that the taxpayer submit financial documentation to support the reduction of the restitution payment amount.

Discussions between the TRA Office, the Legal Department, and the Sales and Use Tax Department resulted in concurrence that the collector should have made inquiries of the probation department or the court to confirm the adjusted payment amount was authorized by the court. This case brought to the TRA Office's attention the need for guidance to staff on how to proceed with collection cases while restitution payments are being made. TRA Office staff could locate no guidelines regarding BOE's authority or responsibility during this time.

**Work in Process.** The TRA Office brought its concerns to management's attention and, based on discussions, have identified the following areas where written policy and procedures are needed for collection cases where taxpayers are making court-ordered restitution payments:

- What mechanisms are in place to monitor the payment of restitution payments and how should staff proceed if restitution payments are not made?
- What steps are needed to ensure that collection staff has access to the court order upon sentencing so that all details regarding restitution payments are known?
- What procedures will ensure that taxpayers are routinely informed that, regardless of the amount of restitution ordered by the court, their liability to the BOE is not discharged until paid in full?
- If the taxpayer has an additional BOE liability that is separate from the debt addressed by the court, how should BOE collection staff proceed with collection of the additional liability in light of the ongoing restitution payments?
- If collection staff becomes aware of a change in the taxpayer's financial situation while restitution payments are being made, can or should the BOE petition the court for an adjustment to the payment amount or date certain to complete the payments?

The TRA Office understands that the Investigations Division of the Legal Department generally receives information regarding the details of sentencing, including any restitution payment orders. In addition, they can assist collection staff when the taxpayer is not complying with the terms of the disposition or plea agreement while serving out their probation.

At the TRA Office's request, the Sales and Use Tax Department worked with the Legal Department's Investigations Division and Special Operations Branch, as well as with the Property and Special Taxes Department to draft policies and procedures to guide staff actions when taxpayers are ordered to make restitution to the BOE. A new database was developed to track restitution cases; however, at the close of fiscal year 2009-10, issuance of a new Operations Memorandum was delayed while the work group, under the direction of the Special Operations Branch, addressed a number of legal issues and procedural questions. The TRA Office will continue to participate in the work group and in the review of the draft Operations Memo to ensure all taxpayer rights issues are addressed.

### ***Copy of investigation for dual billings should be provided to dualee***

**Issue.** Corporate officers and other individuals who have been held personally liable for the liabilities incurred by terminated corporations, limited liability companies, etc. ("dualees") have contacted the TRA Office on a number of occasions to seek information about the determination (billing). Often, the individuals have expressed concern that they were not aware that they were to be personally billed or they received no explanation as to how the BOE determined they were personally responsible.

In researching the basis for the dual determinations, TRA Office staff learned that there was no policy in place in either the Centralized Collections Section or in field offices to provide the dualee with a copy of the investigation and staff recommendation which is prepared for management approval and provides the basis for the dual determination.

The TRA Office was concerned that taxpayers are not afforded due process when an individual is billed for a liability without an adequate explanation as to why he or she was billed. As more than one dualee explained to the TRA Office, it was difficult to prepare an effective petition for redetermination (appeal) without knowing staff's

position. The TRA Office recommended that new procedures be promulgated to routinely provide a copy of all dual investigations, including the basis for staff's recommendation, to dualees once approved for billing.

**Work in Process.** Currently, upon request, a copy of the dual investigation package is provided to the individual who is being held personally responsible. The Sales and Use Tax Department is developing a standard report (letter) to be routinely provided to dualees that will explain the basis of the billing and how requirements for personal responsibility are deemed met. The Sales and Use Tax Department staff initiated a preliminary clearance and two re-clearances of the draft letter, as they worked to address reviewers' suggestions and comments. The TRA Office has provided extensive comments and will continue to participate in the clearance of this important new mechanism for ensuring due process protections.

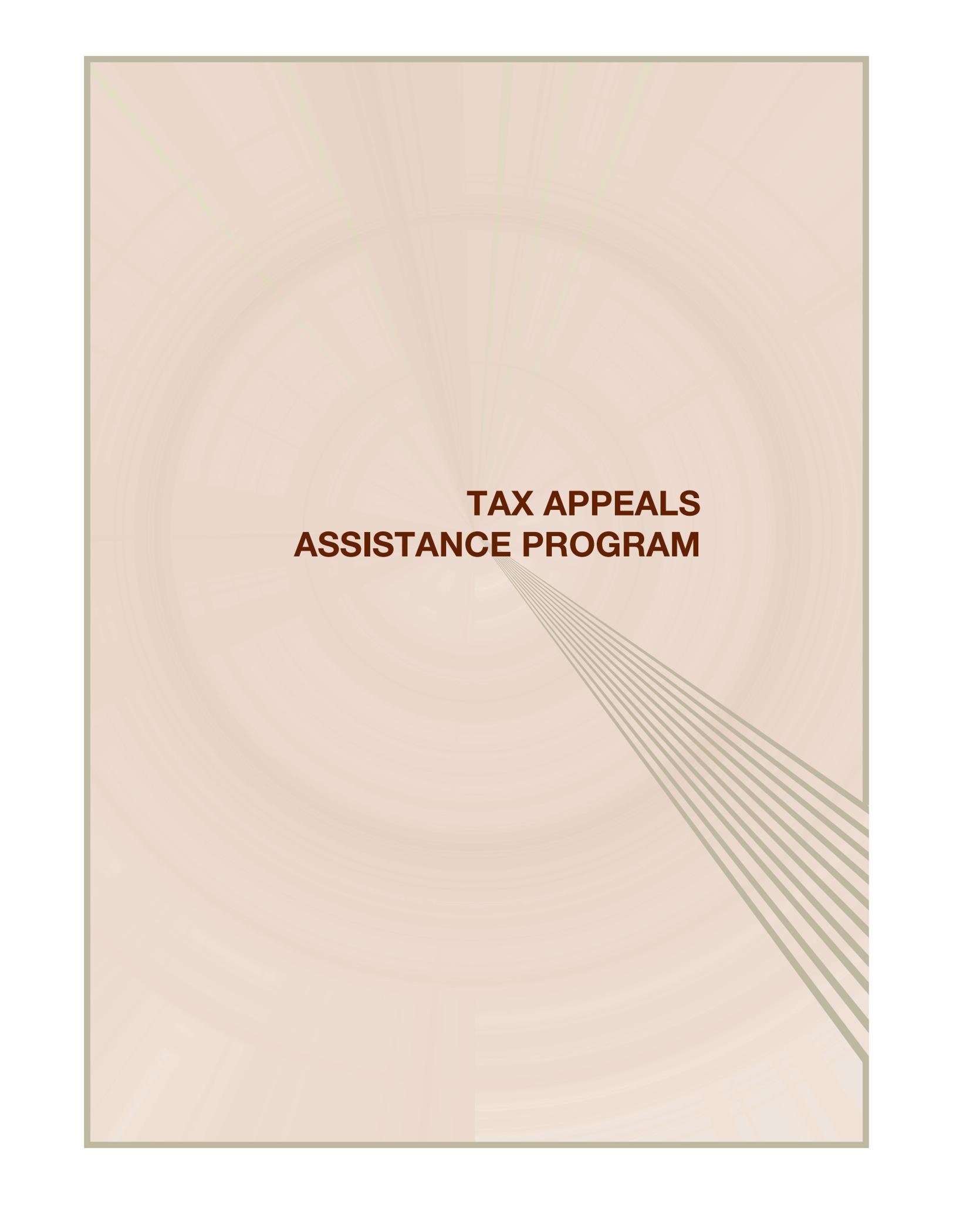
### ***Possible unequal treatment of taxpayers regarding exemption from levy—social security deposits***

**Issue.** Section 704.080 of the Code of Civil Procedure (CCP) states, in part, that certain payments such as social security benefits, when directly deposited by the government or its agents, are automatically exempt from levy action without filing a claim of exemption with the BOE. As an example, this section provides "...\$2,425 are exempt where one depositor is the designated payee of directly deposited social security payments..."

However, if a taxpayer receives their social security benefits via a check, there is no automatic exemption if the BOE captures these funds through a levy. Rather, the taxpayer will have to file for an exemption with the BOE. Further if the taxpayer's social security funds are comingled with other funds, the taxpayer will likely be required to prove that the social security funds were not spent prior to the levy being served.

Taxpayers who receive social security deposits via check instead of via direct deposit may not be receiving equal treatment under the law in regard to the legal exemption from levy. The TRA Office proposed consideration of a policy clarification such that if a taxpayer files a claim of exemption stating that their social security funds have been captured through a levy sent by BOE (and provides supporting documents), the BOE would release or refund the captured funds using the same limits set forth in CCP section 704.080. In addition, proposed policy would provide that, if a taxpayer is able to show that social security funds were received and deposited, they would not be required to prove that the social security funds were not spent prior to the levy being served.

**Work in Process.** The Sales and Use Tax Department, the Property and Special Taxes Department, and the Legal Department were in general agreement with this proposed policy. The Sales and Use Tax Department drafted an Operations Memo to clarify policy regarding social security benefits. When the clearance on the Operations Memo is complete, staff will be provided guidance on how to proceed when notified that funds in excess of the automatic exemption amount (for social security direct deposits) exist and when taxpayers claim that funds captured include social security benefits deposited by check. The TRA Office is participating in the clearance review and has suggested additions to the information in the draft Operations Memo. We also recommended that the Sales and Use Tax Department incorporate information into an existing BOE publication about the duties of taxpayers to file exemption claims.



**TAX APPEALS  
ASSISTANCE PROGRAM**

## ABOUT THE PROGRAM

The Board of Equalization (BOE) serves as the administrative appellate body for the tax and fee programs it administers. Its appellate duties also include review of final actions of the Franchise Tax Board involving the state's Corporation Tax, Personal Income Tax, and Homeowner and Renter Property Tax Assistance Laws.

The Taxpayers' Rights Advocate (TRA) Office created the Tax Appeals Assistance Program in fiscal year 2005-06 to allow low-income taxpayers who have filed an appeal the opportunity to seek free legal assistance, which is provided by law students. Five law schools participate in the program: the University of the Pacific McGeorge School of Law in Sacramento, the Loyola Law School Los Angeles, the Chapman University School of Law in Orange, the Golden Gate University School of Law in San Francisco, and the University of San Diego School of Law in San Diego. All interactions with participating law schools are overseen by the TRA Office, which also provides instructors for the students.

The program is offered to appellants who are appealing decisions of the Franchise Tax Board, including denials of applications for Homeowner and Renter Property Tax Assistance<sup>3</sup> and income tax disputes of less than \$20,000 if the dispute relates to one of the following issues:

- Penalties
- Head of household
- Residency \*
- Innocent spouse \*
- Interest abatement
- "California Method" (Revenue and Taxation Code section 17041)
- Federal action (notice of proposed assessment based on an action by the Internal Revenue Service)
- Statute of limitations (assessments or refunds)
- Childcare credits \*
- Exemption credits \*
- Other state tax credits \*
- Personal income tax deductions \*
- Corporate minimum tax \*

\* Issues added to the program this year

In fiscal year 2009-10 the TRA Office expanded the Tax Appeals Assistance Program to assist individuals appealing BOE consumer use tax billings. The first contact letters to prospective clients with consumer use tax appeals of less than \$20,000 were sent out in September 2009.

The Tax Appeals Assistance Program has been well received by all five law schools and the program's clients. The TRA Office will continue to work with the Appeals Division, the Sales and Use Tax Department, and the Special Taxes and Fees Division to develop guidelines and parameters for adding additional business taxes appeals to the program.

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<sup>3</sup> No Homeowner and Renter Property Tax claims are being processed by the Franchise Tax Board because the program is not currently funded.

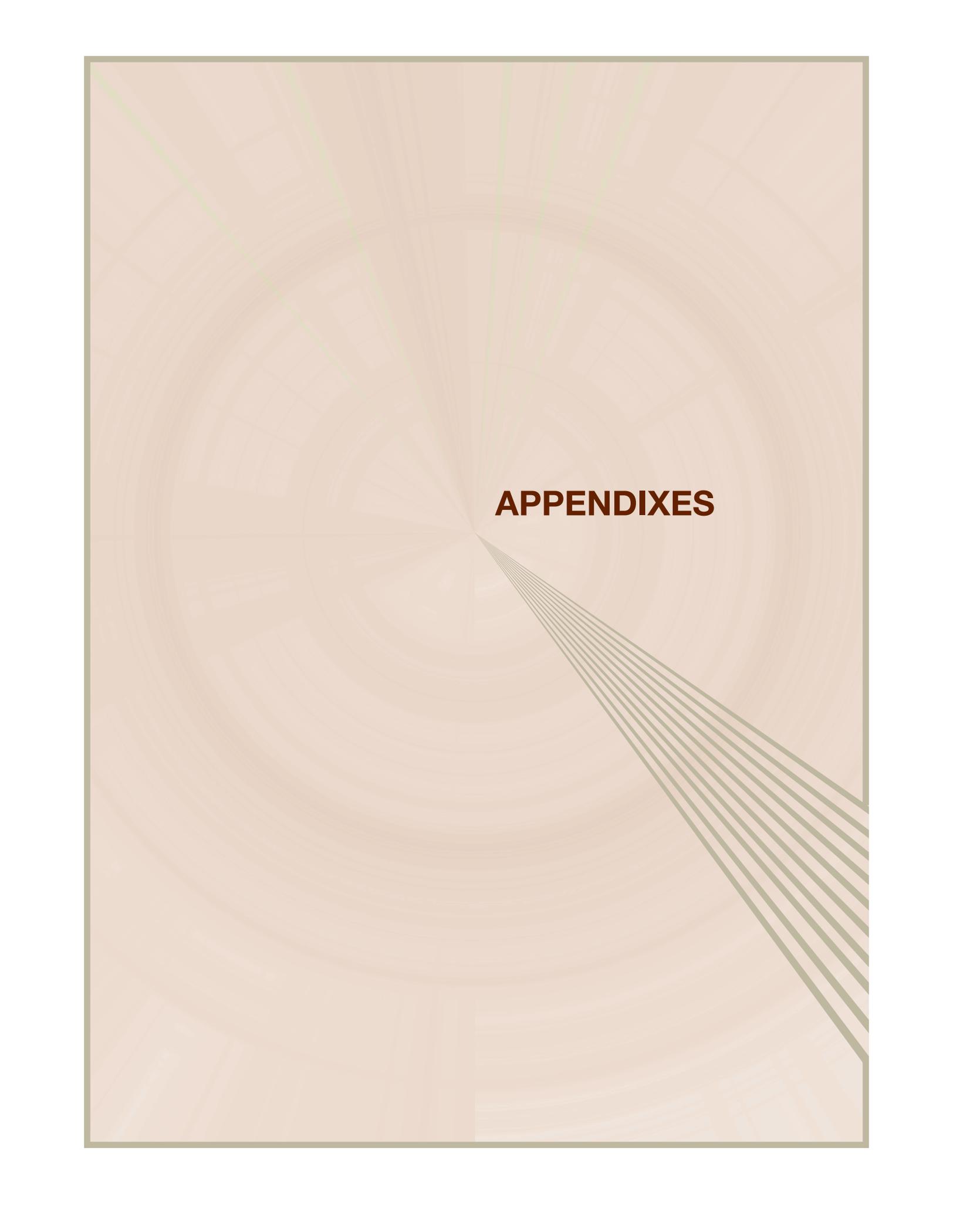
## CASE RESOLUTION

Since its inception, the program has grown from one law school with five students instructed by one BOE tax counsel, to five law schools and 40 students instructed by two BOE tax counsels. As noted previously, the program was expanded starting in September 2009 to accept appeals of consumer use tax billings. By June 2010, consumer use tax appeal cases were being offered at all five law schools. In addition, a wider variety of franchise and income tax issues under appeal were being accepted into the program by year-end.

During fiscal year 2009-10, 234 franchise and income tax appellants were contacted, 93 were accepted into the program, and 102 cases were resolved (including some cases that were accepted prior to July 1, 2009). This year, 428 individuals appealing consumer use tax determinations were contacted, 99 appellants were accepted into the program, and 29 cases had been resolved as of June 30, 2010.

The Tax Appeals Assistance Program makes a positive difference in the lives of its clients. This year's completed cases have fulfilled the purposes of the program, which are to:

- Educate and assist taxpayers in voluntarily complying with California's tax laws while minimizing their tax compliance burden, and
- Enhance the preparation and quality of the appeals that come before the Board Members.



# **APPENDIXES**

## APPENDIX 1

### The Harris-Katz California Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

**7080. Title.** This article shall be known and may be cited as “The Harris-Katz California Taxpayers’ Bill of Rights.”

**7081. Legislature’s findings and declarations.** The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will improve both voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer’s correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer’s liability.

**7082. Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

**7083. Taxpayers’ Rights Advocate.** (a) The board shall establish the position of the Taxpayers’ Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

**7084. Education and information program.** (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Taxpayer or industry groups identified in the annual report described in Section 7085.

(3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller’s permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

**7085. Identification of taxpayer noncompliance by board.** (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether or not professional tax preparation assistance was utilized by the taxpayer.

(F) Whether sales and use tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the full board where industry representatives and individual

taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

**7086. Preparation of statements by board.**

The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

**7087. Limit on revenue collected or assessed.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest revenue quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

**7088. Evaluation of employee's contact with taxpayers.** (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

**7089. Plan to timely resolve claims and petitions.** No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

**7090. Procedures relating to protest hearings.** Procedures of the board, relating to protest hearings before board hearing officers, shall include all of the following:

(a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.

(b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her attorney, accountant, or other designated agent.

**7091. Reimbursement to taxpayer.** (a) Every taxpayer is entitled to be reimbursed for any

reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

**7092. Investigations for nontax administration purposes.** (a) An officer or employee of the board acting in connection with any law administered by

the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

**7093.5. Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the

recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section

shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

**7093.6 Offers in compromise.** (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7

(commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected sales tax reimbursement or use tax from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 7 (commencing with Section 6811) of Chapter 6.

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this

part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer’s liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement that permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that the installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in

any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining “sufficient annual income” for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required sales and use tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file sales and use tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer’s present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(l) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and

no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(n) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(o) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

**7094. Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers’ Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

**7094.1. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

**7095. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

**7096. Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

**7097. Preliminary notice to taxpayers prior to lien.**

(a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error.

In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

**7098. Notice preliminary to suspension.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

**7099. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Section 7156.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from

the board and shall be collected as a tax imposed under this part.

**7099.1. Protection of taxpayer communications.**

(a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communications.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the State Board of Equalization.

(3) For purposes of this section:

(A) "Federally authorized tax practitioner" means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) "Tax advice" means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, "federal tax advice" means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) "Tax shelter" means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(b) The privilege under subdivision (a) shall not apply to any written communication between a

federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

## APPENDIX 2

### The Morgan Property Taxpayers' Bill of Rights

(Revenue and Taxation Code Sections)

**5900. Title.** This part shall be known and may be cited as “The Morgan Property Taxpayers’ Bill of Rights.”

**5901. Findings and declarations.** The Legislature finds and declares as follows:

(a) Taxes are a sensitive point of contact between citizens and their government, and disputes and disagreements often arise as a result of misunderstandings or miscommunications.

(b) The dissemination of information to taxpayers regarding property taxes and the promotion of enhanced understanding regarding the property tax system will improve the relationship between taxpayers and the government.

(c) The proper assessment and collection of property taxes is essential to local government and the health and welfare of the citizens of this state.

(d) It is the intent of the Legislature to promote the proper assessment and collection of property taxes throughout this state by advancing, to the extent feasible, uniform practices of property tax appraisal and assessment.

**5902. Administration.** This part shall be administered by the board.

**5903. “Advocate.”** “Advocate” as used in this part means the “Property Taxpayers’ Advocate” designated pursuant to Section 5904.

**5904. Property Taxpayers’ Advocate; responsibilities.** (a) The board shall designate a “Property Taxpayers’ Advocate.” The advocate shall be responsible for reviewing the adequacy of procedures for both of the following:

(1) The distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers.

(2) The prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

(b) The advocate shall be designated by, and report directly to, the executive officer of the board. The advocate shall at least annually report to the executive officer on the adequacy of existing procedures, or the need for additional or revised procedures, to accomplish the objectives of this part.

(c) Nothing in this part shall be construed to require the board to reassign property tax program responsibilities within its existing organizational structure.

**5905. Additional duties.** In addition to any other duties imposed by this part, the advocate shall periodically review and report on the adequacy of existing procedures, or the need for additional or revised procedures, with respect to the following:

(a) The development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

(b) The development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language, all of the following matters:

(1) Taxation of real and personal property in California.

(2) Property tax exemptions.

(3) Supplemental assessments.

(4) Escape assessments.

- (5) Assessment procedures.
- (6) Taxpayer obligations, responsibilities, and rights.
- (7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.
- (8) Property tax appeal procedures.

**5906. Additional duties.** (a) The advocate shall undertake, to the extent not duplicative of existing programs, periodic review of property tax statements and other property tax forms prescribed by the board to determine both of the following:

- (1) Whether the forms and their instructions promote or discourage taxpayer compliance.
- (2) Whether the forms or questions therein are necessary and germane to the assessment function.

(b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:

- (1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.
- (2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.
- (3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.

(4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

(c) Nothing in this section shall be construed to modify any other provision of law or the California Code of Regulations regarding requirements or limitations with respect to the correction of the assessment roll, the cancellation of taxes, the issuance of refunds, or the imposition of penalties or interest.

(d) The board shall annually conduct a public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers, to address the advocate's annual report pursuant to Section 5904, and to identify means to correct any problems identified in that report.

**5907. Employee evaluations.** No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

**5908. Educational assistance.** Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

**5909. Written rulings.** (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an

actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer's failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

(1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.

(2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

**5910. Report to board.** The advocate shall, on or before January 1, 1994, make specific recommendations to the board with respect to standardizing interest rates applicable to escape assessments and refunds of property taxes, and statutes of limitations, so as to place property taxpayers on an equal basis with taxing authorities.

**5911. Legislative intent.** It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

## APPENDIX 3

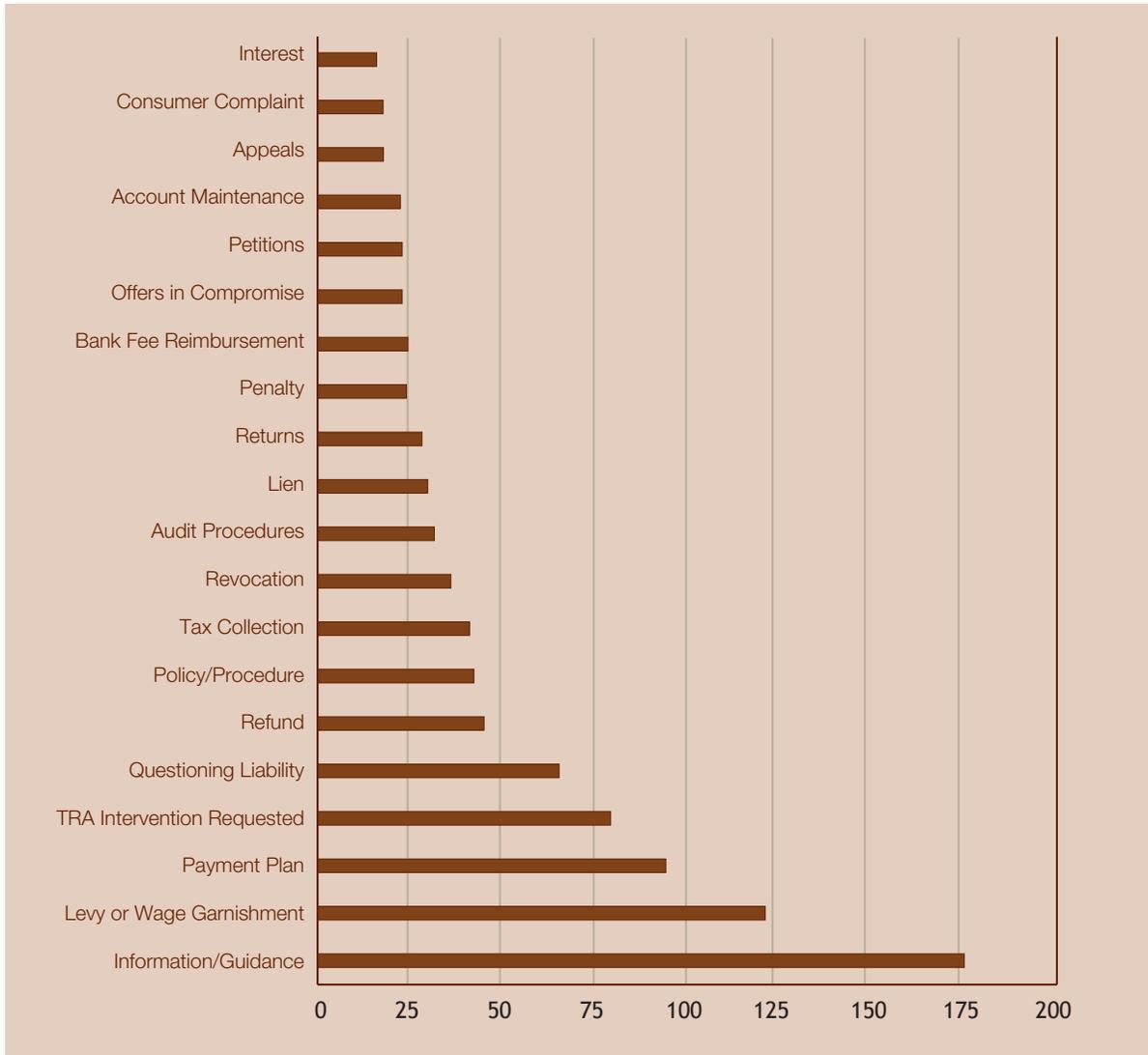
### Outcomes of Business Taxes Cases

Office of Origin	Cases by Issue Type			Total Cases	Customer Service Concerns	Agreed with Staff Case Handling		Case Handling Changed		Taxpayer Satisfied with Outcome	
	Audit	Compliance	Other			Yes	No	Yes	No	Yes	No
Norwalk (AA)	7	9	2	18	4	13	1	5	10	13	1
Van Nuys (AC)	4	11	0	15	3	14	0	5	10	11	1
West Covina (AP)	6	3	1	10	2	8	0	0	8	5	0
Ventura (AR)	2	6	1	9	3	3	2	3	3	5	1
Culver City (AS)	4	44	2	50	6	33	1	10	33	31	2
San Francisco (BH)	0	15	0	15	1	11	1	5	8	10	0
Oakland (CH)	7	29	0	36	1	32	1	8	26	21	1
Irvine (EA)	7	32	4	43	3	28	0	9	23	30	3
Riverside (EH)	5	15	1	21	1	12	0	8	8	13	0
San Diego (FH)	3	17	1	21	2	8	0	4	10	12	1
San Jose (GH)	6	27	2	35	3	23	2	6	23	20	2
Santa Rosa (JH)	1	16	1	18	4	10	2	2	14	15	1
Sacramento (KH)	1	54	1	56	4	43	2	13	39	30	4
Out-of-State (OH)	1	1	2	4	2	0	1	2	0	2	0
Appeals Division	6	4	2	12	3	3	0	2	5	7	0
Board Members' Offices	0	1	1	2	0	0	0	0	0	2	0
Centralized Collection Section	1	70	7	78	4	50	3	14	51	45	6
Consumer Use Tax Section	0	7	1	8	0	3	0	1	5	5	0
Environmental Fees Division	2	4	0	6	2	3	0	0	6	2	1
Excise Taxes Division	0	5	1	6	0	3	0	0	3	2	0
Franchise Tax Board	0	12	19	31	0	4	0	0	7	11	0
Fuel Taxes Division	0	6	2	8	2	3	0	1	4	5	1
HQ—General	7	7	5	19	3	6	0	4	6	11	1
Offers In Compromise Section	1	4	1	6	0	6	0	1	5	3	3
Petitions Section	1	2	2	5	2	2	0	1	2	4	0
Refunds Section	3	14	5	22	6	11	1	6	9	13	2
Return Analysis Unit	0	14	3	17	4	13	0	3	11	14	0
Special Operation Branch	0	3	0	3	0	2	0	0	2	2	0
Taxpayers' Rights Advocate	3	1	7	11	0	2	0	0	2	3	0
Other	1	27	65	93	0	9	0	0	11	36	2
<b>Total</b>	<b>79</b>	<b>460</b>	<b>139</b>	<b>678</b>	<b>65</b>	<b>358</b>	<b>17</b>	<b>113</b>	<b>344</b>	<b>383</b>	<b>33</b>

**Note:** A number of outcomes are tracked for business taxes cases. Not all outcomes are applicable to all cases.

## APPENDIX 4

### Most Common Issues in Business Taxes Cases



**Note:** Individual business taxes cases may involve a variety of issues that caused the taxpayer to contact the Taxpayers' Rights Advocate Office. Up to three issues in each case were tracked and the 20 most common issues are displayed here.

