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Taxpayers' Rights Advocate's

2013-2014 ANNUAL REPORT — PROPERTY AND BUSINESS TAXES

February 2015

Ms. Cynthia Bridges
Executive Director

Dear Ms. Bridges:

I am pleased to present the Taxpayers' Rights Advocate's 2013-14 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; and
- Contains examples of cases illustrating the services our office provides.

All tax and fee payers are afforded protection under the Taxpayers' Bills of Rights, and should expect to be treated with professionalism, respect, and cooperation when they come into contact with Board of Equalization (BOE) staff. Therefore, the Taxpayers' Rights Advocate Office focuses ongoing efforts both on educating taxpayers about their rights and responsibilities and on promoting BOE staff's commitment to honor and safeguard the rights of taxpayers. In addition, the Taxpayers' Rights Advocate Office wants to make sure BOE staff understand the important role all BOE employees play in ensuring taxpayers' rights are protected during the assessment and collection of taxes and fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd C. Gilman". The signature is fluid and cursive, with the first name "Todd" being the most prominent.

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 taxpayers¹ 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.

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

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 and consumer use tax accounts, which currently include approximately 942,000 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 and fee programs administered by the Board of Equalization (BOE), currently affecting approximately 1,025,000 taxpayers in 29 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](#)).

A summary of the taxpayers' rights statutes that apply to the tax and fee programs administered by the BOE can be found in BOE [publication 70](#), *Understanding Your Rights as a California Taxpayer*.

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;
- Works with BOE staff to ensure that 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 the Taxpayers' Rights Advocate Office Fulfills its Legal Responsibilities

Facilitates resolution of taxpayer complaints or problems

The Taxpayers' Rights Advocate (TRA) Office generally assists taxpayers who:

- Have been unable to resolve a matter through normal channels;
- Want information regarding BOE procedures;
- Claim their rights have been violated in either the audit or compliance areas; or
- Seek confirmation that staff action is lawful and consistent with BOE policy.

The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps 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. 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 tax 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 to the way the TRA Office resolves business taxes issues, property tax cases are primarily resolved directly with the county assessors, tax collectors, auditor-controllers, and county boards of supervisors (all elected officials), as well as assessment appeal boards. Additionally, the TRA Office works with the BOE's Legal Department and the County Assessed Properties Division when required. 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.

The *Business Taxes Issues* and *Property Tax Issues* chapters of this report include 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, 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

- 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* (September 2011), which is available in all BOE offices and on the BOE's website.
- [Publication 231](#), *Hit the Wall Trying to Solve Your Tax Problem? We Can Help* (October 2012), is a brochure that briefly summarizes how the TRA Office can help when normal channels do not work. Publication 231 is provided at many public events and is available on the BOE website.
- [Publication 215](#), *Free Legal Help . . . Do You Qualify?* (December 2012), explains to prospective clients what help is available from the Tax Appeals Assistance Program, which is overseen by the Advocate.
- [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 (search for "Your Rights").

- Many BOE publications prepared for permit or license holders reference the TRA Office's toll-free telephone number.
- The TRA Office's toll-free number is printed on the BOE's permits and licenses.
- Articles reminding taxpayers about their rights and referencing [publication 70](#) are published each year in BOE newsletters.
- Contact information for key TRA Office staff can be found at the back of this Annual Report.

Email and Telephone Contacts

- The TRA Office's webpage, www.boe.ca.gov/tra/tra.htm, can be accessed from any page of the BOE's website. The webpage contains a video message from the Advocate introducing 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:

- Meetings of the Board of Equalization: The Advocate or a TRA Office staff member is present and available to answer questions or assist taxpayers arriving for their hearings before the Board Members in Sacramento, and is available by telephone to assist taxpayers at Board meetings held in other cities.
- Board Member-sponsored events: The Advocate or designee attends Small Business Fairs and Seminars 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 and some presentations are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such the IRS Nationwide Tax Forum, the annual meeting of the California Tax Bar and California Tax Policy Conference, 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.

CONTACTS RECEIVED IN FISCAL YEAR 2013-14

Cases

The TRA Office worked 897 cases in fiscal year 2013-14 compared to 972 cases in the previous fiscal year. The TRA Office caseload was comprised of 68 percent business taxes cases and 32 percent property tax cases.

The BOE website accounted for the largest source of referrals for all TRA Office cases. In fiscal year 2013-14, taxpayers indicated they learned about the TRA Office via the Internet in 16 percent of the property tax cases and in 33 percent of the business taxes cases. The *Property Tax Issues* and *Business Taxes Issues* chapters include listings of other important means by which taxpayers learned about the TRA Office.



Telephone Calls

Telephone call volume in fiscal year 2013-14 increased slightly from the previous year, at an average of 812 calls per month (not including calls that resulted in new cases), compared to 801 calls per month in fiscal year 2012-13. 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.

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

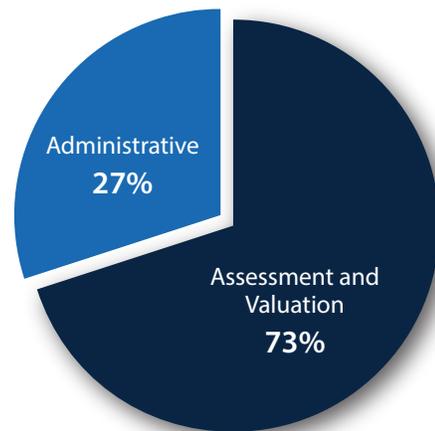
The TRA Office received 289 property tax cases in fiscal year 2013-14 compared to 326 cases in the previous fiscal year. The TRA Office tracked the number of cases by county of origin and found, for the most part, that the population of the county tends to determine the number of cases from each county.

Ten counties represented 67 percent of the cases while those ten counties represent 71 percent of the state's population. The ten counties include Alameda, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara, and Ventura. 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 2013-14, 73 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 27 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.



Two specific change in ownership exclusion issues that are tracked each year, base year value transfers between parents and children and base year value transfers for taxpayers 55 years of age or older or persons severely and permanently disabled (Revenue and Taxation Code sections 63.1 and 69.5 respectively), accounted for seven percent of the total cases in fiscal year 2013-14 compared to eleven percent of the total caseload for fiscal year 2012-13.

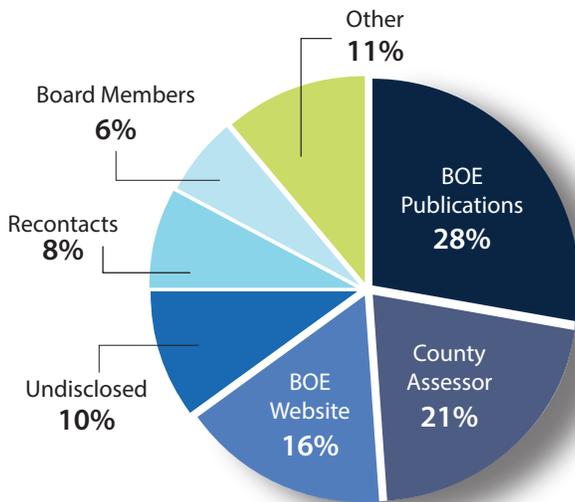
Specific property tax issues leading to TRA Office contacts

Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 3](#).

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. This year the category of BOE publications was the largest source of referrals, accounting for 28 percent of the property tax cases. In the last several years the BOE website accounted for the most referrals. County assessors accounted for 21 percent compared to last year's 15 percent.²

Property Tax Caseload Referrals



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. Our role usually involves review and explanation of processes and methodology, and facilitation of resolutions between taxpayers and county departments.

Estate closed before tax bill arrived

Issue. A taxpayer was the executor of an estate. Property the decedent owned was quickly transferred to the heirs. The assessor did not know about the transfer upon the decedent's death and did not assess that change of ownership until after the property transferred to the heirs. The estate had already closed prior to the assessor finding out about the death. The taxpayer expressed her concern at the June 2014 Taxpayers' Bill of Rights Hearing that she did not timely receive a property tax statement. In addition, she stated her belief that Proposition 13 protections against property tax increases should not be removed following the death of the property owner while the property is still in trust.

While the law requires that the assessor of any county be notified where a decedent owns property, this does not always happen timely. This creates a time lag in reassessments that the assessors fully recognize as a problem, as confirmed by the California Assessors' Association President, who commented on the issue at the Taxpayers' Bill of Rights Hearing, as requested by the Board. Often, a change in ownership due to a death is first recognized by the assessor's office when the property transfers to a buyer or an heir.

Resolution. The TRA Office confirmed the correctness of the assessment, explained the factors that can delay a property tax statement following a death, and explained that the burden falls on the executor of the decedent's estate to report a property owner's death to the county assessor.

In regard to the taxpayer's comments about Proposition 13 protections against property tax increases, the TRA Office explained that the change in ownership provisions of Revenue and Taxation Code section 60 do not include an exclusion from the definition of "change in ownership" for transfers upon death. The taxpayer was advised to follow up with her local legislator if she wished to propose a law change to allow that type of exclusion.

²The "Other" category consists of various types of referrals, each comprising two percent or less of the total, including county appeals boards, BOE staff, county tax collectors, and the State Controller's Office.

Summary—Services Provided. In this case, the TRA Office confirmed the correctness of the assessment and provided an explanation about statutory provisions regarding change in ownership.

Taxpayer had questions about assessment of life estate

Issue. A taxpayer contacted the TRA Office with questions about change in ownership and what triggers a reassessment. He was trustee and heir to three properties owned by his deceased ex-wife, with whom he had a son. The trust was structured such that the taxpayer would receive income from the properties for his lifetime and, upon his death, the properties would be transferred to his son. The taxpayer had a number of questions but was not able to obtain answers from the assessor's office:

- Would his acceptance and receipt of income from the life estate trigger a reassessment of the properties as a change in ownership?
- If the answer to the first question is yes, could the properties be excluded from reassessment if he denies the income and gives the properties directly to his son?
- If the properties are transferred to his son, what basis is used to assess the properties — current market value or the present assessed value?

Resolution. The TRA Office sought expert advice from the BOE Property and Special Taxes Department on behalf of the taxpayer, provided the taxpayer with a source of general information about change in ownership, and contacted the appropriate expert in the county assessor's office to personally assist the taxpayer. The taxpayer was able to avoid reassessment and his son was granted the parent-child exclusion from change in ownership.

Summary—Services Provided. The taxpayer benefited from the TRA Office's ability to understand his situation and obtain expert advice from BOE staff on his behalf. In addition, the TRA Office's contacts with personnel in county offices allowed them to solicit individual assistance from the county.

TAXPAYER SERVICE IMPROVEMENTS BY COUNTIES

The TRA Office notes specific improvements counties have made in the services provided to the public. Each year we monitor and report on improvements that either directly or indirectly enhance service to the public.

Napa County

Napa County Assessor's Office scanned their Master Property Records for periods in which data about parcels was hand-typed, from the 1950s through March 1, 1987, when the division moved to a computerized tracking system. These images are tied to each parcel and available to the public in the assessor's office and to county staff. Although state statute prohibits these images from being posted on the Internet, the records from that period are available to the appraisal staff so they have all the pertinent information in order to make fair assessments. In addition, Napa County has linked their parcel data to the overall County Geographic Information System, allowing the public to view on the Internet aerial photography of a parcel along with certain parcel data. State statute prohibits the owner's name and address from being displayed.

San Bernardino County

San Bernardino County now accepts values from other counties under Revenue and Taxation Code section 69.5 as of January 1, 2014. This means that, under certain circumstances, people over the age of 55 who move from other counties to San Bernardino County can retain their property's tax base. There are currently ten counties accepting values under this code section. Those counties are Alameda, El Dorado, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, and Ventura.

Sacramento County

Systems and workflow issues caused the Assessor to completely revamp the way that building permits are handled. It was discovered that certain permits were not added to the system, and thus not appraised, for up to 18 months after issuance. This resulted in tax bills for multiple roll years. Under the new system,

controls have been put in place to alert staff when jurisdictions have failed to submit building permit data as required by law. About half of the cities in the County provide permit information electronically, while the remainder still rely on hard copy documents. Work is underway to convert all Sacramento County's cities to electronic processes, thus improving efficiency and reducing costs. Additionally, standard notifications to taxpayers have been revised to make it easier for taxpayers to provide information about their construction projects.

Humboldt County

The Humboldt County Assessor's Office, in conjunction with the County of Humboldt, launched a new website in July 2014. The new website includes more interactive tools for citizens plus easier site navigation. The County Assessor's web address changed to www.humboldt.gov/220/Assessor and the page features printable parcel maps, frequently used forms in a fillable and printable format, pertinent information on property tax assessments in general, an assessment inquiry option, and links to other valuable information. These types of website improvements are becoming the norm for both large and small counties alike.

Santa Clara County

The Santa Clara County Assessor's Office now allows taxpayers the opportunity to receive Notices of Value online in late June of each year. Additionally, taxpayers have online access to property characteristics and are able to change their mailing address online.

Los Angeles County

The Los Angeles County Assessor's Office developed a detailed exemption manual that enables staff to process exemptions more quickly. They also developed a processing program for reviewing and enrolling the value of manufactured homes, including those in a decline-in-value status. In addition, their website now has overviews of the various types of exemptions available and a printable brochure for taxpayers' convenience.

Santa Barbara County

The Santa Barbara County Assessor's Office is now accepting the electronic filing of business property statements, which makes it more convenient for taxpayers to file and more expedient for staff to reconcile.

BUSINESS TAXES ISSUES

CASE RESOLUTION

Approximately two-thirds of the Taxpayers' Rights Advocate (TRA) Office's contacts consist 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."

A primary goal of the TRA Office is to ensure that taxpayers contacting the office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed. Because the Advocate and his staff have extensive knowledge of BOE programs, policies, and procedures, they are able 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 them 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 the office offers its customers.

About the Business Taxes Case Statistics

During fiscal year 2013-14, the TRA Office recorded 608 new business taxes cases, compared to 646 cases in the previous fiscal year.

Outcome of business taxes cases

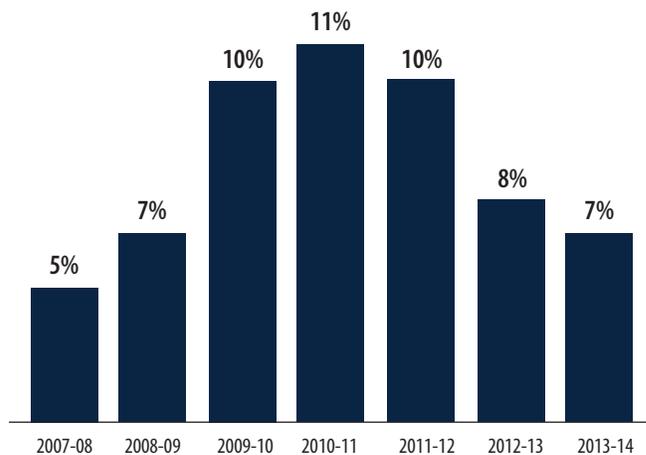
Appendix 4 provides important information about the cases, categorized by office of origin. A specific BOE field or Headquarters office or the Franchise Tax Board was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "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 because the manner in which taxpayers are treated is 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 are categorized as:

- *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 decreased slightly this year at seven percent (see [Appendix 4](#)). The percentage of business taxes cases in recent years expressing concerns related to customer service is illustrated below.



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.

Disagreed with Staff Case Handling. After investigating a taxpayer's concerns, the TRA Office is often able to confirm that staff's handling of the situation was consistent with legal, regulatory, and procedural mandates. Nevertheless, it is still possible that staff handling of the case could change. This may happen due to additional information coming to light through the TRA Office's investigation and communication with staff and the taxpayer; or as a result of the TRA Office's recommendation of a different approach to produce a result 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 — only four percent in fiscal year 2013-14 (see [Appendix 4](#)). A case is recorded as "disagreed with staff handling" only when the TRA Office finds that:

- Staff did not adhere to the law or approved policies or procedures;
- Staff acted contrary to what the taxpayer was told by staff;
- Staff caused unreasonable delays; 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, which provides management 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. The "other" category represents consumer complaints, general information requests, and matters involving other state agencies.



Specific Issues Leading to TRA Office Contacts. Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 5](#).

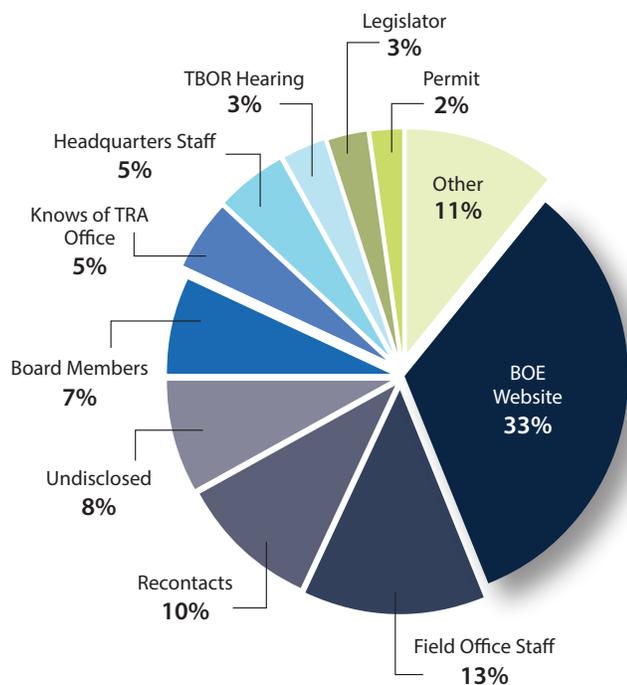
Not surprisingly, many of the business taxes cases include the need for general information and guidance. Taxpayers often seek information on a particular procedure or process or to determine if an action taken by BOE staff was appropriate and in compliance with the law and BOE policy.

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 to its office. As in the past, this year the BOE website was the largest source of referrals, accounting for 33 percent of the business taxes cases.³

³ The "Other" category consists of various types of referrals, each comprising less than two percent of the total, including BOE publications, friends and colleagues, and other government agencies.

Business Taxes Caseload Referrals



Examples of Business Taxes Cases

The following cases illustrate how taxpayers' issues are resolved by TRA Office staff with the cooperation of BOE staff, and indicate the range of services provided by the business taxes technical advisors. These three cases in particular demonstrate how TRA Office's ability to take a fresh look at a case and focus attention on all aspects of the situation benefits the taxpayer and the BOE.

Billing issued to "merged" corporation without right to appeal

Background. Corporate "mergers" are discussed and described in the California Corporations Code (CCC), but are not specifically defined there. Mergers are, however, defined under California case law as the absorption of one corporation by another which survives and, together with the added capital, franchises and powers of the merged corporation, continues the combined business. The merged corporation ceases to exist, and the merging corporation alone survives.⁴

"Conversions" of corporations are governed by the CCC. A converted corporation is one that results from a conversion of another type of business entity. A corporation in California that wishes to convert into another domestic business entity must approve a plan that conforms to requirements set forth in the CCC and file the plan with the Secretary of State.

Statutory legal formalities required to effect "merger reorganizations" (all mergers other than short-form mergers) and "short-form mergers" are set forth in the CCC. For example, a merger reorganization requires the approval and filing of an agreement of merger by the board of each corporation; a short-form merger requires the filing of a resolution or plan of merger approved by the board of the parent corporation.

Case law also describes a third type of merger, a "de facto" merger, which involves business entities transferring assets between themselves, while failing to observe statutory formalities necessary to properly complete a statutorily described merger.

The BOE's Compliance Policy and Procedures Manual (CPPM) provides collection guidance when dealing with merged or converted entities in section 726.033, which provides in part:

A merger involves two or more entities while a conversion involves only one. In a merger, one entity is absorbed by another so that the assets, debts, obligations, etc., of the disappearing entity are transferred to and become part of the combined assets, debts, and obligations of the surviving entity. In a conversion, the entity that converts into another is for all purposes the same entity that existed before the conversion, except that the form of business organization (and possibly the name) has changed. In both cases, the law stipulates that the debts and obligations of the former entity become the debts and obligations of the new or surviving entity.

Since the debts and obligations of the former entity become the debts and obligations of the converted or merged entity, it is inappropriate to issue successor billings or dual determinations to transfer or replicate a liability established against the former entity to the

⁴ 15 Fletcher, *Cyclopedia Corporations* (1961) § 7041, p. 9: 1 Ballantine & Sterling, *California Corporation Laws* (4th ed. 1963) p. 565

converted entity. By operation of law, these merged or converted entities are not entitled to the statutory 30-day petition rights accorded rightful dualees or successors.⁵ Instead, a demand billing will be sent to the surviving or converted entity for payment of the liability incurred by the former entity, with conversion information and appropriate reference to the origin of the liability included. This also applies to billing to a surviving corporation in a statutory corporate merger.

Issue. The TRA Office was asked by a Board Member to review a demand billing received by a corporation (Corporation B) for an audit liability incurred by a different corporation (Corporation A). Corporation A had filed for bankruptcy and closed. Thereafter, Corporation B, whose officer was the son of Corporation A's officer, commenced operations in the same line of business as Corporation A, with Corporation A's officer holding a small share of Corporation B. Subsequently, the closed permit of Corporation A was audited, and a liability established. Corporation A had not appealed the audit findings and the liability was final.

Collection staff had obtained approval from the Special Operations Branch to issue a demand billing to Corporation B as a converted or merged corporation with Corporation A. As a result, Corporation B was charged with Corporation A's liability without the right to file a Petition for Redetermination. Both corporations argued that no merger or conversion had occurred.

Based on the TRA Office's independent research, it questioned the ability of the BOE to issue a demand billing under CPPM section 726.033 in this case and was concerned that Corporation B's only right to appeal the liability was to pay the tax amount due and request a refund. It was found that no merger documents were filed with the Secretary of State and, while the documentation used by the Sales and Use Tax Department did indicate that the corporations were related and may have merged, much of the evidence was rebuttable. The TRA Office pointed out that generally when there is rebuttable evidence and the BOE is asserting liability, a Notice of Determination

rather than a demand billing would be issued, giving the surviving corporation a chance to appeal the billing.

Resolution. The TRA Office's concerns were forwarded to the BOE Legal Department for response. As a result, the demand billing to Corporation B was canceled. In its opinion regarding how merger and conversion billings should be handled, the Legal Department acknowledged the difficulties inherent in a situation where a corporation shuts down without formally dissolving and the owner forms a new corporation, doing the same business in the same location, with no formal merger and no contract of sale that would support billing the new corporation under successor liability. The opinion stated that, when the facts appear to allow BOE to assert that there has been a "de facto" merger, or that the new corporation should be billed as a "mere continuation" of the former entity, the Legal Department should be consulted before any billing takes place.

Summary — Services Provided. The TRA Office investigated the facts of the case and the California laws and BOE policy governing mergers and conversions. Based on its research, the TRA Office raised questions, not only about the appropriateness of the demand billing in this case, but also about how the policy provided in CPPM 726.033 should be implemented. As a result, the liability in the case referred to the TRA Office was resolved, and the Legal Department replaced an earlier opinion on the subject of mergers and conversions with an opinion providing more thorough guidance. The TRA Office plans to follow up with the Sales and Use Tax Department regarding appropriate revisions to policy based on the guidance provided by the Legal Department.

Wrong account in out-of-state bank was levied

Issue. A taxpayer who was living outside California contacted the TRA Office regarding concerns about a bank levy. The levy sought funds in payment of a 20-year-old liability incurred by a closed corporation for which the taxpayer was being held personally liable. The taxpayer explained that the levy, sent to

⁵ This statement is correct in regard to final liabilities; however, if the original entity petitioned a liability, the newly added entity would join the same appeal that is pending against the disappearing entity.

an out-of-state bank, included his spouse's name and the name of his current business, a non-California corporation. The levy had attached a large amount on his business' bank account. That corporation never operated in California and owed no California taxes. In addition, the taxpayer did not understand why the levy was for roughly twice the amount owed by the closed corporation, and stated the hold on his bank account would prevent him from paying his employees and business expenses. Furthermore, he claimed he had proof that he had nothing to do with the business during the time the liability was incurred.

The TRA Office's research disclosed that the levy was sent to an out-of-state bank that had no nexus (locations or business connections) in California; therefore, the BOE lacked jurisdiction to issue the levy to the bank. The levy included the name of an unrelated entity with no tax liability. The name of the taxpayer's spouse, who was not on the permit, was included on the levy without the statement that is required if the BOE intended to attach community property. It was found that the amount of the levy included a liability unrelated to the entity named on the levy.

Resolution. After the TRA Office pointed out the problems with the levy to BOE collection staff, the levy was released. The TRA Office advised the taxpayer regarding appeal rights and assisted the taxpayer's representative in gathering appropriate financial documentation to support a feasible installment payment agreement. Collection staff agreed to accept a nominal short-term monthly payment amount while the taxpayer worked on an offer in compromise.

Summary — Services Provided. The TRA Office identified specific errors on the levy and collection staff readily released it once the matter was brought to their attention. The TRA Office then continued to assist the taxpayer in resolving the liability by providing advice and assistance on appeal options and an equitable payment plan.

Guidance and assistance provided on appeals process

Background. *The Rules for Tax Appeals of the State Board of Equalization* (Cal. Code of Regs, Title 18, Div.

2.1) are the hearing procedures applicable to the various tax and fee programs administered by the BOE. Rule 5266 provides that either the taxpayer or the department (e.g., Sales and Use Tax Department) may submit a written request for reconsideration in response to recommendations in a Decision and Recommendation (D&R) issued by the Appeals Division that contains the Appeals staff's findings. The request for reconsideration (RFR) is to be submitted within 30 days after the issuance of the D&R or letter from the Appeals Division explaining the results of a reaudit that was recommended in the D&R.

Section (d) of Rule 5266 provides that the Appeals Division will prepare a Supplemental D&R to respond to an RFR. The Appeals Division may also issue a Supplemental D&R when it deems it appropriate to do so, including where no party has filed a timely RFR.

Issue. The TRA Office was contacted by a taxpayer's representative regarding his client's pending appeal of an audit. The representative asked a general question about audit procedures and expressed concern that he had not heard anything regarding the appeal, which was filed 16 months earlier, fearing that he may have failed to take a required action at some point.

The TRA Office discussed the audit matter with the representative, researched the status of the appeal, and contacted a staff person in the Petitions Section to inquire if everything was in order to move the case forward. The Petitions Section responded that the case would be sent to the Appeals Division in approximately two weeks. After confirming that the case was moved into the next appeals phase, the TRA Office informed the representative and provided a general timeline in which an appeals conference could be expected.

Eleven months later the taxpayer's representative contacted the TRA Office again regarding his client's appeal. He explained that the D&R, which contained the Appeals Division's recommendation to grant the petition, was issued 47 days earlier. Pursuant to the audit findings, the district office had placed a hold on an escrow account for a sub-location the taxpayer sold. The representative called the district office and was told the hold could not be lifted because the department could still appeal. The representative

wanted to know if this was correct, since the department had not filed an RFR within the 30 days provided by Rule 5266.

Resolution. The TRA Office discussed the appeal with the District Principal Auditor, who confirmed that an RFR was not requested, but stated the district had voiced its objections to the D&R to department management. Next, the TRA Office contacted the Petitions Section and asked that the case be finalized since the department had not filed an RFR within 30 days from the issuance of the D&R. Five days later a Notice of Redetermination was issued, effectively ending the appeal and allowing the provisional hold on the escrow account to be released. One week later, the TRA Office confirmed that the hold on the escrow account was lifted, and informed the representative.

Summary — Services Provided. Taxpayers and their representative understand that the TRA Office, as a neutral party whose staff is well informed about the appeals process, is able to provide informative, non-biased information about the audit and appeals processes. In addition, TRA Office staff's close working relationships with BOE personnel throughout the agency provides for direct and efficient communication as the TRA Office works to obtain answers and assistance for taxpayers and their representatives.

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 BOE management for evaluation. The TRA Office then works with BOE staff 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 laws, policies

and procedures; or improvements to the training and education provided to BOE staff and the public were accomplished this past year.

Only financial information should be used to evaluate a proposed installment payment agreement

Issue. The BOE has discretion under the law to allow an installment payment agreement (IPA) in cases of financial hardship, thereby accommodating a taxpayer's economic realities while allowing the taxpayer to meet its obligation to the state. As reported in the Advocate's 2012-13 Annual Report, taxpayers now have the ability to propose an IPA online, and if predetermined criteria are met, the IPA is automatically approved without the requirement of submitting financial information.

When a proposed IPA does not meet the criteria for automatic acceptance, collection staff may request that a taxpayer submit specific financial documents needed to evaluate the IPA request. Such documents may include, for example, a completed [BOE-403-E, Individual Financial Statement](#), bank statements, or income tax returns. Compliance Policy and Procedures Manual section 770.023, *Rejecting a Standard Installment Payment Agreement*, provides that the taxpayer's proposal to enter into an IPA may be rejected if the taxpayer's financial circumstances do not warrant the BOE accepting payments over time or if the taxpayer fails to provide adequate documentation to support the need for an IPA.

The TRA Office was concerned that collectors were requiring taxpayers to submit documents that did not relate to their financial circumstances in order to be considered for an IPA. For example, the TRA Office brought to the attention of Sales and Use Tax Department (SUTD) management that collectors were routinely requiring corporate taxpayers to submit a completed questionnaire used by collection staff to investigate personal liability for corporate officers or other potential responsible persons in order to be considered for an IPA.

Resolution. The SUTD agreed with the TRA Office that a reminder to staff was needed on the appropriate types of documentation required for evaluating a

proposed IPA. In March 2014, a memorandum was sent to SUTD staff, with a copy to Special Taxes and Fees management, stating that documentation that does not support the taxpayer's financial circumstances should not be requested or used to reject or deny an IPA.

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.

Notice of Proposed Determination letters should be issued for dual determinations other than R&TC section 6829

Issue. In fiscal year 2010-11, the Sales and Use Tax Department (SUTD) developed a standard report (letter) to be routinely provided to individuals proposed to be held personally liable for a business' tax debt under R&TC section 6829. The letter explains the basis of the proposed billing and how requirements for personal responsibility are deemed met. The BOE-1515, *Notice of Proposed Determination*, is sent to the proposed responsible person(s) 15 days prior to final review and billing. The BOE-1515 outlines the basis for holding the person personally liable under R&TC section 6829, explains their appeal rights, advises them to respond within 15 days if they disagree, and explains that they may obtain copies of documentation relied on by staff to determine the person's liability.

This procedure is working well and is providing taxpayers an opportunity to resolve their liability at an early stage, in some cases without the need to go through a lengthy petition process. The TRA Office believes that all taxpayers being held liable for the debt of another entity should be afforded the same due process and, accordingly, proposed that the SUTD mirror the process of issuing Notice of Proposed Determination letters to responsible persons under R&TC section 6829 for all other types of dual determinations, such as successors, predecessors, and questionable ownership.

Work in Process. The TRA Office is working on drafts of appropriate versions of the BOE-1515 letter for other proposed dual determinations consistent with the latest revision of the BOE-1515, and will continue working with affected BOE units in the SUTD and Legal Department to resolve procedural complications related to this proposal.

A BOE form and filing instructions should be developed for claims of exemption from levy and third-party claims

Background

Claims of exemption. Code of Civil Procedures (CCP) §703.520(a) provides that a tax debtor making a claim of exemption in response to a Notice of Levy must do so within 10 days after the date the notice of levy on the property claimed to be exempt was served.

CCP §703.530(a) provides "If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment [tax] debtor and the spouse and dependents of the judgment debtor, the claim of exemption shall include a financial statement."

CCP §700.010 (amended by Stats. 2013, Ch. 64, Sec. 4, effective 1/1/14) requires the levying officer (the BOE in this case) to provide to the tax debtor, along with a copy of the Notice of Levy:

- A copy of the form listing exemptions prepared by the Judicial Council pursuant to CCP §681.030;
- The list of exemption amounts published pursuant to CCP §703.150;
- A form the tax debtor may use to make a claim of exemption pursuant to CCP §703.520; and
- A form the tax debtor may use to provide a financial statement pursuant to CCP §703.530.

BOE policy in Compliance Policy and Procedures Manual (CPPM) 753.205 requires BOE collectors to send a copy of the Notice of Levy to the taxpayer within 10 calendar days after the levy has been mailed to the garnishee and to provide a list of legal exemptions, BOE-425, *Exemptions from the Enforcement of Judgments*, and a BOE-425-L3, *Notice*

of *Levy – Information Sheet*, along with the tax debtor's copy of the *Notice of Levy*.

Third-party claims. A third party may claim ownership or the right to possession of property subject to a Notice of Levy pursuant to CCP §688.030. CCP §§720.110 and 720.120 require that a third-party claim be made by the person claiming ownership and that the claim be submitted prior to the levying officer receiving the levied funds. Therefore, if a claim is received after the BOE has deposited the funds the only recourse available to the claimant is to follow the claim for refund process. CCP §720.130 requires a third-party claim to be executed under oath and provides specific requirements for the contents of the claim.

CPPM 753.210, *Third Party Claims*, provides general information and guidance on processing third-party claims. A third-party claimant should file its claim with the BOE office that issued the levy and the BOE office issuing the levy is responsible for advising the claimant of all the requirements for a valid claim and determining whether the third-party claim conforms to the requirements of CCP §720.130. All conforming third-party claims are to be immediately referred to the Litigation Division of the Legal Department, where a determination will be made whether to release the levy or refer the matter to the Attorney General.

The information sheet that is required to be provided to the tax debtor with the copy of the *Notice of Levy*, [BOE-425-L3](#), contains a section on "Information for Person Other Than Judgment Debtor" that provides in part: "If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon, you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800."

Issues

Claims of exemption. The BOE is not fully compliant with CCP §700.010 because, as the levying officer, it does not provide a form the tax debtor may use to make a claim of exemption pursuant to CCP §703.520, nor a form the tax debtor may use to provide a

financial statement for making a claim of financial hardship pursuant to CCP §703.530.

Third-party claims. The TRA Office regularly receives questions and concerns from non-liable third-parties whose bank accounts or investment accounts were impacted by BOE levies. The TRA Office believed it would be beneficial to BOE staff and to third-party claimants to develop a BOE form for use in filing a written third-party claim. Typically, the third party would not receive the *Notice of Levy – Information Sheet* that is sent to the taxpayer with the copy of the Notice of Levy, and even if they did, there is no information on it about how to file a claim with the BOE and no notice that the claim must be received by the BOE prior to the BOE depositing the funds. If a standard third-party claim form were available, with general information and instructions, any BOE employee contacted by a potential claimant could immediately provide the form to the individual.

Work in process. The TRA Office worked with the Special Operations Branch of the Legal Department on a draft of a new claim form that can be used for either a claim of exemption to levy or a third-party claim. As suggested by the Special Operations Branch, the new claim form was proposed to be printed on the back of the [BOE-425-L3](#), *Notice of Levy - Information Sheet*, that is required to be provided to the tax debtor. In addition, the information sheet was revised to make the information easier to understand and a section was added regarding claims of financial hardship. Finally, text was added that refers to the BOE-403-E, *Individual Financial Statement*, which is to be provided to the tax debtor along with the information sheet.

At the close of fiscal year 2013-14, the revised BOE-425-L3, with the new exemption claim form printed on the back, was in the process of BOE-wide review. Once the review is complete and the revised BOE-425-L3 is approved, the TRA Office and the Special Operations Branch have offered to work with both the Sales and Use Tax Department and the Special Taxes Policy and Compliance Division on the preparation of guidance to staff on use of the new form.⁶

⁶ The revisions to the BOE-425-L3 completed clearance in September 2014.

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 Franchise and Personal Income Tax Laws.

The Taxpayers' Rights Advocate created the Tax Appeals Assistance Program (TAAP) in fiscal year 2005-06 to allow low-income and underrepresented taxpayers who have filed an appeal the opportunity to seek free legal assistance, which is provided by law students. The law students are instructed by three BOE tax counsels reporting to the Advocate, who oversees the program.

Seven law schools participate in the program: the Loyola Law School Los Angeles, the Chapman University School of Law, the Golden Gate University School of Law, the University of San Diego School of Law, the Lincoln Law School of Sacramento, the San Francisco University School of Law, and the Santa Clara University School of Law.

Franchise and Personal Income Tax Appeals

The program is offered to appellants who are appealing decisions of the Franchise Tax Board with less than \$20,000 in dispute, if the dispute relates to:

- Penalties;
- Head of household;
- Residency;
- Innocent spouse;
- Interest abatement;
- "California Method" (R&TC section 17041, subdivision (b));
- Federal action (notice of proposed assessment based on an action by the Internal Revenue Service);
- Statute of limitations (assessments or refunds);
- Child and dependent care credits;

- Exemption credits;
- Other state tax credits;
- Personal income tax deductions; or
- Corporate minimum tax.

Business Taxes Appeals

The TAAP is available to assist individuals with appeals related to:

- Consumer use tax billings under \$20,000;
- Cigarette and Tobacco Products Licensing Act violations; or
- Dual determinations under \$20,000.

The TAAP has been well received by all seven law schools and the program's clients. The Advocate will continue to work with the Appeals Division, the Sales and Use Tax Department, and the Property and Special Taxes Department to develop guidelines and parameters for adding additional business taxes appeals to the program.

CASE RESOLUTION

During fiscal year 2013-14, 1,123 individuals were informed about the program, 327 cases were accepted, and 245 cases were resolved.

The TAAP 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.

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). A 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 a compromise shall not 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 of 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. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(m) A 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 a person did any of the following acts regarding the making of the offer:

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

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record or made a 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) A person who, in connection with an 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 pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

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

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a 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, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another 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, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, 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, erroneous processing action, or erroneous collection action 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, erroneous processing action, or erroneous collection action. 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, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the levy or notice to withhold, erroneous processing action, or erroneous collection action, 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 the bank and third-party charges were incurred by the taxpayer. 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.

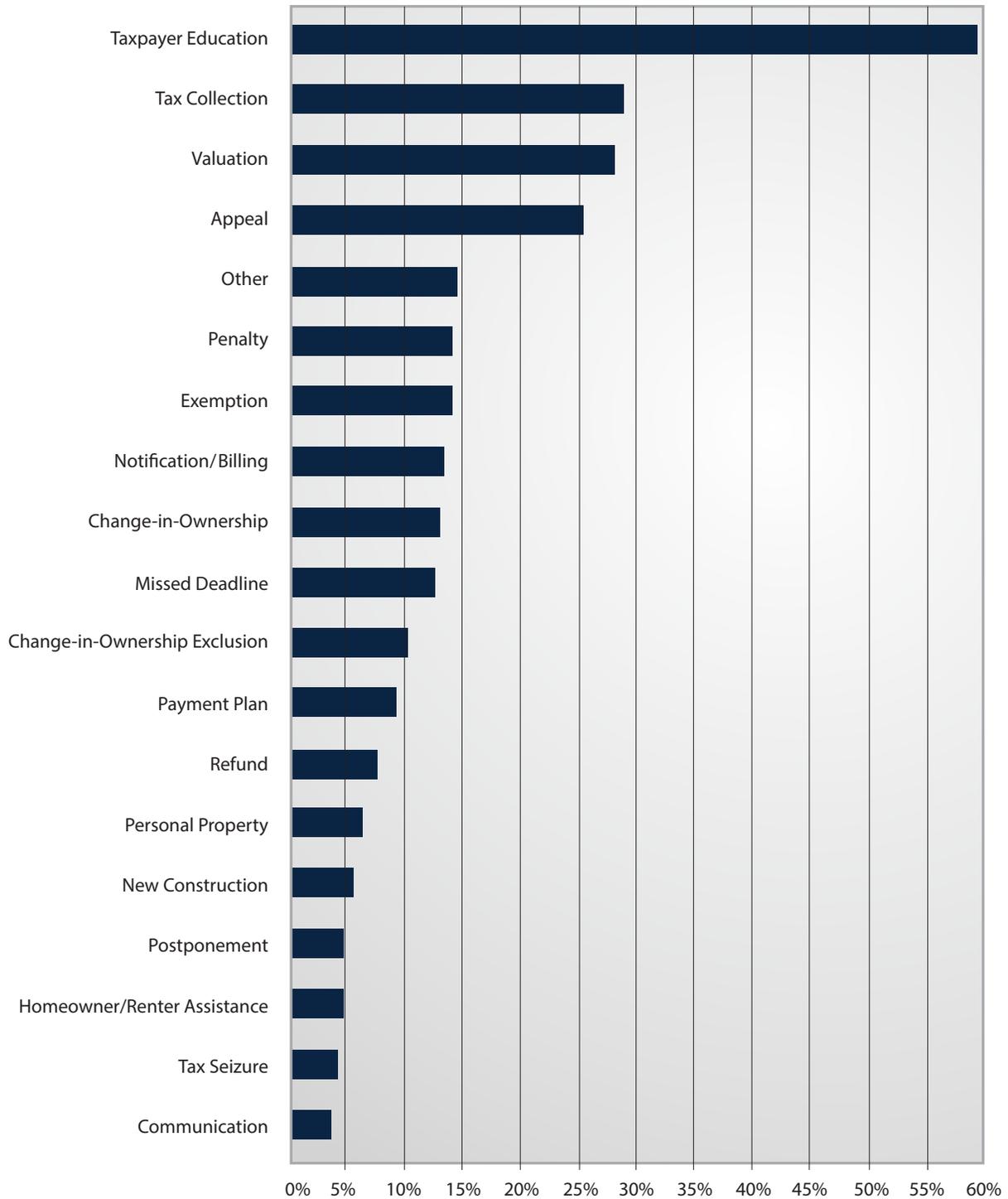
5911. Legislative intent. It is the intent of the Legislature in enacting this part to ensure that:

(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

MOST COMMON ISSUES IN PROPERTY TAX CASES



Note: Individual property tax cases may involve a variety of issues that caused the taxpayer to contact the Taxpayers' Rights Advocate Office. All issues in each case were tracked and the most common issues are displayed here.

APPENDIX 4

OUTCOME OF BUSINESS TAXES CASES

Office of Origin	Cases by Issue Type			Total Cases	Customer Service Concerns	Disagreed with Staff Case Handling (1)	Case Handling Changed
	Audit	Compliance	Other				
Norwalk (AA)	2	13	4	19	0	0	5
Van Nuys (AC)	1	17	3	21	4	1	5
West Covina (AP)	1	7	1	9	2	0	2
Ventura (AR)	1	5	2	8	1	1	2
Culver City (AS)	4	12	7	23	2	1	11
San Francisco (BH)	7	13	2	22	1	1	5
Oakland (CH)	1	10	3	14	0	0	2
Fresno (DF)	3	33	5	41	5	3	19
Irvine (EA)	7	24	4	35	2	1	11
Riverside (EH)	3	33	8	44	0	1	15
San Diego (FH)	6	22	6	34	2	1	10
San Jose (GH)	3	26	5	34	1	3	9
Santa Rosa (JH)	1	15	2	18	4	1	8
Sacramento (KH)	4	47	10	61	2	6	24
Out-of-State (OH)	1	2	2	5	0	0	1
Santa Clarita (SO)	1	2	0	3	1	0	2
Appeals Division	5	1	2	8	0	0	1
Audit Determination and Refund Section	3	2	1	6	0	0	0
Board Proceedings Division	0	0	2	2	0	0	0
Centralized Collection Section	1	28	15	44	5	3	10
Consumer Use Tax Section	0	6	7	13	2	1	3
Investigations	0	1	0	1	1	0	0
Offer in Compromise Section	0	3	1	4	1	0	2
Petitions Section	0	2	2	4	0	0	1
Return Analysis Unit	0	3	1	4	1	0	0
Settlement Section	1	0	0	1	0	0	0
Special Operations Branch	0	3	2	5	0	0	1
Special Taxes Policy and Compliance Division	0	18	22	40	2	2	10
Statewide Compliance and Outreach Program	0	3	0	3	2	0	1
Use Tax Administration Section	0	6	1	7	1	0	1
Other Government Agencies	0	7	28	35	1	0	1
Other (2)	3	5	32	40	1	0	1
Total	59	369	180	608	44	26	163

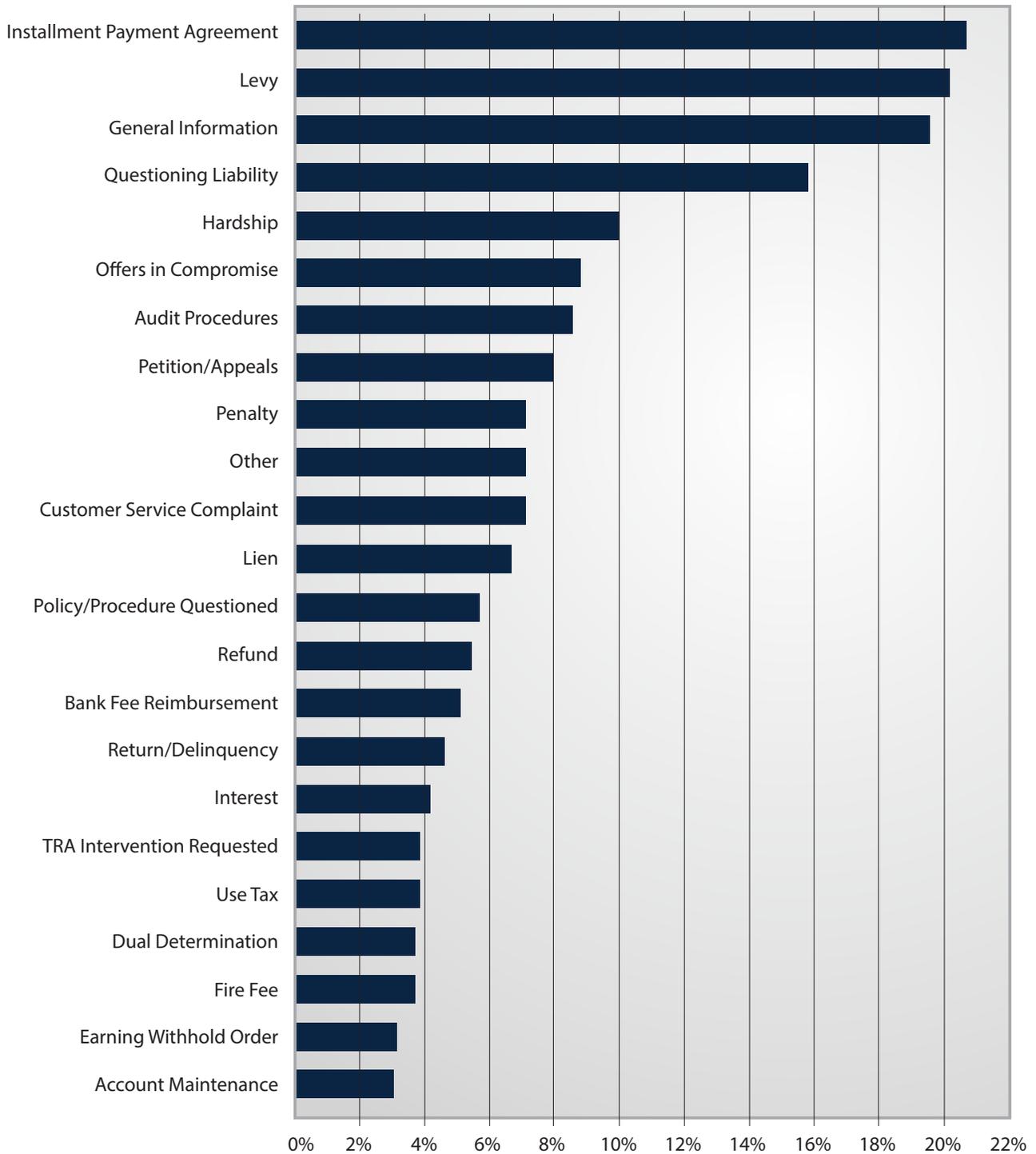
Notes: A number of outcomes are tracked for business taxes cases, with the three most significant outcomes displayed here.

(1) In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate department head and division manager detailing cases in which the TRA Office disagreed with how BOE staff handled the case. See the Business Taxes Issues Chapter for additional information on *Disagreed with Staff Case Handling*.

(2) The category of "Other" under *Office of Origin* includes cases that have no particular office of origin — for example, contacts from the public asking questions about how tax applies or requesting general information.

APPENDIX 5

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. All issues in each case were tracked and the most common issues are displayed here.

TAXPAYERS' RIGHTS ADVOCATE OFFICE

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