

# Compliance Policy and Procedures Manual

## Chapter 1

### General



Sales and Use Tax Department  
*California State*  
*Board of Equalization*

*This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda.*

*Please contact any board office if there are concerns regarding any section of this publication.*

**COMPLIANCE POLICY AND PROCEDURES MANUAL**

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# COMPLIANCE POLICY AND PROCEDURES MANUAL

**GENERAL 100.000****THE BOARD, ITS MISSION, HISTORY, AND ORGANIZATION 105.000****MISSION AND PHILOSOPHY 105.003**

The mission of the State Board of Equalization is to serve the public through fair, effective, and efficient tax administration.

The State Board of Equalization is committed to a philosophy of service and accountability to the public, whose interest is best served through sound administration of the tax laws. We believe this can be most effectively accomplished through programs that enable and encourage people to voluntarily comply with the laws. The Board's compliance policies and procedures are some of the many ways in which the Board provides assistance and information to the public along with a fair and firm enforcement program to ensure that taxes are reported properly.

**PURPOSE OF COMPLIANCE MANUAL 105.005**

This manual contains working information, which will assist compliance staff in the equitable and uniform administration of the business tax programs administered by the Board. It incorporates processes, procedures and techniques that have evolved over a period of years and that have proven to be sound and practical.

**HISTORY 105.010**

The California Constitution of 1879 created the State Board of Equalization as a successor to an agency of the same name but of different composition. The Board inherited the duty of maintaining a uniform level of property assessment between counties. The Constitution added the duty of assessing intercounty railroad property and utilities. It is the oldest board in existence in California and is the only elected board in California State Government.

Since 1879, the Board has been given many additional duties — some by the Legislature, others by the voters. As one of the two major revenue agencies for the state, it has a staff of more than 4,200 employees and collects approximately one-third of the state's revenue.

The members of the Board are responsible to the people. One member is elected from each of four equalization districts. A map showing the equalization districts is in the *Introduction* to the Business Taxes Law Guide. Each member has the duty to investigate the administration of the laws within the district from which he or she is elected and for which the Board, as a whole, has statewide responsibility. The fifth member of the Board is the State Controller, one of whose functions is to serve as an ex-officio member of the Board.

**ORGANIZATION****105.020**

The Executive Director is the chief administrative officer of the Board. The Executive Director is assisted by the Deputy Directors of the Sales and Use Tax, Special Taxes, Property Taxes, and Administration Departments. For detailed information about the functions and duties of the deputy directors and their departments, see State Board of Equalization Administrative Manual (BEAM), Part 1, *Organization and Functions*. A list of the tax programs administered by the Sales and Use Tax and Special Taxes Departments is shown in Exhibit 1.

In addition to collecting sales and use tax on behalf of the state, the Board contracts with counties and cities to collect the tax due under the Bradley-Burns Uniform Local Sales and Use Tax Law. The Board also contracts to collect tax for districts authorized by law to impose a transactions and use tax. These taxes are reported and paid on the same returns used to report state sales and use tax.

The Board also contracts with or is required to collect special taxes for the following agencies:

- Integrated Waste Management Board to collect the Integrated Waste Management Fee and the Tire Recycling Fee.
- State Lands Commission to collect the Ballast Water Management Fee.
- Department of Health Services to collect the Childhood Lead and Occupational Lead Poisoning Prevention Fees.
- Department of Toxic Substances Control to collect the Hazardous Substances Tax.
- California Energy Commission for the collection of the Energy Resources Surcharge.
- California Public Utilities Commission to collect the Natural Gas Surcharge.

See CPPM Section 110.000 for a description of the tax programs administered by the Board.

**BUSINESS TAXES****105.030**

Business taxes are administered by the Sales and Use Tax Department and the Special Taxes Department. To enhance the public convenience and efficient administration of sales and use taxes, the four equalization districts are divided into 14 administrative districts, each under the direction of a district administrator who reports directly to the Chief of Field Operations. Each district administrator oversees the operation of the district and its branch offices (See CPPM 105.032).

An Out-of-State District is located in Sacramento, making a total of 15 administrative districts. The Out-of-State District has branch offices in New York City, Chicago and Houston to service accounts which do business in California or incur tax liability in this state but are headquartered outside this State (See CPPM 105.032).

Special Taxes Department staff is headquartered primarily in Sacramento and includes the Excise Taxes, Environmental Fees, and Fuel Taxes Divisions, that are responsible for all remaining business tax programs. The Special Taxes Department staff is occasionally assisted by the district offices. In addition to its headquarters staff, the Fuel Taxes Division has a small field unit that inspects motor carriers at border stations.

The duties of the Sales and Use Tax and the Special Taxes Departments include both compliance and audit functions. The function of the field auditing staff is to audit the records of taxpayers to determine the accuracy of self-assessed taxes and fees and recommend, when necessary, amounts to be assessed or refunded. The compliance function is detailed in CPPM 120.000.



**GENERAL**

**BUSINESS TAXES**

**(CONT) 105.030**

The Sales and Use Tax and Special Taxes Departments are assisted by the Investigations Division when a taxpayer is suspected of criminal fraud. The Investigations Division has units in both Northern and Southern California. If a taxpayer is suspected of engaging in efforts to defraud the state, Sales and Use Tax Department and Special Taxes Department staff should follow the procedures detailed in Operations Memo 1088, *Criminal Tax Evasion Cases*.

**DISTRICT AND BRANCH OFFICES AND GEOGRAPHIC DESIGNATORS**

**105.032**

EQUALIZATION DISTRICT	DISTRICT OFFICE CODE	LOCATION	BRANCH OFFICE CODE	LOCATION
4	AA	Norwalk		
4	AC	Van Nuys		
4	AP	West Covina		
2	AR	Ventura	ARH	Bakersfield
4	AS	Culver City		
1	BH	San Francisco		
1	CH	Oakland		
3	EA	Irvine		
3	EH	Riverside	EHC	Rancho Mirage
3	FH	San Diego	FHA	El Centro (Satellite Office)
			FHB	San Marcos
2	GH	San Jose	GHC	Salinas
1	JH	Santa Rosa	JHF	Suisun City
2	KH	Sacramento	KHO	Fresno
			KHM	Redding
	OH	Sacramento	OHA	Chicago
			OHB	New York
			OHC	Houston

Property and Special Taxes Department (All located in Sacramento Headquarters)

- EF Environmental Fees
- ET Excise Taxes
- MT Fuel Taxes

A map showing the location of Equalization Districts is in the *Introduction* to the Business Taxes Law Guide and in the Business Taxes Code Book section 301.050.

**COMPLIANCE POLICY AND PROCEDURES MANUAL**

**BUSINESS TAX LAWS ADMINISTERED****110.000****BUSINESS TAX LAWS****110.005**

This section of the manual outlines the fundamentals of the tax laws administered by the Sales and Use Tax and Special Taxes Departments. Only the basics of each law are mentioned. Refer to the Business Taxes Law Guide or contact the appropriate sales and use tax or special taxes division for specific applications of tax or fees.

All future references to the terms “tax(es)” and “taxpayer(s)” should be interpreted to include “fee(s)” and “surcharge(s)” and “feepayer(s)” and “surcharge payer(s)” where applicable.

**SALES AND USE TAX****110.010**

The sales tax is imposed on retailers for the privilege of selling tangible personal property in California at retail. It is measured by gross receipts from retail sales. “Gross Receipts” and “Sales Price” mean the total amount of the sales price including all receipts, cash receipts, cash credits and property of any kind or nature.

The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer. Generally, the use tax, rather than the sales tax, applies when the property purchased is delivered to the purchaser at a point outside this state for use in California or is shipped or delivered from an out-of-state point to a California consumer. The use tax is measured by the sales (purchase) price of the property. The rates are the same for both taxes.

The use tax is not imposed when the sale of the property to the consumer is subject to the sales tax.

**BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAX LAW****110.015**

This law authorizes counties to impose a sales and use tax at the rate of one and one-quarter percent of the selling price of tangible personal property sold at retail in the county, or purchased outside the county for use within the county, unless the sale is subject to a local tax under a Uniform Local Sales and Use Tax Law ordinance in the county of purchase. Each county desiring to impose a local tax must contract with the Board for administration of the tax. The provisions of the ordinance required to be adopted by the county must conform to the provisions of the state Sales and Use Tax Law. There are a few additional exemptions in the local tax law that do not apply to the state sales and use tax law.

This law authorizes each city in a county, which adopts an ordinance under the Bradley-Burns Law, to levy a state-administered city tax with the same base and a rate of one percent or less that would be credited against the county tax.

This law also authorized a redevelopment agency of any city to levy a state-administered redevelopment agency tax at a rate of one percent or less to be credited against the city tax, provided the city ordinance includes a provision for the credit. Effective January 1, 1994, legislation was enacted which provides that no new redevelopment agencies may be implemented.

**COUNTY PUBLIC TRANSPORTATION FUND****110.020**

The one and one-quarter percent local tax includes one-quarter percent that is directly deposited to each county’s Public Transportation Fund.

**TRANSACTIONS (SALES) AND USE TAX****110.025**

This law authorizes districts, with voter approval, to adopt an ordinance which imposes a transactions (sales) and use tax. Tax rates may be in one-eighth to one-half percent increments but the total rate of all districts in a locality may not exceed one and one-half percent of the selling price of tangible personal property sold at retail in the locality, or purchased outside the locality for use within the locality (unless the sale is subject to a transactions (sales) and use tax at the place of purchase). Each district desiring to have a transactions (sales) and use tax must contract with the Board to administer the Transactions and Use Tax Law.

**MOTOR VEHICLE FUEL LICENSE TAX AND THE MOTOR VEHICLE FUEL TAX 110.030**

Until December 31, 2001, the Motor Vehicle Fuel License Tax is imposed for the privilege of distributing motor vehicle fuel (gasoline, etc.). See the chart in CPPM 110.037 for the current rate for each gallon of fuel distributed. All fuel refined, manufactured, produced, blended, blended or compounded in this state, or imported into this state and no longer in the possession of the distributor, is presumed under the law to have been distributed.

Persons who have paid the license tax, either directly or to a vendor, shall be reimbursed the amount of the tax paid if the gasoline was used in an exempt manner under RTC sections 8101 through 8101.7. To receive this reimbursement, the claimant must file a claim with the State Controller.

Aircraft jet fuel dealers who make taxable sales or taxable use of aircraft jet fuel must be registered and pay two cents (\$0.02) license tax for each gallon of aircraft jet fuel sold or used. For information on exempt sales or use, refer to section 7374 of the Motor Vehicle Fuel License Tax Law.

Effective January 1, 2002, the Motor Vehicle Fuel License Tax is replaced with the Motor Vehicle Fuel Tax. The Motor Vehicle Fuel Tax shifts the imposition of the tax from the distribution of the fuel to the removal of motor vehicle fuel from a refinery or terminal rack. The tax is paid by refiners, position holders, enterers, and blenders. The application of tax to motor vehicle fuel is the same as the Diesel Fuel Tax.

**DIESEL FUEL TAX****110.033**

The Diesel Fuel Tax is imposed upon suppliers (refiners, position holders, enterers and blenders). The tax applies to the removal of diesel fuel from a terminal or a refinery at the rack, the entry of diesel fuel into this state if not by bulk transfer, and the removal or sale of previously untaxed blended fuel by the blender. Diesel fuel is dyed for off-highway and other exempt uses. In addition, the Interstate Users Tax (Component b) is imposed on persons who use diesel fuel in the operation of a qualified motor vehicle in this state and who operate the vehicle within and without this state or the United States. Interstate users must obtain a fuel trip permit or an International Fuel Tax Agreement (IFTA) license to assure the proper payment of diesel fuel tax for gallons of diesel fuel used on the public highways of California.

Exempted from the tax is diesel fuel for purposes other than operating motor vehicles upon public highways of the state. A partial exemption applies to diesel fuel used in certain bus operations described in section 60039 of the Diesel Fuel Tax Law. Fuel usage that qualifies for the partial exemption is subject to a tax of one cent per gallon.

**USE FUEL TAX****110.035**

An excise tax is imposed on alternative fuels (liquefied petroleum gases (LPG), liquid natural gas (LNG), compressed natural gas (CNG), alcohol fuels, kerosene, and distillate) used to propel a motor vehicle on highways except fuel that is subject to the tax imposed by Part 2 or Part 31 of the Revenue and Taxation Code (gasoline or diesel tax). The tax is imposed upon the user of the fuel. Any vendor who sells and delivers the fuel into a vehicle's fuel tank shall, at the time of sale, collect the tax from the user. The vendor then becomes liable for the tax. See the chart in CPPM 110.037 for the current rate for each gallon of fuel.

The user must file a return and account for his or her fuel sales and usage even though he or she has paid all of the tax to the vendor and has no liability. A user of fuel cannot claim a deduction for tax paid to a vendor unless he or she has actually paid the bill.

The full and partial exemptions for Use Fuel Tax are the same as for the Diesel Fuel Tax.

Users of fuel who own or operate vehicles propelled by LPG, LNG or CNG have the option of paying the applicable use fuel tax directly to the vendor, or to the state if the user has bulk storage, or paying an annual flat rate fuel tax to this Board. Payment of the annual flat rate tax entitles the user to purchase LPG, LNG or CNG without payment of the use fuel tax to the vendor or state, regardless of the type of conversion system installed on the vehicle.

Additionally, some users are exempt from obtaining permits and filing returns or may obtain a four day use fuel tax permit (see CPPM Chapter 2).

**FUEL TAX ENFORCEMENT****110.036**

A sound enforcement program is essential to effective diesel or use fuel tax administration. Since such a program results in the apprehension of those who have not complied with permit or license requirements, it helps protect the tax base and ensures that those who comply with the law do not suffer a competitive disadvantage.

Special Taxes' enhanced truck stop program is a major means of enforcing the Diesel Fuel Tax. (See CPPM 110.033) The program may thwart the importation and unlawful use of untaxed diesel fuel, encourages voluntary compliance, and deters tax evasion. A truck check is also a valuable tool for collecting liabilities and clearing delinquencies under all Board programs. Furthermore, examination of bills of lading provides leads to sales and use tax evasion and to sales of contraband cigarette and tobacco products or untaxed alcoholic beverages.

Under the enhanced truck stop program, Business Taxes Representatives (BTR) are stationed at permanent and temporary truck stops set up by the CHP. In addition to registration, reinstatement, and routine collection duties, these BTR's duties include seizure, sale, and assessment of criminal penalties.

**FUEL TAX RATES**

**110.037**

Effective Date and Rate (per gallon)

<b>Fuel</b>	<b>1-1-92</b>	<b>1-1-93</b>	<b>1-1-94</b>
Gasoline	\$0.16	\$0.17	\$0.18
Alcohol	\$0.08	\$0.085	\$0.09
LNG & LPG	\$0.06	\$0.06	\$0.06
CNG	\$0.07	\$0.07	\$0.07
Diesel	\$0.16	\$0.17	\$0.18
Diesel — Component b	See Note		

There has been no change in fuel tax rates since 1994.

Note on Diesel Fuel Tax — Component b: RTC section 60116, effective October 3, 1997, establishes the interstate user component of the Diesel Fuel Tax. The rate of Component b may vary from year-to-year. The rate is established each year on January 1 and is based the average retail sales price per gallon of diesel in California multiplied by a percentage equal to the combined state and local sales tax rate. The current rate of Component b is available from the Fuel Taxes Division or can be accessed through the IFTA website: [www.IFTACH.org](http://www.IFTACH.org).

**TAX ON INSURERS**

**110.038**

The insurance tax is levied against insurance companies in lieu of all other taxes except license fees and real estate taxes. The tax is based on the gross amount of premiums for insurance sold in California or, in the case of ocean marine insurance, on underwriting profits.

**CIGARETTE AND TOBACCO PRODUCTS TAX**

**110.040**

A tax for each cigarette is imposed upon cigarette distributors. A distributor is a person who sells cigarettes upon which the tax liability has not yet accrued. The tax is prepaid by the distributor through the use of stamps, which must be affixed to each pack of cigarettes before its distribution. The Bank of America holds the current contract to supply stamps to the distributors.

A tax is imposed upon distributors of tobacco products, based on the wholesale cost of the products, at a rate determined annually. If you need the current rates or have other questions, contact the Excise Taxes Division.

**ALCOHOLIC BEVERAGE TAX**

**110.045**

The tax imposed upon beer, wine, and distilled spirits varies with the type of beverage and alcoholic content. Issuance of a license to any manufacturer, wine grower, distilled spirits manufacturer’s agent, rectifier, wine rectifier, wholesaler, importer, or customs broker or industrial alcohol dealer by the Department of Alcoholic Beverage Control (ABC) constitutes registration with the Board insofar as the Alcoholic Beverage Tax Law requirements are concerned.

ABC furnishes the Board with a notice that a license has been applied for requiring a supporting surety bond. The Excise Taxes Division then requests a bond or other acceptable security in the required amount. The ABC also notifies the Board of surrenders or transfers.

**ENERGY RESOURCES SURCHARGE****110.046**

The Energy Resources Surcharge is imposed on the consumption of electrical energy. The surcharge is collected by the electric utilities from the consumers or paid directly by public institutions, water districts and irrigation districts that have purchased electrical energy from the federal government.

**EMERGENCY TELEPHONE USERS SURCHARGE****110.047**

The Emergency Telephone (9-1-1) Users Surcharge is imposed on the charges for intrastate telecommunication services. The surcharge is collected by the telephone service supplier from the service user with the bill for telephone service.

**HAZARDOUS SUBSTANCES TAX****110.050****DISPOSAL FEE**

The Disposal Fee is imposed on persons who dispose of or submit for disposal hazardous waste in California. The fee is collected by the operator of the disposal facility where the waste is submitted for disposal. The facility operator reports and pays the fees on a monthly basis, based upon tons of waste disposed.

**GENERATOR FEE**

The Generator Fee is imposed upon persons who generate hazardous waste in California and it applies to persons who generate certain types of hazardous waste outside this state if the waste is shipped into California. The Generator Fee is a site-specific fee. It is based upon the amount of waste generated at a specific generating site and is reported on a yearly basis. Accounts meeting certain criteria may be required to file prepayment returns.

**FACILITY FEE**

The Facility Fee is imposed on persons who have been issued a Hazardous Waste Facility Permit or who have been granted interim status to operate a hazardous waste facility. Facility permits are required of persons who treat, store, or dispose of hazardous waste on-site. The fee is reported on an annual basis, with two prepayments of 50% each.

**ACTIVITY FEE**

Activity Fees are imposed on persons who have filed various applications with the California Department of Toxic Substances Control (DTSC), including applications for permits and variances. These fees are billed based upon information provided to the Board by the DTSC.

**ENVIRONMENTAL FEE**

The Environmental Fee is imposed upon all corporations identified by a standard classification code that consists of corporations that use, generate, store, or conduct activities related to hazardous materials. The fee is based upon the number of employees employed in California and is reported on an annual basis.

In addition, the Occupational Lead Poisoning Prevention and the Childhood Lead Poisoning Prevention fees are administered under provisions of the Hazardous Substances Tax but are separately imposed. (See CPPM s 110.052–110.053)

**OCCUPATIONAL LEAD POISONING PREVENTION FEE**

**110.052**

The Occupational Lead Poisoning Prevention Fee is imposed on persons who operate in industries identified as having a potential for causing occupational lead poisoning. The fee is reported on an annual basis.

**CHILDHOOD LEAD POISONING PREVENTION FEE**

**110.053**

The Childhood Lead Poisoning Prevention Fee is imposed on distributors of motor vehicle fuel, distributors of architectural coatings, and on facilities releasing lead into the ambient air. The fees are due annually.

**UNDERGROUND STORAGE TANK MAINTENANCE FEE**

**110.054**

The Underground Storage Tank Maintenance Fee is imposed upon underground storage tank owners. The fee is reported on a quarterly basis and the rate per gallon of fuel placed into the underground tank is:

\$0.006	Effective January 1, 1991
\$0.007	Effective January 1, 1995
\$0.009	Effective January 1, 1996
\$0.012	Effective January 1, 1997

**INTEGRATED WASTE MANAGEMENT FEE**

**110.055**

A fee is imposed upon solid waste disposal facility operators such as municipal and private landfill operators. The fee is based on tons of solid waste disposed and is reported on a quarterly basis

**CALIFORNIA TIRE FEE**

**110.065**

The Tire Recycling Fee is imposed upon every person who purchases a new tire, including new tires provided as part of the sale or lease of a new or used motor vehicle, new or used construction equipment, or new or used farm equipment. The fee is set at \$1.00 per tire, effective January 1, 2001. The prior rate was 25 cents per tire. The seller is required to collect the \$1.00 per tire and remit it on a quarterly basis. The seller is allowed to retain three per cent of the fee, effective January 1, 2001 (ten percent prior to 1/1/01) for reimbursement of related collection costs.



**OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES****110.070****OIL SPILL RESPONSE FEE**

Every operator of a refinery must pay a fee for each barrel of crude oil received at a refinery within the state. Every owner of petroleum products must pay a fee for each barrel of petroleum products received at a marine terminal from outside this state. The fee is collected by the marine terminal operator from the owner of the petroleum products. Every operator of a pipeline must pay a fee of \$0.25 for each barrel of petroleum products transported into this state by means of a pipeline operating across, under or through marine waters of this state. The size of this fund is to be maintained at a specified level. Any amount over this level will be refunded to the feepayers. Collection of the fee is suspended whenever sufficient funding exists.

**OIL SPILL PREVENTION AND ADMINISTRATION FEE**

Every owner of crude oil or petroleum products must pay a fee of \$0.04 for each barrel of crude oil received at a marine terminal from within or outside the state and for every barrel of petroleum products received from outside the state. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum products. Every operator of a pipeline shall pay a fee for each barrel of crude oil originating from a production facility in marine waters and transported in this state by means of a pipeline operating across, under or through marine waters of this state.

**BALLAST WATER MANAGEMENT FEE****110.075**

The Ballast Water Management Fee is imposed upon the owner or operator of any vessel that enters a California port with ballast water loaded from outside the Exclusive Economic Zone (EEZ). The fee is imposed for each voyage and is billed based on information provided to the Board by the Marine Exchanges and other sources.

**NATURAL GAS SURCHARGE****110.080**

The Natural Gas Surcharge Program imposes a surcharge on all natural gas consumed in California. The surcharge applies to all consumption, except natural gas used to generate power for sale, resold to end users, used for oil recovery, utilized in co-generation technology, or produced in California and transported on a proprietary pipeline. All public utility gas corporations operating in this state, and all persons consuming natural gas in this state that has been transported by an interstate pipeline must register. Returns are due quarterly.

**COMPLIANCE POLICY AND PROCEDURES MANUAL**

**COMPLIANCE RESPONSIBILITIES AND FUNCTIONS 120.000****COMPLIANCE RESPONSIBILITIES 120.010**

The compliance staff is responsible for enforcing the provisions of the various business tax laws and regulations administered by the Board of Equalization equitably and uniformly. Staff must ensure that persons engaged in business in this state comply with the laws and must inform them of any violations. Staff will license those required to report and pay business taxes; and assist taxpayers to report and pay timely the correct amount of tax. Staff must also promote voluntary compliance through education of the taxpayer and ensure that follow-up actions on any unfiled returns or unpaid liabilities are prompt and timely.

**COMPLIANCE FUNCTIONS 120.020**

In executing its delegated responsibilities, the compliance staff performs the following functions:

- a. **REGISTRATION:** Registration identifies the correct legal ownership required to report and pay any business taxes to the Board. After identification, there is a standard procedure for registering accounts correctly and maintaining an accurate record for each active account. See CPPM Chapter 2, *Registration*, for information about registration.
- b. **SECURITY:** The compliance staff must determine if security is warranted. If security is needed, staff must ascertain the size and scope of the proposed business, the manner in which it will operate and the financial stability and integrity of those persons responsible for the operation. The staff member must follow standard procedures for obtaining deposits in proper form; making adjustments of security when warranted; recommending refunds of deposits; applying deposits to clear tax liability; and establishing and maintaining security deposit files. See CPPM Chapter 4, *Security*, for more information about security.
- c. **RETURNS:** The compliance staff advises and educates taxpayers to prepare tax returns properly. The staff members must recognize and investigate irregularities in reporting and maintain adequate delinquency controls. See CPPM Chapter 5, *Returns*, for more information about returns.
- d. **CLOSE OUTS:** The compliance staff examines the books, records, and returns of an account closing out in order to determine whether the following actions should be taken:
  1. Recommendation of an audit by the Board's auditing staff.
  2. Initiation of a compliance assessment to establish additional tax liability disclosed by investigation when an audit is not warranted.

The compliance staff also clears delinquencies, makes demands on escrows, prepares escrow withholds, and issues escrow clearances and highway tax clearances on motor vehicles subject to the use fuel tax. See CPPM Chapter 6, *Close-Outs and Clearances*, for more information about close-outs.

- e. **REVOCATIONS:** The compliance staff enforces the provisions of the business tax laws pertaining to revoked accounts, reinstates licenses or permits of taxpayers who have complied with the laws, obtains evidence and prepares cases for prosecution of taxpayers who continue to operate after revocation, and seizes and impounds vehicles operated in violation of the law. See CPPM 340.000 and 751.000 for more information about revocations.

## COMPLIANCE FUNCTIONS

(CONT.) 120.020

- f. **COLLECTIONS:** To effect the collection of delinquent taxes, the compliance staff maintains adequate controls of accounts receivable at both the district and Headquarters levels; prepares and serves withhold notices; initiates and prepares warrants; requests recordation of certificates of lien; requests releases, partial releases and subordination of liens; seizes and sells motor vehicles under the Use Fuel and Diesel Fuel Tax Laws; seizes and sells liquor licenses to clear delinquent sales and use taxes; locates assets, including real property, on which to levy; and makes recommendations for revocation of licenses or permits for failure to pay delinquent tax liability. See CPPM Chapter 7, *Collections*, and Publication No. 54, *Tax Collection Procedures*, for more information about collections.
- g. **ADVISORY SERVICES AND PUBLIC RELATIONS:** A principal objective of the Sales and Use Tax and Special Taxes Departments is to ensure that taxpayers voluntarily report and pay the correct amount of tax. The compliance staff assists taxpayers in preparing tax returns and advises them of the correct application of the laws and regulations. A sincere and helpful attitude by each member of the compliance staff is of paramount importance in maintaining good public relations.

**RELEASE OF TAX INFORMATION TO THE PUBLIC****120.025**

Information contained in the files and records of the Board of Equalization (BOE) relating to taxpayers is confidential as provided in Government Code section 15619 (all Board tax records) and Revenue and Taxation Code (RTC) section [7056](#).

Overlying the above confidentiality sections of law, which prohibit the disclosure of confidential taxpayer information, are two other acts, the Information Practices Act and the Public Records Act. The Information Practices Act (IPA) is a “private access” statute that provides individuals wishing to access their personal information, as maintained in the files and records of any state agency, to have such access. The IPA also restricts disclosing personal information about an individual to the public. The Public Records Act (PRA) provides “public access” to any records maintained by a state agency that are not otherwise exempt from disclosure.

The Government Code provides that “public records” include any writing that contains information relating to the conduct of the public business and that is prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided. Government Code section 6254(k) does not permit a state agency to withhold disclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as taxpayer’s names or account numbers, must be redacted and the redacted document should then be released.

**Requirement to Disclose “Working Law”**

Under the PRA, documents that disclose the BOE’s practices in applying its regulations to the cases coming before it are “working law” and are subject to disclosure upon request. Upon receipt of a request for working law document(s), all confidential taxpayer information must be redacted prior to releasing the document(s) to the requesting party. Examples of working law are:

1. A memorandum written by the legal staff to other departments of the BOE, which those departments can rely upon to make determinations about the applicability of statutes or regulations to certain tax situations.
2. An opinion letter written by a staff attorney to a taxpayer.

**Documents That May Be Withheld**

In contrast to the working law of the agency, there are legal opinions and internal correspondence addressed to or from attorneys in the Legal Department that bear confidential status by virtue of the attorney-client privilege or the attorney work-product rule. Memoranda falling within the following listed categories are often labeled “Confidential: Attorney-Client Privilege” or “Confidential: Privileged Document,” and should not be released to the public without the approval of the author or the Legal Department:

1. Memoranda to a Board Member or Members or the Executive Director prepared for the signature of the Chief Counsel, except contribution disclosure opinions.
2. Memoranda directly related to litigation in which the BOE is a party, including refund and collection actions.
3. Memoranda between the Legal Department and the Attorney General’s office when the Attorney General is acting as the BOE’s attorney.
4. Intra-Legal Department memoranda which reflect an attorney’s impressions, conclusions, opinions or legal research or theories, except briefs filed by the Sales and Use Tax Department or Special Taxes Department with the Appeals Division in accordance with the direction of the Board.
5. Memoranda between the Legal Department and program staff that evaluate the strengths or weaknesses of the agency’s position regarding the interpretation of statutory or regulatory provisions. This includes memoranda having to do with requests for reconsideration of reports issued by the Appeals Division.
6. Memoranda analyzing new or proposed statutes or regulations affecting programs administered by the BOE.

Note that if the holder of the attorney-client privilege, without coercion and in a non-confidential context, discloses a significant part of the communication or consents to such disclosure by anyone, this constitutes a waiver of the privilege.

In addition to documents exempt from public disclosure under the attorney-client privilege or the attorney work-product rule, any documents relating to confidential audit or compliance techniques are not to be released to the general public. Consult the Legal Department if there is any question about whether a particular document is confidential or not.

**Advice To Potential Public Records Act Requesters**

Any person interested in obtaining BOE information under the PRA should be advised to submit a written request to the attention of the BOE’s Disclosure Officer. Requests should be as specific as possible in identifying the desired records. At a minimum, the request must identify the subject matter of interest, e.g., Regulation 1501, RTC section 6596, sales by Indians, etc. If the requester is seeking records from a specific office, that office should be identified.

Many general subject files are divided into specific topics. For example, Regulation 1591 contains a subdivision on orthotic and prosthetic devices, among others. If a requestor asks for information on a specific topic contained within a general subject file, the general subject file may be indexed and the index provided to the requestor. From the index, the requestor can then identify and request, in writing, copies of specific documents.

**Procedures for Handling Requests under the Public Records Act (PRA)****Acknowledgment of Requests**

Immediately route requests for documents falling under the PRA to the Disclosure Officer in the Legal Department. The Disclosure Officer has ten working days to timely acknowledge receipt of the request. After acknowledging the request, the Disclosure Officer will forward a copy of the request to the appropriate BOE section for handling. The Disclosure Officer will route requests for district office information to the Tax Policy Division, which will coordinate preparation of the requested records for release. These requests may ask for document indices and/or copies of documents.

PRA requests that incorrectly refer to the IPA are addressed under the guidelines for PRA requests. Likewise, IPA requests that incorrectly refer to the PRA are addressed under the guidelines for IPA requests.

**Requested Documents**

As stated earlier, a request may ask for documents addressing a specific type of property or transaction, or a request may be made for documents in a broader category, such as a regulation or code section. When handling these requests, either for document indexing or redacting and releasing documents, staff should adhere to the requested subject matter as closely as possible without being excessively restrictive. It is not always necessary to index entire files and not all documents contained within these files need to be redacted and released.

**Document Indexing**

An index should clearly identify the source of the material and include the following information for each document, preferably on a spreadsheet:

1. Name of Addressee (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer").
2. Name of the Author (if this is a taxpayer, the information is confidential and should be substituted with the term "taxpayer").
3. A short description of the subject of the document.
4. Document date.
5. Number of pages.

An additional column may be reserved for eventual use in identifying confidential documents not allowed to be released.

Each document should also be numbered as a reference to assist in locating documents at a later date. To allow continuous numbering, documents should be numbered sequentially from the oldest document forward. The original index should be maintained conspicuously within the file indexed to avoid duplicate effort in the event a subsequent request is received. As subsequent requests are received, the index should be updated before it is photocopied and released.

**Document Preparation and Approval for Release**

The integrity of the original documents should be maintained as much as possible. If a requested document only exists as an unredacted hard copy, make a photocopy of the original document, redact all necessary information and, after receiving approval from the Disclosure Officer to release the document, provide the redacted photocopy to the requestor. To avoid duplication of effort if a subsequent request for the same document is received, make a photocopy of the redacted document to provide to the requestor and retain the original redacted photocopy in the file.



The quality of hard copy documents often degrades over time. In order to provide a legible copy that has adequate contrast for reproduction purposes, it may be necessary to touch up the document. Once the photocopy is suitable for reproduction, the redaction should be done using a black felt tip pen, correction tape, or similar masking material that prevents exposure of confidential information.

If the document exists electronically, it should be saved and identified with a new document name. Redact the information from the newly saved document and convert it to portable document format (.pdf) before providing it to the requestor.

Information subject to redaction includes:

1. Taxpayer names.
2. Addresses.
3. Signatures.
4. Account numbers.
5. Telephone numbers.
6. Trade secrets.
7. Products or processes that can be used to identify the taxpayer.
8. Logos.
9. Letterhead on incoming correspondence.
10. Author's initials.
11. File names.
12. Any other information that can be used to identify the taxpayer. This includes handwritten notes as well as typed information contained in the formal correspondence. Care should be taken during the redacting process to ensure that confidential information is completely and adequately masked so that it is not revealed upon reproduction.

Documents recommended for release, including documents with redacted information, should be organized in sequential order. Documents recommended to be withheld from public release should be separated from the release copies and an index should be prepared to identify these documents and the basis for withholding them from public release.

All of the documents, including the index of documents to be withheld from public release, should be submitted to the Disclosure Officer in the Legal Department for review by an attorney and approval for release or withhold. The Disclosure Officer should initial, date, and indicate "PRA review" in the lower right hand corner of each document.

After review of the documents, the Disclosure Officer will return the documents, with corrections noted, to the unit working the request. The unit will incorporate the corrections and make the photocopies of the documents to be released. These photocopies should contain a disclaimer on each document indicating that the information contained within may be outdated. One effective means of transferring the disclaimer statement to each release copy is by using a transparency sheet containing a copy of the disclaimer as an overlay during the photocopy process.

### **Release of Documents**

After the relevant documents are photocopied, the photocopies, the number of photocopied pages for release, and a copy of the index of withheld documents is mailed to the requestor by the Disclosure Officer. The Legal Department is responsible for providing the related charges to the Accounting Section for appropriate billing to the requestor. In general, the cost for this service is ten cents (10¢) per page provided.

The law provides that copies of documents should be furnished within a reasonable amount of time. Generally, it is BOE practice to provide documents within 30 days of receipt of the request. If preparing the documents for release will take more than 30 days, the Disclosure Officer should be contacted so that the requester can be appropriately informed of the possible delay.

### **Storage of Redacted Copies of Documents**

Staff handling PRA requests should organize the documents for each request in chronological order or, if indexed, in sequential order. In addition, the documents should be properly identified as to their source and subject. If an index is prepared, a copy should also be included as well as a copy of the index of the documents not subject to disclosure. Upon completing these tasks, the information should be stored on location for use in responding to subsequent requests.

## **Procedures For Handling Requests Under The Information Practices Act (IPA)**

### **Document Preparation and Release**

All personal information maintained in a taxpayer's file must be made available to the taxpayer or his/her authorized representative upon request. However, certain documents retained in a file, such as memoranda with reference to taxpayers other than the taxpayer whose file information is being requested, should be redacted to remove confidential information before the document is photocopied and released. Copies of redacted documents should be attached to the original file document and retained in the taxpayer's file for future use. In addition, any information contained in a file, which is of a confidential nature under the attorney-client privilege or attorney work-product rule, is not subject to disclosure.

Requests for copies of information from a taxpayer's own file should be handled by the district office that maintains the file. Requests for copies of file information maintained in headquarters should generally be handled by the section that receives the request or the appropriate section that handles the type of information requested, e.g., requests for refund information should be handled by the Audit Determination and Refund Section, requests for petition information should be handled by the Petitions Section, etc.

Acknowledgment of a request for documents is not required by the IPA. However, acknowledging a request is a good practice to follow, especially if the preparation of documents is anticipated to require an extended period of time to complete. Copies of documents should be furnished to the authorized requester within 30 days of receipt of the request. An additional 30 days is allowed in the event the records are geographically dispersed or are inactive and in central storage.

Charges for these services and copies of documents should be made in accordance with established guidelines. Generally, an agency may charge no more than ten cents (10¢) per page. (See Board of Equalization Administrative Manual (BEAM) Section 7223.1).

For more information regarding the IPA, refer to the pamphlet, "Information Security at the Board of Equalization", and BEAM, beginning with [section 7223](#).

## **ADVICE TO TAXPAYERS**

**120.030**

The importance of giving complete and correct advice to taxpayers cannot be over emphasized. Incomplete information or misinformation given a taxpayer by a Board employee has a disastrous effect upon good public relations. In addition, RTC section 6596 under the Sales and Use Tax and similar sections for taxes administered by Special Taxes may relieve the taxpayer of tax, interest, or penalty when failure to report or pay is due to reliance on *written* advice from the Board (see CPPM 150.040). Authorizing statutes for the sales and use tax and for special taxes are summarized in Exhibit 2, Table 1 — Reliance on Written Advice.



The compliance employee must be sure that an answer is correct. All of the facts must be carefully examined before a conclusion is reached. Snap answers, or answers based upon incomplete information, are inexcusable. Also, it is never appropriate for a Board employee to offer any legal advice, other than interpretation of the tax laws administered by the Board.

Any officially published regulation, publication, or informational release intended for public distribution of the Board may be furnished to the taxpayer (see CPPM 135.075). Business Taxes General Bulletins which may be released to the public are marked with the symbol (PR) immediately following the bulletin number. Bulletins issued prior to December 30, 1963, which are published in the Business Taxes Law Guide, may also be distributed. Operations Memos which do not have a confidential status notation under the title, "OPERATIONS MEMO" may also be furnished to the public. Operations memos that have confidential status notation must have all confidential information redacted before being given to the public. Staff should contact the Board's Disclosure Officer in the Internal Security and Audit Division for a redacted copy.

Annotations should not be used as the basis for advice given to taxpayers. They are synopses of past advice provided by the Board's legal staff and may be revised at any time. If a copy of an annotation is provided to any person, it must be accompanied by the following statement:

Annotations are summaries of the conclusions reached in selected legal rulings of counsel. Annotations are intended to provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance. Annotations do not have the force or effect of law and may be revised at any time. Following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, and penalty except: (1) when the advice was written in direct response to a request for advice from the specific taxpayer seeking to rely on the advice; or (2) the annotation or legal ruling of counsel is provided to the taxpayer within the body of a written communication in direct response to a written inquiry from that taxpayer and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

Questions pertaining to other agencies or to the laws they administer should be referred to that agency.

### WRITTEN ADVICE

Written advice by the Board to a taxpayer in response to a taxpayer's specific written inquiry or an inquiry from the taxpayer's representative seeking relief from liability may constitute written advice that can be relied on for section 6596 relief. To be considered a specific written inquiry, representatives must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.

In responding to accountants, attorneys, or other taxpayer representatives where the name of the taxpayer is not divulged, the writer will ask that the representative divulge the name and permit number of the taxpayer to enable the Board to maintain appropriate records with respect to the information provided. The taxpayer's name and permit number will be referenced in the Board's response.

## ADVICE TO TAXPAYERS

(CONT.) 120.030

Tax advice to trade associations, taxpayer representatives failing to identify their clients, and/or taxpayers whose questions are vague or general in nature must include the following statement:

The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under section 6596.

If individual taxpayers are identified, but background information is incomplete, the taxpayer should be encouraged to write again setting forth the specific facts. Staff is encouraged *not* to make presumptions. However, should it become necessary to do so, they should be clearly identified as such in the letter.

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. Written advice that may serve for relief under section 6596 must include the following statement:

The opinion expressed in this letter may only be relied upon for relief under section 6596 of the Sales and Use Tax Law by (state taxpayer's name). Any person seeking relief under this section will be required to furnish a copy of the original written inquiry to the Board and a copy of this written advice.

Written advice that meets the above criteria will qualify for relief of liability under section 6596 even when the information is provided by E-mail.

For more information on 6596 relief, see CPPM 150.040.

**VERBAL INQUIRIES**

For verbal inquiries, if there is any doubt as to the correct answer, the person should be requested to present the problem in writing stating all of the facts, or the matter should be referred to the next level of supervision. Furthermore, Board staff is to encourage taxpayers to write regarding specific tax questions. Taxpayers who verbally request tax information are to be advised that, although an answer to their question is being provided, they may also wish to put their question in writing so that they may receive a written response for their records (see CPPM 150.000).

Staff, particularly those whose duties do not require providing telephone advice such as CATS or the SUTD Public Information and Administration Section, must consider whether written documentation should be provided when telephone advice is provided to a taxpayer. Unless the taxpayer identifies his- or herself and provides a proper seller's permit number, no documentation is required. When tax advice is given over the telephone to an identified taxpayer, staff should prepare a Form BOE-11 (File on Memo Inquiry — Report of Telephone Call) or provide a record of the call using the TAR comment screen on IRIS or an appropriate comments screen on ACMS. The report of the telephone call should state the question(s) asked by the taxpayer, the answer given, and any regulations furnished. This is particularly true when such advice pertains to specific exemptions. District administrators and Headquarters supervisors are requested to establish a review mechanism to ensure that BOE-11's or the comment screens on IRIS or ACMS are being used and to review the staff responses for completeness and accuracy prior to filing the form in the taxpayer's file. If a response is incorrect or incomplete, the taxpayer must be contacted immediately and given correct information and a note made on the BOE-11 of the follow up contact. If a BOE-11 is used and there is no District file folder, an on line comment should be entered and the BOE-11 sent to the Headquarters file. The use of such forms and comments should be periodically re-emphasized by supervisors.

**STANDARDS OF CONDUCT** **130.000****CONDUCT ON THE JOB** **130.010**

The Board's compliance employee must remember that he or she represents the State of California and the Board of Equalization and at no time does the position carry with it the authority to be argumentative or offensive. More information about the Board's policies on conduct is provided in the pamphlet, *Ethics: Guidelines for Professional Conduct*.

While it is rare, there have been occasions where Board compliance representatives have been offered or have solicited bribes. Allegations or suspicions of this nature are to be *immediately* reported to a supervisor and the Internal Security and Audit Division (ISAD). Detailed information about how to report such attempts are in the Board pamphlet, *Bribery — A Guide to Recognition and Prosecution*.

Some specific rules of conduct about the nature of the compliance function itself are set forth below.

**USE OF BUSINESS CARDS** **130.020**

Business cards are issued to compliance representatives for their convenience and to help introduce the representatives to the public in a businesslike manner.

Business cards do not replace, nor should they be used as a substitute for the identification card, Form BOE-1102, which has a photograph and the authorized signature of the representative.

**IDENTIFICATION CARDS** **130.025**

The identification card is to be used for verification of authorization to conduct business of the Board of Equalization. The identification card, Form BOE-1102, must be kept in a secure manner so as to prevent loss and possible misuse by an unauthorized person. See BEAM Sections 2940 through 2945 for procedure to follow when an identification card is damaged or lost, or when an employee who has been issued an identification card is separated from the Board.

**CONFIDENTIAL BOARD RECORDS** **130.030**

The Government Code, Civil Code, and most of the business tax laws contain provisions making it illegal to divulge to any unauthorized persons information regarding a taxpayer's affairs obtained through investigation or from returns or reports. Such information *must* be treated in strict confidence. The Governor may, by general or special order, authorize the examination of records maintained by the Board, by other state officers, tax officers of another state, by the Federal Government if reciprocal agreement exists, or by any other person.

The Underground Storage Tank Law, under RTC subdivision 50159(c), authorizes the Board to give confidential information regarding the lessee and the lessee's suppliers to the tank owner to the extent necessary for assessment, administration and verification of the fee.

If directly affected, successors, receivers, trustees, executors, administrators, assignees and guarantors may be given information regarding unpaid tax liability of a taxpayer. Rules for releasing information to the taxpayer are covered in the discussion of the Information Practices Act in CPPM 135.074.

**RELEASE OF REGISTRATION INFORMATION TO THE PUBLIC****130.040****SALES TAX**

RTC section 7056 excludes the information appearing on sales and use tax permits from provisions prohibiting the Board and its employees from divulging information on sales and use tax accounts. See also CPPM 901.060 regarding Resolutions of Local Taxing Jurisdictions (LTJ) or Special Taxing Jurisdictions (STJ). However, the Board is prohibited from releasing the names and addresses of individuals who are registered with, or hold licenses or permits issued with the Board (sole proprietorships and husband and wife co-ownerships designated with a code M), except to verify resale certificates, administer the tax and fee provisions of the Revenue and Taxation Code, or to provide information to federal or state agencies or local governments as authorized by law (Civil Code Section 1798.69).

Sales tax permits do not show all information contained in the registration record. The content of permit forms is set forth in CPPM Chapter 2, *Registration*, which gives procedural instructions rather than regulations or statutory requirements. The entries are governed principally by practical limitations of form design, processing time, etc., and not by restrictions on the type of information displayed in the permit. The Board does, however, provide private sector requesters with certain additional information (see CPPM 135.074).

Regarding a closed-out account, the legal staff has consistently taken the position that the closed-out status and the date of the close out of an account are not confidential.

**SPECIAL TAXES**

The provisions governing the release of taxpayer information vary among the special tax programs and in some cases are much more restrictive. For example, under the Hazardous Substances Tax, we can not disclose whether or not a person is registered. Therefore, requests for the release of special taxes feepayer information should be referred to the appropriate division in the Special Taxes Department.

**VERIFICATION OF RESALE CERTIFICATES AND PERMITS****130.041**

The Board has an obligation to assist taxpayers in verifying the validity of resale certificates. Although responsibility for answering these inquiries is primarily that of the districts, taxpayers may also use the Board's website to verify an account number on a resale certificate. The website address is [www.boe.ca.gov](http://www.boe.ca.gov) and taxpayers may click on the Sellers' Permit Verification menu item. Staff must be aware of the restrictions on providing certain information on individuals as detailed in CPPM 135.074.

Sellers seeking to verify resale certificates should provide the district with the *name of the business, its location, and the purchaser's seller's permit account number*. With this information, the district can then verify and inform the seller whether the account is active or closed out. In the absence of providing this information, the inquiry should be considered a *searching service* request and forwarded to the Headquarters Account Analysis and Control Section (see below).

If a district receives a long list of accounts for which resale certificates are to be verified, the district should refer the list to the Headquarters Account Analysis and Control Section for verification. The verified information will then be mailed directly to the requesting seller unless otherwise instructed by the district.

Districts also may assist purchasers in verifying that persons with whom they are dealing have the required permits to collect California sales and use taxes. When the requester cannot provide the district with the sales tax permit number, the request should generally be considered a *searching service* request.

**SEARCHING SERVICE****130.042**

Alphabetical searching service is furnished only by the Headquarters Account Analysis and Control Section. No charge is made for verification of resale certificates and permits. The fee for other requests, such as those received from attorneys and collection agencies, is \$3.00 per search. These customers are billed quarterly. The release of information regarding individuals and confidential accounts is restricted (see CPPM 135.074, 145.010, 145.020).

The Account Analysis and Control Section's searching service may disclose the following information regarding partnerships, corporations, LLPs, and LLCs, but not sole proprietorships and husband and wife co-ownerships designated with a code M: Owner's name including "et al" names (excluding a.k.a.'s, corporate officers and limited partners as they don't appear on the permit), firm name (dba), business address, mailing address (if different from business address), account number, business code, starting date, whether account is active or closed and, if closed, the closing date.

**INTERDISTRICT COOPERATION****130.050**

All compliance employees, regardless of where they may be located, are working for the same organization. It is immaterial where an assignment originates or in what area a taxpayer incurred the tax liability. The responsibility for doing a conscientious job is not limited by district boundaries. Even though the assignment originated in another district, there will be no difference in the way the case is worked or in the amount of effort expended. Refer to CPPM Section 721.000 for detailed information about interdistrict assignments.

# COMPLIANCE POLICY AND PROCEDURES MANUAL

**LEGAL CASES — EMPLOYEE RESPONSIBILITY 135.000****SIGNATURE OF EMPLOYEE ON DOCUMENTS 135.010**

Employees will not sign stipulations, agreements or other documents authorized by the taxpayer or his or her representatives. Board forms, or facsimiles of forms, will be used. See also CPPM 505.080, Preparation of Tax Returns by Board Employee.

**CONFLICT OF INTEREST — SHERIFF'S OR MARSHAL'S SALES 135.020**

To avoid any question of conflict of interest, no Board employee, member of the employee's family or any other relative should purchase or attempt to purchase any asset being offered for sale pursuant to a marshal's or sheriff's seizure and sale held to satisfy delinquent taxes administered by the Board. Likewise, no individual should bid on behalf of a Board employee or his or her family.

The above does not prohibit a designated employee entering a protective bid on a motor vehicle on behalf of the Attorney General's Office as provided for in CPPM 742.060.

**CONTACT BY TAXPAYERS IN ATTORNEY GENERAL CASES 135.030**

If a taxpayer (or his or her representative) involved in a court case in which the Board is a party asks a Board employee for information regarding the case, they should be told to contact the Deputy Attorney General representing the Board in the litigation. To avoid the possibility of adversely affecting the outcome of the litigation, no information should be given unless authorized by the Deputy Attorney General involved.

**SERVICE OF LEGAL PROCESS 135.040**

I. Summons and complaints, restraining orders, orders to show cause, and similar legal process directed to the State Board of Equalization.

A. Authorized Methods of Service.

1. A summons and complaint in an action against the Board may be served by:
  - a. Personal delivery of a copy to the Chair of the Board, Executive Director, or Acting Executive Director. Service is complete at the time of delivery.
  - b. Mailing a copy to the Chair of the Board, Executive Director, or Acting Executive Director, by first class mail, postage prepaid, together with two copies of a notice and acknowledgement form and a return envelope, postage prepaid, addressed to the sender. Service is complete on the date the acknowledgement of receipt is executed by the Chair of the Board, Executive Director, or Acting Executive Director. If the acknowledgement form is not completed and returned within 20 days after the copy of the summons and complaint is mailed, the party to whom it was mailed is liable for reasonable expense thereafter incurred in serving or attempting to serve by another authorized method.
  - c. Leaving a copy in the district office of the Chair of the Board, or at the reception area in the headquarters building for the Executive Director, or Acting Executive Director. The copy must be left during usual office hours with "a person who is apparently in charge of the office." This will include a secretary of the person to be served. Thereafter, a copy must be mailed to the person to be served. Service is complete on the 10th day after such mailing.
2. A restraining order, an order to show cause, etc., directed to the Board, may be served by personal delivery of a copy to the Chair of the Board, Executive Director, or Acting Executive Director, or our attorney of record in the action.



## B. Procedure When Served.

1. Whenever a copy of a summons and complaint, restraining order, order to show cause, etc., directed against the Board is served by personal delivery or by mail, properly or improperly, it should be hand carried immediately to the Chief Counsel, unless it is improperly served by personal delivery and returned to the server as specified below. No written acknowledgement should be made to the server prior to review by the Chief Counsel. When it is not possible to hand carry documents to the Chief Counsel, documents should be forwarded by overnight mail. No written acknowledgement should be given to the process server prior to Chief Counsel review. When service is by mail, the notice and acknowledgement of receipt must be returned within 20 days of the date of mailing.
2. If an attempt is made to personally serve a person other than the Chair of the Board, Executive Director, or Acting Executive Director, with a copy of a summons and complaint, restraining order to show cause, etc., directed against the Board, the server should be told that the Chair of the Board or, preferably, the Executive Director, must be served. The copy should be returned to the server unless he or she insists on leaving it. If the server has left the documents despite being advised that the Board would not accept service in that manner, the documents should be forwarded immediately to the Chief Counsel. If the person served is individually named as defendant, he or she must accept service insofar as he or she personally is concerned, but this service is not binding on the Board. Under these circumstances, however, he or she or his or her supervisor should send the copy served to the Chief Counsel immediately.

For more information about service of summons and complaints, see BEAM 7701.

## II. Subpoenas and Subpoenas Duces Tecum

## A. Authorized Methods of Service.

The service of a subpoena is made by showing the original and delivering a copy to the witness personally including, in the case of a subpoena duces tecum, a copy of the affidavit upon which the subpoena was issued. The service must be made so as to allow the witness a reasonable time for preparation or travel to the place of attendance.

A subpoena duces tecum, to be effective in requiring production of Board records, should be directed to and served upon the Executive Director or Acting Executive Director.

## B. Procedure When Served.

If a subpoena is directed to the Board, an individual Member thereof, or the Executive Director and is served on an employee, the person so served is not required to appear in obedience to the subpoena. The service is of no effect inasmuch as the subpoena is not directed to him/her. The employee should so inform the server.

If the subpoena is directed to a particular employee of the Board and he or she is served, he or she is required to appear in obedience to the subpoena but is not authorized or required to produce any Board records even though it be a subpoena duces tecum. The employee should inform the server that to require production of Board records, a subpoena duces tecum should be directed to and served upon the Executive Director since he or she is the custodian of the records.



## SERVICE OF LEGAL PROCESS

(CONT. 2) 135.040

Board employees are authorized to testify under specified circumstances concerning their own knowledge of tax records when served with a subpoena directed to the employee personally. When a subpoena has been served upon an employee or when an attempt has been made to serve him/her with a subpoena directed to the Board, an individual Member thereof, or the Executive Director, the employee or his or her supervisor should immediately advise the Chief Counsel, forwarding information as to the nature of the proceeding, the name of the attorney, and the party on whose behalf the subpoena was issued. Further instructions as to procedure will be issued by the Chief Counsel. The Chief of Field Operations should be advised in all cases.

For more information about subpoenas, see BEAM 7702.

## SMALL CLAIMS COURT ACTIONS

135.045

Occasionally, the Board is named as a defendant in action filed in small claims court (a division of a municipal or justice court). Jurisdiction to resolve tax questions rests with the superior courts. The following procedures should be followed by field offices and headquarters units which receive communications from a small claims court concerning an action brought against the Board of Equalization with respect to sales and use and use fuel taxes.

1. If the action involves the validity of a determination, auditing errors, claims for refund, etc., the following action should be taken:
  - a. Notify the Headquarters Refund Section *immediately* by telephone.
  - b. The *original* correspondence received from the court should be forwarded to the Refund Section after a copy has been made for the district or unit file.
  - c. The Refund Section will provide a letter to the court which documents the Board's jurisdictional objections to the action.
  - d. If this letter is not accepted in lieu of a formal appearance on behalf of the Board, the Refunds Section will advise the district administrator or the unit supervisor, who will make arrangements to have someone appear for the Board, since attorneys are not allowed in small claims court actions.
  - e. The Refund Section will provide the person making the appearance with a letter detailing the legal basis for the jurisdictional objections to the action. The letter should be read to the presiding judge.
  - f. The person representing the Board should also be prepared to explain the provisions of the tax law which are applicable in the case at hand.
2. If the action involves a matter other than those shown above (e.g., reimbursement for accounting fees, claim for damages, etc.) the Special Procedures Section (CalNet 485-1122, Public Number (916) 445-1122) should be substituted for the Headquarters Refund Section in steps (a) through (f) shown above.
3. All actions involving special taxes programs should immediately be referred to the appropriate division which will perform similar functions to those referenced above.

**EXAMINING RECORDS — AUTHORITY FOR****135.050**

If a taxpayer challenges the authority of a BOE representative to examine the taxpayer's business records in the course of performing his or her official duties, the taxpayer should be referred to Government Code section 15618 or to the appropriate code section in Exhibit 2, Table 2 — Authority for Examining Taxpayer Records, at the end of this chapter.

Government Code section 15618 states, "The board may examine, as a board, individually, or through its staff, the books, accounts, and papers of all persons required to report to it, or having knowledge of the affairs of those required so to report."

CPPM 135.073 and 774.000, et seq., describe the procedures for obtaining a subpoena to produce records (subpoena duces tecum) when it becomes necessary to compel the person to allow staff access to its records.

**CLAIMS AGAINST PUBLIC EMPLOYEES****135.060**

Section 860.2 of the Government Code provides:

"Neither a public entity nor a public employee is liable for an injury caused by:

- (a) Instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax.
- (b) An act or omission in the interpretation or application of any law relating to a tax."

The Legislative Committee Comment to Section 860 states that:

"This chapter confers immunity upon public employees and public entities for their discretionary acts in the administration of tax laws. It is likely that the courts would confer an immunity for these acts under the general provisions of Section 820.2; but it appears desirable to make the immunity explicit in order to obviate the necessity for test cases to determine whether the discretionary immunity extends this far."

Section 820.2, referred to in the Legislative Committee Comment, provides as follows:

"Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

In one court case against a public employee, a discretionary act was defined as one which requires the exercise of judgment or choice.

Good judgment is a prerequisite of a successful compliance person. Any employee who is acting in the course and scope of his or her employment when he or she is engaged in work he or she was employed to perform, or when an act is an incident to this duty and was performed for the benefit of his or her employer and not to serve his or her own purposes or convenience, will be protected from personal liability for acts performed in tax collection.

**RIGHT TO FINANCIAL PRIVACY ACT****135.070**

The Board of Equalization (BOE) must comply with the provisions of law pertaining to governmental access to financial records commencing with Government Code section 7460, the *California Right to Financial Privacy Act* (FPA), when obtaining financial information from banks and other financial institutions.

The FPA protects the confidentiality of records for customers of financial institutions. As defined, “financial institutions” include state and national banks, state and federal savings associations, trust companies, industrial loan companies, and state and federal credit unions. The FPA covers all phases of a financial institution’s operations; therefore, the records of customers of a financial institution’s escrow and leasing departments are protected. However, for escrow and leasing companies, the FPA does not protect the confidentiality of a customer’s records, since escrow and leasing companies are not “financial institutions.”

In general, the FPA prohibits state or local government employees or agents from requesting or receiving copies of a customer’s financial records, or information from those records. However, government employees or agents may obtain this information if the records are described “with particularity,” are consistent with the scope and requirements of the investigation for which the records are requested, and the disclosure is in response to:

1. A customer authorization (see Government Code section 7473).
2. An administrative subpoena or summons (see Government Code section 7474).
3. A search warrant (see Government Code section 7475).
4. A judicial subpoena or subpoena duces tecum (see Government Code section 7476 and CPPM 774.000, et. seq.).

However, Government Code subdivision 7480(e)(1) permits BOE staff to inquire as to whether a person has an account(s) at a particular office or branch of a financial institution, and, if so, the identifying numbers of such account(s). In addition, Government Code subdivision 7480(h) specifically provides that the following information can be disclosed to the BOE:

1. The information required by those sections of the Revenue and Taxation Code (RTC) that pertain to the *Notice to Withhold* and *Notice of Levy*. The specific code sections of the RTC are shown in Exhibit 2, Table 3, titled Authorization To Issue A Notice of Withhold And A Notice of Levy, at the end of this chapter.
2. The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the RTC.
3. The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(Note: When serving a Notice of Levy on a financial institution, the usual Form BOE-425-LA is used. Use Form BOE-465 to serve a *Notice of Withhold*. If the financial institution is the employer of the taxpayer, Form BOE-425-E, *Earnings Withholding Order for Taxes*, is used (see CPPM 752.070, 753.010, and 755.000).)

**OBTAINING RELEASE OF FINANCIAL INFORMATION****135.071**

Except as noted in the previous section, (CPPM 135.070), the FPA generally prohibits Board employees from requesting or receiving information from a financial institution's customer records. Two means of obtaining such financial information that may be used by Board staff include:

- Obtaining proper authorization from the customer (Government Code section 7473), or
- Issuing a subpoena duces tecum (Government Code section 7476).

For both methods, the specific financial records to be reviewed must be described and be consistent with the scope and requirements of the investigation (Government Code, Section 7473). In addition, before requesting information from a financial institution, Board staff must first try to obtain from the taxpayer any data or documents which should have been retained in accordance with RTC section 7053 or similar requirements under the tax programs administered by the Board. If all other available avenues of information have been exhausted and approval of the district administrator has been obtained, Board staff may request the information directly from the financial institution either by obtaining the taxpayer's authorization or by issuing a subpoena duces tecum. To obtain the taxpayer's authorization, staff should use Form BOE-869 (Release of Financial Information) to secure access to the information. This section briefly discusses the procedures for using this form. It should be noted that obtaining authorization is rarely successful and a subpoena is usually used to obtain financial information. Obtaining taxpayer authorization is covered in the following section (CPPM 135.072); issuance of a subpoena duces tecum is discussed in CPPM 135.073.

Whichever method is used to obtain financial information, staff should attempt to examine and extract the data at the institution and directly from the available records. Direct examination avoids the expense of making copies or using some other method of delivering the information to the Board. In addition, the code section providing for taxpayer authorization does not legally require an institution to provide the requested information. Consequently, if the needed information will be costly and time consuming to produce, the institution may condition its production of the data on the Board's payment of the related expenses.

If obtaining the data is deemed necessary and unavoidable and in the Board's best interests, reasonable charges will be paid by the Board to secure the required information or documents, even though the Board is not legally bound to pay any such charges. These charges must be borne by the Board since there is no statutory authority for passing them on to the taxpayer. The district administrator has the responsibility for approving any charges which the financial institutions may make for the needed information and/or documents.

The financial institution must maintain a record of all examinations and disclosures of the financial records of a customer including the identity of the person examining the financial records, the department represented, and a copy of the customer's authorization, subpoena, etc., providing for such examination (Government Code, Section 7473).

It is imperative that the procedures for obtaining financial information be strictly followed to ensure compliance with the FPA. The FPA provides that:

Any person, who, with the intent to violate, knowingly participates in a violation of this chapter is guilty of a misdemeanor, and upon conviction shall be imprisoned for not more than one year, or fined not more than five thousand dollars (\$5,000), or both.

Any problems or questions which arise as a result of the Act, and which cannot be resolved in the district, should be referred to the Supervisor of the Special Procedures Section.

**OBTAINING TAXPAYER AUTHORIZATION (FORM BOE-869)****135.072**

Form BOE-869 is a four-part multicolored form. A sample of this form is shown in Exhibit 3. Initially, all four copies will be completed to the point of signature of the Board representative. The blue copy will be given to the taxpayer who authorizes the examination. The pink copy will be given to the financial institution who holds the records. The remaining two copies will be retained with the assignment file.

Preparation of Form BOE-869 is self-explanatory, but it must be completed in full detail and be properly executed by all parties involved. The expiration of the authorization normally should be dated no more than 60 days from the date of request of the authorization. The expiration date may exceed 60 days from the date of request of the authorization only when it is felt that more time is needed to examine the financial institution's records.

After the examination has been completed, the bottom receipt portion of the yellow and white copies must be signed by an official of the financial institution to acknowledge return of the records. The white copy will be retained by the financial institution. The original yellow copy will be retained in the district file of the account. Within 30 days of the examination, the taxpayer must be notified, in writing, that the examination has been completed and that the reason for such examination will be furnished upon written request. An acknowledgment letter (see Exhibit 3) must be used by the district of control for this purpose and a copy retained in the district file of the account (Government Code, Section 7473).

Since the expiration of the authorization normally will be 60 days from the date of request, priority must be given to the completion of the examination of the records provided by the financial institution.

Should the taxpayer refuse to authorize the release of information requested, the district administrator will follow the standard Board procedures for administrative subpoena or summons, search warrant or subpoena duces tecum (see CPPM 135.073).

**SERVICE OF SUBPOENAS****135.073**

Staff will direct all requests to issue a subpoena to the Legal Department.

Under Government Code section 7474, when an administrative subpoena is served on a financial institution, a copy must be served on its customer under the provisions in the Code of Civil Procedure (CCP), commencing with section 413.10 (see CPPM 774.020).

BOE staff may use any of the following methods to serve a copy of the subpoena on the customer:

1. Personal service (see CCP section 415.10).
2. Leaving a copy at the customer's office in the presence of an adult apparently in charge or at the customer's home in the presence of a competent adult member of the household, and then mailing a copy to the customer at the address of the office or home where the copy was left. Service is complete 10 days after mailing (see CCP section 415.20).
3. Mailing a copy with a form for acknowledgment. Service is complete when acknowledged. If not acknowledged, the customer may be held liable for cost of personal service (see CCP section 415.30).
4. If the person is outside the state, a copy may be sent by first class mail requiring a return receipt. Service is complete 10 days after mailing (see CCP section 415.40).
5. If no other service is feasible, service by publication in a newspaper may be used. This requires a court order, and it must be shown that the customer has an interest in property in this state or that certain other requirements are met (see CCP section 415.50).



Staff may use any of the above methods of service, however, the first or second method of those listed is the preferred means of serving a subpoena.

After being served with a subpoena, the person has ten days to move to quash the subpoena.

## INFORMATION PRACTICES ACT

135.074

The Information Practices Act of 1977 (Civil Code Section 1798 et seq.) (IPA) is a “private access” statute. That is, the IPA provides that individuals are to be allowed access to any personal information about them which is maintained in the files and records of any state agency. It also restricts the disclosure of such personal information to members of the public-at-large. The IPA places strict requirements on state agencies in the collection, use, maintenance, and dissemination of information relating to individuals. Since an individual is defined as a natural person, the act applies to sole proprietorships and husband and wife co-ownerships with a code M, but does not apply to partnerships (including formal husband and wife partnerships assigned a code P) or corporations, as such.

The term “personal information” includes, but is not limited to, the individual’s name, social security number, home address, home telephone number, financial matters, and statements made by, or attributed to, the individual.

The act prohibits the distribution of individuals’ names and addresses for commercial purposes (for purpose of financial gain). Civil Code section 1798.69 provides that the State Board of Equalization may not release the names and addresses of individuals (sole proprietorships) who are registered with, or are holding licenses or permits issued by the Board. The Board also includes in this restriction married taxpayers who jointly operate a business without a formal partnership agreement (code M).

An exception to this general restriction is information needed to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code. The Board may also provide names and addresses to any federal or state agency or local government if the release of the information is authorized by law.

The Board may disclose other personal information about “individual” taxpayers under the conditions shown in Civil Code Section 1798.24. These include:

1. To the individual to whom the information pertains (with proof of identity).
2. With written, voluntary consent of the subject individual, if consent was obtained not more than 30 days prior to disclosure, or in the time limit agreed to by the individual in the written consent.
3. To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected. (Disclosure or accounting requirements as specified in the act must be met.)
4. To another person or governmental organization to the extent necessary to obtain information required for the Board’s investigation of failure to comply with a specific law which the Board is responsible for enforcing.

Section 1798.67 also provides for the disclosure of information relating to the identity of a person against whom a lien or encumbrance on real property has been recorded in order to distinguish the person from another with the same or similar name.

**INFORMATION PRACTICES ACT****(CONT.) 135.074**

The Board must maintain the source of information collected and, when requested, provide it unless the source is exempt from disclosure.

Some of the programs administered by the Special Taxes Department do not allow disclosure of registration information. Please refer to the appropriate division for guidance before making any disclosure.

The Information Practices Act provides penalties for persons who intentionally violate its provisions. The penalties apply to those who furnish or obtain information improperly.

Questions concerning policies and procedures related to the Information Practices Act should be referred to the Board's Disclosure Officer.

**PUBLIC RECORDS ACT****135.075**

In contrast to the IPA, the Public Records Act (PRA) (Government Code Section 6250 et.seq.) provides that "public records" include **any** writing containing information relating to the conduct of the public business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The Government Code also provides that public records are open to inspection at all times during the office hours of the state agency and every person has a right to inspect any public record, except as otherwise provided.

The Board has adopted Regulations 8000–8016, which set forth the procedures to be followed to obtain copies of Board public records. A copy of these regulations is available from Board offices free of charge or can be accessed through the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov).

These regulations provide that "public records" subject to disclosure include:

- Annotations and their backup opinions, with confidential taxpayer information redacted.
- Staff memoranda and letters, including policy memoranda issued to Districts with confidential taxpayer information redacted.
- Business Taxes law guides, regulations, Current Legal Digests, and Business Taxes General Bulletins.
- Decision and recommendations (D and R) resulting from appeals conferences with confidential taxpayer information redacted.
- Manuals and guidelines with the exception of those the disclosure of which would compromise the Board's administration of tax programs.
- Memorandum Opinions.
- Newsletters and pamphlets.
- Operations Memoranda with the exception of confidential information contained in the memoranda.
- Rulemaking files.
- Public records of settlement agreements with a reduction of tax in excess of \$500.
- Training materials.

**PUBLIC RECORDS ACT****(CONT.) 135.075**

The PRA does not allow nondisclosure of an entire document simply because it contains some confidential information. Instead, confidential information, such as a taxpayer's name and account number and other identifying information, should be redacted, and the remainder of the document should then be released. However, if the requestor discloses that he or she knows the name of the taxpayer for whom the requested D and R or opinion has been prepared, the information may not be released, even if the document has been properly redacted.

In general, requests for public records should be in writing and should be addressed to the Board's Executive Director or the Disclosure Officer. However, copies of law sections, regulations, annotations, non-confidential operations memoranda, or other publicly available materials such as pamphlets or newsletters may be requested orally or may be available on the Board's website. Requests may be made in person at Board offices or may be made by telephone using the Board's Customer Service number, 1-800-400-7115.

A request to inspect or obtain public records must provide a sufficiently specific description so as to allow the Board to identify the requested records. Requests received at District offices or headquarters sections must be forwarded to the Disclosure Officer for review and processing. By law, all requests must be acknowledged within 10 working days of receipt of the request.

Additional information about the PRA may be found in Operations Memo 1041, *Release of Sales and Use Tax Information to the Public*, and BEAM sections 7223 and 7223.1.

**GUIDELINES FOR RELEASE OF AN INFORMANT'S NAME****135.076**

Periodically, members of the public (informants) will contact the Board with information regarding a taxpayer's alleged fraudulent activity. In some cases, the information is verbal, while in others, copies of documents might be provided. Some informants choose to remain anonymous, while others identify themselves or can be identified from the information provided.

The Information Practices Act (California Civil Code, § 1798 et seq.) requires the disclosure of all information found in an individual taxpayer's files when the individual so requests. Some exceptions to the disclosure rule include situations where the information:

1. "Is compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators..."  
*(Civil Code Section 1798.40(b))*
2. "Is maintained for the purpose of an investigation of ... a grievance or complaint, or a suspected civil offense, so long as the information is withheld only so as not to compromise the investigation or a related investigation. The identities of individuals who provided information for the investigation may be withheld pursuant to Section 1798.38."

*(Civil Code Section 1798.40(d))*

Under Civil Code Section 1798.38 and 1798.40 (d), an agency may withhold the identity of a source if there has been a promise of confidentiality and the information is withheld because it led to civil investigation of the individual involved. However, even though the identity of the source may be withheld, the agency is still required to:

"... fully inform the individual of all personal information about that individual without identification of the source. This may be done by providing a copy of the text of the material with only such deletions as are necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material."

*(Civil Code Section 1798.38)*



The promise of confidentiality is a requirement if the Board is to withhold an informant's name. It is essential that any promise of confidentiality to an informant be documented and clearly noted on or attached to any information which divulges the identity of the informant. This should prevent improper release of the informant's name.

Information obtained from an informant is to be withheld pending completion of an investigation (audit or other inquiry) if disclosure will compromise the investigation or a related investigation. At the conclusion of the investigation, the identity of the informant will be withheld if a promise of confidentiality has been made. The information provided by the informant, however, must be provided if the taxpayer requests it. As provided by the Civil Code, either copies of the information, with the identification of the informant properly deleted, or a comprehensive summary of the substance of the material will be provided in response to such a request.

Providing a comprehensive summary of the information is the preferable approach if there are any physical characteristics of the information (handwriting, spelling or grammar, identifying marks, unique details) which would result in the identification of the informant.

Whichever method is used, the Board shall ensure that full disclosure is made to the individual of any personal information that could reflect or convey anything detrimental, disparaging, or threatening to the individual's reputation, rights, benefits, privileges, or qualifications.

Finally, the Information Practices Act is not the only law which impacts the Board's actions in withholding information revealed by informants. Occasionally, circumstances involving discovery proceedings in active court cases or a defendant's right to face his or her accuser may require the disclosure of specific information, including the informant's name. These situations would result from court proceedings, and the Board's records would be subpoenaed. Should this circumstance arise, the matter must be referred to the Board's legal staff and/or the Deputy Attorney General assigned to the matter for decision and response.

# COMPLIANCE POLICY AND PROCEDURES MANUAL

**EXCHANGES OF CONFIDENTIAL INFORMATION** **140.000**

**GENERAL** **140.010**

It is extremely important that only authorized parties release and receive confidential information. For complete details, refer to the Board of Equalization Administrative Manual (BEAM), Section 7200 et seq. Any questions regarding the exchange of information should be directed to the Board's Disclosure Officer.

**AUTHORIZED AGENCIES** **140.020**

Arrangements have been made for the exchange of "confidential" information by the Board and other state agencies and the Federal Government. See BEAM, Section 7200 et seq., for authorized agencies in California, other states, and the federal government, the tax programs the agreements relate to, authorized personnel, and other provisions of authorization.

All reciprocal agreements provide that information may only be given after proper identification. Therefore, officers or employees of other agencies and of this Board must present their credentials when making a personal request for information (see CPMG Section 170.000).

**FILE DOCUMENTATION** **140.030**

In certain circumstances including disclosures made pursuant to exchange agreements, the Information Practices Act (Civil Code Section 1798 et seq.) requires an accurate accounting of the date, nature, and purpose of each disclosure made about individuals (Civil Code Section 1798.25). This accounting should be sent to Taxpayer Records and also may be recorded in a taxpayer's on-line file.

**COMPLIANCE POLICY AND PROCEDURES MANUAL**

**ACCOUNTS CLASSIFIED CONFIDENTIAL 145.000****CONFIDENTIAL INDICATOR 145.010**

Some accounts have been flagged as confidential because the taxpayer is concerned that the release of his or her address will compromise the taxpayer's personal safety. Sufficient justification to have an account flagged as confidential must be provided by the taxpayer to the Board's Disclosure Officer. When providing resale certificate verification on a confidential account, the Board will only verify the name on the account, the account number, and the status of the account. The address will not be disclosed.

**CALIFORNIA CONFIDENTIAL ADDRESS PROGRAM (CAL CAP) 145.020**

The California Confidential Address Program (Cal CAP) was enacted by Government Code section 6205. This program addresses confidentiality for victims of domestic violence. The law, effective July 1, 1999, will remain in effect until January 1, 2005, and then is repealed unless extended by statute. The Cal CAP program is administered by the Secretary of State's (SOS) office. Participants in the Cal CAP program designate the SOS as agent for service of process and receipt of mail. SOS provides the participant an identification card certifying participation.

Participants in the Cal CAP program require special administrative procedures as detailed in CPPM 205.035.

If an account has been flagged as confidential, a red "CONFIDENTIAL" will show on the Registration Screen.

**COMPLIANCE POLICY AND PROCEDURES MANUAL**

**CORRESPONDENCE****150.000****ACKNOWLEDGEMENT****150.005**

All incoming correspondence not subject to the Public Records Act (PRA) must be either responded to or acknowledged within 12 days of receipt. PRA requests must be responded to or acknowledged within 10 days, as required by law. These guidelines also apply to incoming E-mail (see CPPM 135.075). The Board of Equalization's Administrative Manual (BEAM) sections 7600–7660 provide uniform guidelines for correspondence acknowledgement.

**FORMAT AND CONTENTS****150.010**

Letters to taxpayers, organizations and the general public will be on letterhead of the Board of Equalization and will contain the signature, typewritten name, and working title of the authorized signer (see Operations Memo 984). The interoffice memorandum form should not be used.

Section 7525 of the Government Code requires state agencies to place telephone numbers on official stationary used in communications with the public. This requirement includes Data Processing printed forms in addition to manually prepared forms, letters and E-mails. Therefore, the Business Taxes Systems Coordinator and the Document Design and Control Unit should each be notified by memorandum whenever changes are made in district or branch office telephone numbers or addresses. The notices should be given as soon as firm information is available and should include the effective date of the change so data processing originated information and preprinted forms, envelopes, and phone listings may be corrected.

All Board correspondence must serve as a complete source of the questions asked, the facts presented and the answer given. Accordingly, all letters by the Board staff in response to tax questions obtained through personal contact with the taxpayer after receipt of the letter will be included in the response and will be identified as to source.

In responding to accountants, attorneys, or other taxpayer representatives in situations where the representative has not divulged the name of the taxpayer, the writer will ask that the representative divulge the name of the taxpayer to enable the Board to maintain appropriate records with respect to the information provided. Tax advice to trade associations, taxpayer representatives failing to identify their clients or taxpayers whose questions are vague or general in nature, should include a statement indicating that the answer given is intended to provide general information regarding the application of the tax. Where individual taxpayers are identified, but background information is incomplete, the taxpayer should be encouraged to write again, setting forth the specific facts. The staff is encouraged *not* to make presumptions, however, should it become necessary to do so, they should be clearly identified as such in the letter.

When correspondence may cause recipients to contact a Board Member, the Board Member should be copied. An example of such correspondence would be a letter sent to an entire class of taxpayers. (Always send a cc to the Executive Director when sending a cc to Board Members.)

**REVIEW****150.020**

District administrators and Headquarters supervisors will review all letters involving tax questions to ensure that the information is correct and in the proper format. The review with respect to letters which state a particular activity or transaction is exempt from tax (exempt letter) will be completed before the letters are mailed.

Copies of all correspondence should be initialed in the lower right hand corner after being reviewed.



**MODIFICATION/RESCISSION OF PRIOR ADVICE****150.025**

Where an opinion has been issued, and it is subsequently determined that the tax advice as applied to the facts given is incomplete or incorrect, appropriate modification or rescission letters should be sent to the taxpayer.

Written advice may also be invalidated by statutory or constitutional law, a change in the Board's regulations, or a final decision of a court, rendering the Board's earlier written advice no longer valid.

Tax advice may only be relied upon by the taxpayer to whom it was originally issued. Accordingly, whenever a change in legal ownership occurs, successors relying on this prior advice in the continuing operation of the business would not be entitled to relief based upon reasonable reliance on written advice from the Board.

**DISPOSITION OF CORRESPONDENCE****150.030**

District administrators and Headquarters supervisors will maintain records regarding the number of letters and E-mails received and responded to. This data, along with copies of all letters confirming transactions of an exempt nature or rescinding prior "exempt" correspondence should be accumulated monthly. This information, including the taxpayer's original inquiry, will then be forwarded to the Public Information and Administration Section (MIC:44). That section will be responsible for a final review of the letter's accuracy. Any correspondence requiring adjustment will be returned to the originating party.

Special Taxes Division Chiefs will maintain records and accumulate information as noted above and will be responsible for a final review of the letter's accuracy. (see BEAM 760 et.seq.)

**GUIDELINES FOR RELIEF — RELIANCE ON WRITTEN ADVICE****150.040**

RTC section 6596 provides statutory authority for the Board to relieve taxpayers of sales and use tax and any penalty or interest added where the Board finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the Board. Relief is provided only where there has been written advice by the Board in response to a request, in writing, from a specifically identified taxpayer who, in turn, described fully the specific facts and circumstances of the activity or transaction for which advice was requested. In addition, Sales and Use Tax Regulation 1705, *Relief from Liability*, provides that a prior audit report of a person requesting relief will be considered written advice from the Board if the issue in question was addressed in the audit report. Generally, a field waiver will not provide relief under this section.

Most of the business tax and fee programs contain statutes with provisions similar to RTC section 6596. These provisions are listed in Exhibit 2, Table 1, Reliance on Written Advice. Therefore Special Taxes staff should use the guidelines in this section.

**PERIODS OPEN TO RELIEF REQUESTS**

RTC sections providing relief do not specifically limit requests for relief to periods after an RTC section's effective date. Accordingly, relief may be granted to taxpayers under this section, regardless of when the advice was given, provided the taxpayer has not exhausted all administrative remedies.

The taxpayer will be required to demonstrate that all of the conditions set forth in RTC section 6596 or similar sections for other business taxes programs have been met.

Any taxpayer seeking relief from sales and use tax under RTC section 6596 or from other taxes, fees, or surcharges under similar provisions should be informed that they *must* furnish a copy of their original written inquiry to the Board, along with a copy of the Board's written advice. If the taxpayer is making the claim based on an audit report, the report must be provided along with appropriate supporting audit workpapers. Documentation furnished should also include a statement under penalty of perjury, setting forth the facts on which the claim for relief is based. Only the person making the original tax inquiry is entitled to rely on the written advice received from the Board. If any of these conditions are not met, the taxpayer should be informed that his or her request cannot be accepted as a valid claim/petition under section 6596. Taxpayers, whose claims/petitions are not accepted, should be informed of the Board's appeals procedures.

Petitions for redetermination, late protests, or claims for refund received in district offices, under section 6596 or similar provisions, should be forwarded to the appropriate headquarters unit or Special Taxes Division. District personnel should comment as they deem appropriate. While the Board has not authorized the staff to make adjustments or credits under RTC section 6596 or similar provisions, district personnel are encouraged to submit recommendations regarding the acceptability of the documentation provided by taxpayers. Limited authority to grant relief under section 6596 was delegated by the Board to the Deputy Director, Sales and Use Tax Department, or a designee pursuant to a Statement of Action adopted on September 30, 1992. For more information on section 6596 relief see CPPM 120.030.

# COMPLIANCE POLICY AND PROCEDURES MANUAL

**TAXPAYERS' RIGHTS 155.000****THE TAXPAYERS' BILL OF RIGHTS 155.005**

In January 1989, the original Taxpayers' Bill of Rights was established to ensure that the rights, privacy, and property of California taxpayers are adequately protected in the assessment and collection of sales and use taxes. Effective January 1993, the Special Taxes Bill of Rights was established, expanding Bill of Rights statutory authority to the special taxes programs administered by the Board of Equalization (Board). As the Board accepts responsibility for new special taxes and fee programs, the Bill of Rights protections are added for each program. In 1994, Taxpayers' Bill of Rights provisions were added for Property Taxes with the goal to ensure that taxpayers receive fair and uniform treatment under the property taxation laws.

**TAXPAYERS' BILL OF RIGHTS LAW SECTIONS 155.010**

The following is an explanation of the active and applicable Bill of Rights law sections pertaining to the Sales and Use Tax Law. Although this section focuses on the Sales and Use Tax Law, comparable provisions for special taxes and fees and for property taxes are noted in the chart in Publication 70, *The California Taxpayers' Bill of Rights*. In general, most Taxpayers' Rights provisions that apply to the sales and use tax also apply to the other business taxes administered by the Board.

The following sections provide both a summary of the statutory language and an overview of specific actions performed by staff for Sales and Use Tax Law accounts. Staff performs similar actions for the taxpayers' rights provisions that apply to the other tax programs administered by the Board.

**SECTION 7083, TAXPAYERS' RIGHTS ADVOCATE 155.011**

RTC section 7083 establishes the position of Taxpayers' Rights Advocate (TRA) for the purposes of :

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.

If actions, such as payment of a determination, are stayed, the statute of limitations are suspended pending the outcome of the action recommended by the TRA. The accrual of penalties and interest are not affected by the stay.

The TRA reports directly to the Executive Director.

The TRA, or his or her designee:

- Investigates and resolves taxpayer complaints and problems, including complaints regarding unsatisfactory treatment by employees.
- Institutes staying actions and/or orders the release of levies when failure to take such action would result in irreparable loss or threaten the health or welfare of the taxpayer.
- Oversees the Board's programs to evaluate employees' performance with respect to public contacts.
- Recommends changes in statutes, regulations, policies, and procedures to improve service to taxpayers.
- Monitors compliance with all provisions of the Taxpayers' Bill of Rights.
- Carries out various other duties related to the Taxpayers' Bill of Rights.

**SECTION 7084, EDUCATION AND INFORMATION PROGRAM****155.012**

RTC section 7084 requires the Board to develop and implement a taxpayer education and information program. Special efforts must be made to address the needs of newly registered taxpayers, specific groups of taxpayers identified by the staff as having problems complying with the law, as well as Board audit and compliance personnel.

Some methods used to fulfill this mandated program include:

- Special mailings to targeted industry groups.
- Classes for newly registered taxpayers explaining their duties and responsibilities and the most common areas of noncompliance.
- Active participation in business seminars.
- Revision of Board publications to make them easier to understand.
- Continuing education programs for Board staff covering new legislation and areas of noncompliance.

**SECTION 7085, IDENTIFICATION OF TAXPAYER NONCOMPLIANCE BY BOARD****155.013**

Under RTC section 7085, the Board must identify annually the most common areas of recurring taxpayer noncompliance with the Sales and Use Tax Law. A procedure is in place to gather such information from the audit process. This data is used as a foundation for developing educational programs and making changes that will improve both taxpayer compliance and uniform administration of the law. This information also must be included in the Board's Annual Report.

This section also requires the Board to conduct an annual hearing where industry representatives and individual taxpayers can make suggestions for simplification, improvement, or clarification of business tax laws, regulations, policies, and practices.

**SECTION 7086, PREPARATION OF STATEMENTS BY BOARD****155.014**

RTC section 7086 requires the Board to publish brief, but comprehensive, statements in simple language which explain procedures, remedies, rights, and obligations of taxpayers and the Board. These statements must be provided on the initial notice of audit, other substantive notices, and in annual Tax Information Bulletins.

**SECTION 7087, LIMIT ON REVENUE COLLECTED OR ASSESSED****155.015**

RTC section 7087 prohibits the Board from using audit, assessment, or collection statistics to evaluate employees' performance. In addition, the Board may not impose or suggest production quotas or goals. Accordingly, headquarters preparation of individual auditor statistical reports has been discontinued, and all supervisors are reminded that the recording of audited or collected taxes on an individual employee basis is a violation of the law.

It has never been the policy of the Board to measure the performance of an employee based on the amount of taxes assessed or collected. The Board must certify in its Annual Report that this is not done. Accordingly, each appointing power is required to certify annually that the amount of revenue collected or assessed under the Sales and Use Tax and Special Taxes and Fees Law has not been used personally or by those under their direction to evaluate individual employees or to impose or suggest production quotas or goals. Each District Administrator must submit an annual certification to the Chief of Field operations by September 1. Each headquarters manager with audit and/or compliance staff must submit an annual certification to their Deputy Director by September 15. The annual certifications are forwarded to the Taxpayers' Rights Advocate.

**SECTION 7088, EVALUATION OF EMPLOYEE'S CONTACT WITH TAXPAYERS 155.016**

RTC section 7088 requires the Board to implement a program to evaluate individual employee performance with respect to contacts with taxpayers. Procedures, including taxpayer surveys, have been developed for field offices and for each headquarters unit that has significant public contacts. In addition, all probationary reports and performance appraisals must contain comments on the employee's public contact skills under the Relationships with People factor on these reports and appraisals. Evaluations may include active solicitation of feedback by observation, review of correspondence, participation in meetings or conferences with the public and through any other available methods. (See BEAM Sections 1655 and 1664). The Board must include a report on the implementation of this program in its Annual Report.

**SECTION 7089, PLAN TO TIMELY RESOLVE CLAIMS AND PETITIONS 155.017**

RTC section 7089 mandates the Board, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, and other interested taxpayer-oriented groups, to develop a plan to reduce the time required to resolve petitions for redetermination and claims for refund. The Board's plan, adopted in 1992, includes standard time frames and requires a review of cases that exceed the established standard.

**SECTION 7090, PROCEDURES RELATING TO APPEALS CONFERENCES 155.018**

For conferences before appeals staff, RTC section 7090 requires the Board to:

- Hold the conferences at a reasonable time at a Board office which is convenient to the taxpayer.
- Provide the taxpayer prior notice that the hearing will be recorded and the taxpayer is entitled to receive a copy of the recording.
- Inform the taxpayer prior to any hearing that the taxpayer has the right to have an attorney, accountant or other designated agent present.

The Board has implemented the following policies with respect to Appeals Review Section conferences:

- Taxpayers must be informed before the conference that they are entitled to representation.
- The conference will be held at a reasonable time at a Board office that is convenient to the taxpayer.
- The Board has elected not to record conferences. However, taxpayers may record the conference if they give prior notice to the Board. The taxpayer must provide a copy of the recording to the Board, whether by electronic means or by court reporter.

When a taxpayer requests a conference, verification is obtained through Form BOE-1350-A, Referral to Appeals Unit. A copy of this form is sent to the taxpayer. The taxpayer must return the form in 10 days indicating if a conference is desired and at what location. An information sheet that is a part of the form provides the information required by RTC section 7090.

General information about appeals conferences is also provided in Publication 70, *The California Taxpayers' Bill of Rights*.

**SECTION 7091, REIMBURSEMENT TO TAXPAYER****155.019**

Under RTC section 7091, taxpayers are entitled to reimbursement of fees and expenses related to a hearing before the Board if all the following conditions are met:

- The taxpayer files a claim with the Board for the fees and expenses within one year of the date the Board's decision becomes final.
- The Board, in its sole discretion, finds that the action taken by its staff was unreasonable.
- 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.

To determine whether the Board staff has been unreasonable, the Board shall consider whether staff has established that its position is substantially justified.

Reimbursement of costs will be limited to fees and expenses incurred after the filing date of the petition for redetermination or the claim for refund. If the Board finds that the staff was unreasonable with respect to some of the issues involved but not others, reimbursement will be limited to expenses related to the issues with respect to which the staff was unreasonable. The rate at which a taxpayer may be reimbursed is set by RTC section 7156.

**SECTION 7092, INVESTIGATIONS FOR  
NON-TAX ADMINISTRATION PURPOSES****155.020**

Under RTC section 7092, Board employees who knowingly authorize or conduct an investigation of any person for non-tax purposes are subject to disciplinary action under the State Civil Service Act, including discharge from employment. This provision, however, does not apply to any lawful investigation concerning organized crime activities, and is not intended to prevent the exchange of information where multiple violations, including tax or fee program violations, are being investigated.

**SECTION 7093.5, SETTLEMENT AUTHORITY****155.021**

RTC section 7093.5 authorizes the Executive Director, or Chief Counsel if authorized by the Executive Director, to recommend to the Board a settlement of any civil tax matter in dispute. Settlements that reduce sales and use tax or penalties by \$5,000 or less (small case authority) may be jointly approved by the Executive Director and Chief Counsel. Sales and use tax settlement reductions exceeding \$5,000 must be approved by the Attorney General. Special taxes have not been authorized for small case authority; therefore, all settlement recommendations must be approved by the Attorney General.

The Board Members must approve any recommendations for settlement exceeding \$5,000 within 45 days of the submission of the recommendation to the Board. Recommendations that are not approved or disapproved within the 45 days are considered as approved.

A public record of a settlement with a reduction of tax in excess of \$500 is available to the public.

It should be noted that the settlement procedure is administered by the Settlement Section within the Legal Division.



**SECTION 7094, RELEASE OF LEVY****155.022**

RTC section 7094 provides that the Taxpayers' Rights Advocate may order the release of a levy or notice to withhold, up to \$1500, upon finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or their spouse and dependents or family. The section is recognized as an extension of the existing summary collection action review procedures and will be utilized when disagreements between the staff and the taxpayer exist. Under these circumstances, the taxpayer should be advised of provisions of RTC section 7094.

Current compliance policy (CPPM Section 742.100) states that when a Notice of Levy is issued, the taxpayer is entitled to be informed of the exemptions provided in the Code of Civil Procedure. Form BOE-425, Exemptions from the Enforcement of Judgements, is sent to the taxpayer with a copy of the Notice of Levy. To comply with RTC subdivision 7094 (b), the person signing the levy should ensure this form is included with the taxpayer's copy. A Notice to Withhold can have the same effect on health and welfare issues as a Notice of Levy; therefore, it will be treated in the same manner as a Notice of Levy.

When a Headquarters section receives a request for relief under RTC section 7094, it will be forwarded to the District Principal Compliance Supervisor in the district of account with a copy to the TRA. When a request is received in the district office a copy should be forwarded immediately to the TRA and the original assigned to the person in the district responsible for the case.

The person responsible for the case will contact the party holding the seized or levied property and advise them that an appeal under RTC section 7094 has been filed. They will request the financial institution's or other party's cooperation by requesting that the property be held pending outcome of the appeal. This will be followed by a letter of confirmation from the district to the party holding the seized or levied property, with a copy to the TRA Office, advising that they will be contacted regarding a final disposition for the funds within fifteen (15) working days.

If the financial institution or other party remits the funds, a cash deposit receipt, Form BOE-487-C, Cash/Liquid Security Deposit Advice, should be utilized to accept the payment, with notation at the top in bold type: "APPEAL UNDER SECTION 7094".

In order to minimize hardship, early resolution of each situation is the goal. The authority exists with the district to determine if a hardship exists or will occur and, if so, every effort should be made to take the necessary steps to quickly release all or part of the levied property. Hardship may be defined as the inability of the taxpayer to provide necessities of life for himself or herself or dependents. The district will gather and evaluate financial information to determine if seizure of property or funds will cause irreparable hardship to the taxpayer and/or his or her family. The review will focus on health and welfare issues, i.e. the necessities of life and the means to provide them, such as shelter, food, medical care, etc. Each case will be reviewed and judged independently on the specific facts and circumstances involved. Every effort will be made to resolve the appeal within fifteen (15) working days from receipt of the taxpayer's request.

**SECTION 7094, RELEASE OF LEVY****(CONT.) 155.022**

The taxpayer or their representative must provide reasonable documentation and disclosure of financial condition for a stay or release of levy to be considered. A financial statement, with documentation, will be completed by the taxpayer as part of the financial disclosure request. Failure of the taxpayer to verify financial statement information will result in denial of the appeal. Examples of such information might include, but are not be limited to:

- a. Evidence of mortgage or rent payments.
- b. Bank statements to demonstrate average amount of gross income.
- c. Paycheck stubs to show average monthly income for comparison to above item.
- d. Income tax returns, to verify item (b. and (c. and to investigate for other sources of income.
- e. Check stubs or receipts to demonstrate payments for food, utilities, medical expenses or other necessities.
- f. Utility bills.
- g. Medical bills.
- h. Prescription drug receipts.
- i. For credit card expenditures, receipts to show how the balance was incurred.
- j. Other specifically identified supporting information as required.

The district will prepare a report on the information submitted by the taxpayer and its recommendation regarding release of the property in question. This report will be submitted to the TRA Office for a decision and recommendation. Pending a decision, the district will not apply the funds to the liability. To do so will place the payment in claim for refund status and will preclude immediate release of the funds should the taxpayer prevail in the referral. At the conclusion of the matter, the TRA Office will forward a report detailing their analysis and recommendation to the district office with copies to other affected departments within the Sales and Use Tax Department. On those cases where time is critical, the information can be exchanged by FAX machine.

**SECTION 7094.1, RETURN OF PROPERTY****155.023**

Under RTC section 7094.1, the Board shall return to a taxpayer the property or the proceeds from the sale of any property levied upon if;

1. The levy was not in accordance with law,
2. The taxpayer has entered into, and is in compliance with an installment payment agreement pursuant to Section 6832, or
3. The return of the property will facilitate collection or be in the best interests of the state and the taxpayer.

This provision does not apply where the Board finds collection of the tax to be in jeopardy.

**SECTION 7095, EXEMPTIONS FROM LEVY****155.024**

RTC section 7095 provides that exemptions from levy are to be adjusted for purposes of enforcing the collection of debts to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

**SECTION 7096, CLAIMS FOR REIMBURSEMENT  
OF BANK CHARGES BY TAXPAYER****155.025**

Under RTC section 7096, a taxpayer may file a claim with the Board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the Board. Bank charges include a financial institution's customary charge for overdrafts that are a direct consequence of the erroneous levy. The charges subject to reimbursement are those paid by the taxpayer and not waived or reimbursed by the financial institution. Each claimant applying for reimbursement shall file a claim with the Board.

The Board will grant a claim if:

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

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

A procedure has been established to process these claims for reimbursement of bank charges. Districts or units receiving claims for reimbursement should forward the following to the Taxpayers' Rights Advocate:

- The original claim filed by the taxpayer.
- A copy of the notice of charge from the taxpayer's bank.
- A statement explaining the facts that lead to the filing of the claim and a recommendation whether the claim should be paid.

The Taxpayers' Rights Advocate will evaluate the claim and notify the taxpayer of his or her decision. If the claim is approved, it will be forwarded to the Accounting Section of the Financial Management Division for payment and the claimant will receive a check from the State Controller approximately two weeks later.

Because the statute requires a response within 30 days, districts should forward claims as soon as they are received.

Since reimbursements under this section are paid out of the Board's general operating fund and tax liabilities involve other government funds, offsetting transfers between these funds are not routinely possible. Therefore, payment of tax liabilities and reimbursement of bank charges must be handled separately. Requests to internally credit reimbursement of bank charges toward any outstanding tax liability of the taxpayer will not be granted.

**SECTION 7097, PRELIMINARY NOTICE TO TAXPAYER PRIOR TO LIEN****155.026**

RTC section 7097 requires the Board to mail the taxpayer a preliminary notice at least 30 days before the filing of liens. The preliminary notice must specify the statutory authority for filing the lien, show the earliest date on which the lien may be recorded, and explain the remedies available to the taxpayer to prevent the filing of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice must be sent. This notice is not required with respect to liens filed pursuant to a jeopardy determination.

The bill note printed on demand billings has been amended to satisfy this requirement. The procedure for recording liens has been changed accordingly.

If the Board determines that a lien was filed in error, a release must be mailed to the taxpayer and the entity recording the lien as soon as possible, but not later than seven days after identifying the error and receiving the lien recording information. The release must contain a statement that the lien was filed in error. If the erroneous lien is obstructing a lawful transaction, the Board must immediately issue a release of lien to the taxpayer and the entity recording the lien. If requested by the taxpayer, a copy of the release must be mailed to major credit reporting companies in the county in which the lien was filed.

The Special Procedures Section has established a procedure to ensure the timely release of erroneous liens and to place a notice on the release that the lien was filed in error. Upon request of the taxpayer, the Special Procedures Section will send a copy of the release to major credit companies in the county where the erroneous lien was filed.

**SECTION 7098, NOTICE PRELIMINARY TO SUSPENSION****155.027**

As provided in RTC section 7098, a taxpayer's permit or license cannot be revoked until at least 60 days after the Board has mailed a notice to the taxpayer which indicates that the permit or license will be suspended on a certain date.

Accordingly, the date of revocation for each reporting period has been established at 60 days from the date of mailing of the hearing notice. The Annual Calendar of Sales Tax and Use Fuel Tax Functions reflects the dates for these programs. Accounts scheduled to be revoked for balance, security or failure to comply also must be given a 60-day notice before they are revoked or suspended.

All other business tax accounts also will be given a 60-day notice before revocation.

**SECTION 7099, DISREGARD BY BOARD EMPLOYEE OR OFFICER****155.028**

RTC section 7099 provides that an action for damages may be brought against the State of California in Superior Court by a taxpayer aggrieved by the action of any employee of the Board who recklessly disregards Board published procedures. However, if it appears to the court that the taxpayer's case is frivolous, the court may impose a penalty up to \$10,000.

**TAXPAYERS' RIGHTS ADVOCATE****156.000****THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE****156.005**

The Taxpayers' Rights Advocate's (TRA) Office facilitates resolution of taxpayer issues and concerns; monitors various Board tax and fee programs for compliance with the Taxpayers' Bills of Rights; recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers; and participates on various task forces, committees and public forums. During the year, mandated Taxpayers' Bill of Rights public hearings are held to provide an opportunity for the elected Board Members to hear concerns, suggestions and comments from the public.

The TRA Office generally assists taxpayers who have been unable to resolve a matter through normal channels, when they want information regarding procedures relating to a particular set of circumstances, or when there are apparent rights violations in the audit, compliance, or property tax areas. The TRA Office facilitates communication between taxpayers and Board and county staff to eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so that they can be better prepared to discuss their issues with staff and effect resolution.

The TRA Office functions as an independent third party and reviews the issues in each case before making a recommendation or taking action. The goal of the TRA Office is to facilitate communication and understanding between the taxpayer and the local office and to work cooperatively with both the taxpayer and the staff to resolve the problem.

Generally, the TRA Office will become involved in a case when any of the following events occur:

- A taxpayer contacts the TRA directly,
- Board management or the program staff refers a taxpayer to the TRA Office,
- The Governor's Office, a Legislator's Office, or a Board Member's Office refers a taxpayer to the TRA Office, or
- A case requires the TRA's involvement due to statutory situations.

**STAFF REFERRALS TO THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE****156.010**

The procedures discussed here are intended to provide guidelines for referring taxpayers to the TRA. It should be stressed that it is not intended to create new procedures or rules for handling audit or compliance cases or for dealing with taxpayers. Staff should continue to always treat taxpayers in a professional and courteous manner. It must be emphasized that if the staff has dealt with the taxpayer in an open and objective manner, listened to the circumstances of the situation, discussed options and shared information with the taxpayer, their role as a professional has been fulfilled. Undoubtedly, some issues will arise where differences between the taxpayer and the staff can not be resolved. If appropriate, the issue(s) should be referred to a supervisor for review as the basic responsibility for settling disputes rests with district and/or headquarters staff. If, after supervisory review, the taxpayer asks for review by the TRA's office, the case should be referred accordingly.

**STAFF REFERRALS TO THE TAXPAYERS' RIGHTS ADVOCATE'S OFFICE****(CONT.) 156.010**

Problems that can be resolved via normal inquiries to headquarters should not be referred to the TRA Office. (For example: If a taxpayer asks for an explanation of how payments have been applied to a billing on their account, this should be handled by an inquiry from the field office to Headquarters Special Procedures Section if the information is not available in the district.) Typical items that should be resolved in the district would be the negotiation of installment payment proposals, requests for administratively extending reasonable time limits for reinstatement on revoked accounts when circumstances warrant, and answering questions regarding legal issues or audit procedures. Referrals to the TRA should be primarily to facilitate solutions to issues that may be outside the staff's line authority, or issues that raise questions concerning the adequacy, equity, or fairness of established policies and/or procedures.

If the staff believes that a course of action cannot be agreed to and the issue(s) remain unresolved, or they feel the taxpayer does not understand the situation, they should bring it to the attention of their immediate supervisor to see if further discussion with the taxpayer would be beneficial. A discussion with the taxpayer could then be held to allow a full explanation of the staff's position and assure that the taxpayer's desired resolution is fully considered.

This procedure will ensure that there is ample opportunity to draw on the experience of supervisors and managers to satisfactorily resolve taxpayer issues and give employees direction for future encounters. An independent decision made within the district or headquarters staff based on facts and policy, and taking into consideration the unique circumstances of each case is desired and encouraged. If necessary, the case should be referred through other levels of management for review and recommendation prior to referral to the TRA Office.

If the case cannot be resolved in the local office or headquarters, it should then be referred to the TRA Office. Taxpayers should be advised that the TRA will make an independent and impartial review in light of the law and established policies and procedures, and that solutions will be recommended as the circumstances and facts merit.

**TAXPAYERS' RIGHTS ADVOCATE'S OFFICE PROCEDURES****156.015**

The TRA facilitates resolution of taxpayer problems and ensures that taxpayers' rights, privacy and property are protected during the assessment and collection of taxes. Consequently, the TRA has a responsibility to investigate all issues and requests for assistance. Some cases may be referred to the Internal Security and Audit Division, the program department, or Legal Division when it is determined that the issue may fall under their operational responsibility.

Frequently, taxpayers will call the TRA Office prior to attempting to resolve the issue through normal channels. The TRA staff will communicate and guide the taxpayer back to normal channels, such as contacting the local office to resolve any issues.

When referrals or calls from taxpayers are received, the TRA staff will generally review the taxpayer's master file and the BOE systems for information concerning the taxpayer's case. When contacting the district, the TRA staff will first contact the District Administrator and the appropriate District Principal so they will be aware of the referral and can determine the best way to handle the inquiry with their staff. For Headquarters sections, the section supervisor will generally be the initial contact of the TRA staff.



Typical information requested by the TRA Office includes:

- Date of discussion(s).
- Names of all parties present during discussion.
- Issues discussed.
- Taxpayer's desired resolution.
- Staff's position and full explanation of action taken.
- Copies of case notes.
- Other relevant information.

After review of all information, the TRA Office will discuss its recommendation with the program staff and the taxpayer to facilitate resolution.



## Table of Exhibits

Tax Programs Administered by the Board .....	Exhibit 1
Authorizing Statutes .....	Exhibit 2
Release of Financial Information and Recommended Acknowledgement Letter .....	Exhibit 3

GENERAL

TAX PROGRAMS ADMINISTERED BY THE BOARD

EXHIBIT 1

Tax Program	Revenue and Tax Code Sections	Other Relevant Tax Code Sections	Administered by:	
			Department	Division
Sales and Use Tax	6001-7176		SUTD <sup>1</sup>	
Bradley-Burns Uniform Local Sales and Use Tax	7200-7212		SUTD	
Transactions and Use Tax	7251-7279.6		SUTD	
Motor Vehicle Fuel Tax	7301-8408		STD <sup>2</sup>	Fuel Taxes
Use Fuel Tax	8601-9355		STD	Fuel Taxes
Insurance Tax	12000-13170		STD	Excise Taxes
Cigarette and Tobacco Products Tax	30001-30481		STD	Excise Taxes
Alcoholic Beverages Tax	32001-32556		STD	Excise Taxes
Energy Resources Surcharge	40001-40216		STD	Excise Taxes
Emergency Telephone Users Surcharge	41001-41176		STD	Excise Taxes
Hazardous Substances Tax	43001-43651	Sections of the Health and Safety Code	STD	Environmental Fees
Childhood Lead Poisoning Prevention Fee	43001-43651	Health and Safety Code 105175-105197	STD	Fuel Taxes
Occupational Lead Poisoning Prevention Fee	43001-43651	Health and Safety Code 105175-105197	STD	Environmental Fees
Integrated Waste Management Fee	45001-45984	Public Resources Code 48000-48008	STD	Excise Taxes
Oil Spill Response, Prevention, and Administration Fees	46001-46751	Government Code 8670.40-8670.48	STD	Fuel Taxes
Underground Storage Tank Maintenance Fee	50101-50162	Health and Safety Code 25299.10-25299.51	STD	Fuel Taxes
Natural Gas Surcharge	55001-55381	Public Utilities Code 890-900	STD	Excise Taxes
Tire Recycling Fee	55001-55381	Public Resources Code 42860-42895	STD	Excise Taxes
Ballast Water Management Fee	55001-55381	Public Resources Code 71200-71271	STD	Environmental Fees
Diesel Fuel Tax	60001-60709		STD	Fuel Taxes

1 Sales and Use Tax Department (SUTD)

2 Special Taxes Department (STD)

**AUTHORIZING STATUTES**

**EXHIBIT 2**

The following tables list those statutes of Board-administered tax programs that authorize the taxpayer to rely on written advice provided by the Board, and authorize the Board to examine taxpayer records and issue liens and withholds. These tables are intended as a reference only. Staff should read the actual code sections and regulations to ensure familiarity with the specific nature and scope of the authority provided under the law.

**Table 1 - Reliance on Written Advice**

TAX PROGRAM	AUTHORIZING REVENUE AND TAX CODE SECTIONS	REGULATION
Sales and Use Tax	6596	1705
Bradley-Burns Uniform Local Sales and Use Tax	6596	1705
Transactions and Use Tax	6596	1705
Motor Vehicle Fuel Tax	7651, 7651.1	
Use Fuel Tax	8879	1335
Insurance Tax		
Cigarette and Tobacco Products Tax	30284	
Alcoholic Beverages Tax	32257	
Energy Resources Surcharge	40104	
Emergency Telephone Users Surcharge	41098	2432
Hazardous Substances Tax	43159	
Childhood Lead Poisoning Prevention Fee	43159	
Occupational Lead Poisoning Prevention Fee	43159	
Integrated Waste Management Fee	45157	
Oil Spill Response, Prevention, and Administration Fees	46158	2250
Underground Storage Tank Maintenance Fee	50112.5	1248
Natural Gas Surcharge	55302	
Tire Recycling Fee	55302	
Ballast Water Management Fee	55302	
Diesel Fuel Tax	60210	1422

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

Table 2 — Authority for Examining Taxpayer Records

Tax Program	Authorizing Revenue and Tax Code Sections	Regulation
Sales and Use Tax	7053, 7054	1698
Bradley-Burns Uniform Local Sales and Use Tax	7053, 7054	1698
Transactions and Use Tax	7053, 7054	1698
Motor Vehicle Fuel Tax	8253 & 8301–8306	1171–1178
Use Fuel Tax	9254	1332
Insurance Tax	No separate provision	
Cigarette and Tobacco Products Tax	30456, 30454	4026–4028
Alcoholic Beverages Tax	32453, 32551	2500
Energy Resources Surcharge	40172–40175	2343–2346
Emergency Telephone Users Surcharge	41058, 41073, 41129–41130	2431
Hazardous Substances Tax	43502	
Childhood Lead Poisoning Prevention Fee	43502	
Occupational Lead Poisoning Prevention Fee	43502	
Integrated Waste Management Fee	45852	
Oil Spill Response, Prevention, and Administration Fees	46603	2255
Underground Storage Tank Maintenance Fee	50153	1271
Natural Gas Surcharge	55302	
Tire Recycling Fee	55302	
Ballast Water Management Fee	55302	
Diesel Fuel Tax	60604–60606	1470

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

**Table 3 - Authorization To Issue A Notice of Withholds And A Notice of Levy**

Tax Program	Authorizing Revenue and Tax Code Sections
Sales and Use Tax	6702, 6703
Bradley-Burns Uniform Local Sales and Use Tax	6702, 6703
Transactions and Use Tax	6702, 6703
Motor Vehicle Fuel Tax	
Use Fuel Tax	8954, 8957
Insurance Tax	
Cigarette and Tobacco Products Tax	30313, 30315
Alcoholic Beverages Tax	32383, 32387
Energy Resources Surcharge	40153, 40155
Emergency Telephone Users Surcharge	41122, 41123.5
Hazardous Substances Tax	43443, 43444.2
Childhood Lead Poisoning Prevention Fee	43443, 43444.2
Occupational Lead Poisoning Prevention Fee	43443, 43444.2
Integrated Waste Management Fee	45603, 45605
Oil Spill Response, Prevention, and Administration Fees	46404, 46466
Underground Storage Tank Maintenance Fee	50134, 50136
Natural Gas Surcharge	55203, 55205
Tire Recycling Fee	55203, 55205
Ballast Water Management Fee	55203, 55205
Diesel Fuel Tax	60404, 60407

Note: Unless otherwise indicated, the regulations are in the same sections of the Business Taxes Law Guide as the codes. The regulations are also available in the California Code of Regulations (CCR), Title 18, Division 2. The CCR is available online and in the Legal Library.

RELEASE OF FINANCIAL INFORMATION AND  
RECOMMENDED ACKNOWLEDGEMENT LETTER

BOE-869 REV. 1 (10-92)  
RELEASE OF FINANCIAL INFORMATION

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

AUTHORIZATION TO RELEASE INFORMATION TO  
STATE BOARD OF EQUALIZATION

I/We, \_\_\_\_\_ hereby authorize  
(NAME OF TAXPAYER)  
\_\_\_\_\_ to release to  
(NAME & ADDRESS OF FINANCIAL INSTITUTION)  
\_\_\_\_\_ an official  
(NAME & TITLE)

representative of the California State Board of Equalization, the following financial records covering the  
period from \_\_\_\_\_ to \_\_\_\_\_ .

Description of Records

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This authorization expires \_\_\_\_\_ . However, I reserve the right at any time to revoke this  
(DATE)  
authorization.

\_\_\_\_\_  
(SIGNATURE) Account No. \_\_\_\_\_  
\_\_\_\_\_  
(TITLE) (DATE)

These records have been received for the purpose of making an examination pursuant to the provisions of  
the \_\_\_\_\_ tax law.

\_\_\_\_\_  
(DISTRICT ADMINISTRATOR) (DATE)  
By \_\_\_\_\_  
(TITLE)

Return of the above-described records is acknowledged:

\_\_\_\_\_  
(NAME OF FINANCIAL INSTITUTION) (DATE)  
By \_\_\_\_\_  
(TITLE)

TAXPAYER COPY

RELEASE OF FINANCIAL INFORMATION AND  
RECOMMENDED ACKNOWLEDGEMENT LETTER

**Recommended Acknowledgement Letter**

Taxpayer Name

Street Address or P.O. Box

City, State Zip Code

Account No. \_\_\_\_\_

Dear (Taxpayer Name)

This is to notify you that the records listed below for the period from \_\_\_\_\_ to \_\_\_\_\_ were examined by the California State Board of Equalization pursuant to the provisions of the \_\_\_\_\_ tax law.

These records were returned to the possession of (NAME OF FINANCIAL INSTITUTION) on (DATE).

DESCRIPTION OF RECORDS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You may request the reason for the examination if you wish.

Sincerely,

By \_\_\_\_\_

Title \_\_\_\_\_