

**Amend Revenue and Taxation Code Section 7096 of the Sales and Use Tax law to allow a taxpayer to file a claim for reimbursement of bank charges and third party check charges incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the Board of Equalization (BOE). (Housekeeping)**

**Source: Taxpayers' Rights Advocate**

**Existing Law**

Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or order to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

However, under Revenue and Taxation Code Section 7096, if the BOE erroneously issues a levy or notice to withhold, and that error resulted in bank charges or third party check charges incurred by a taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. Bank and third party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those actually paid by the taxpayer and not waived or reimbursed by the financial institution.

Occasionally, an erroneous BOE action has resulted in the imposition of bank or third party check charges and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. Occasionally, due to a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was credited erroneously by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the law contains no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

**This Proposal**

This proposal would expressly provide that, in addition to reimbursement of bank or third party check charges incurred by a taxpayer as the directly result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE.

It is only fair and equitable to reimburse taxpayers for bank and third party check charges when those charges are a direct result of a BOE error, and to no fault of the taxpayer. This proposed change is consistent the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the Franchise Tax Board (FTB). The FTB sponsored AB 1767 (Ch. 349, Stats. 2005), to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

*Section 7096 of the Revenue and Taxation Code is amended to read:*

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

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

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

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. 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.