

STATE BOARD OF EQUALIZATION

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Taxpayers' Rights Advocate's

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# 2015-2016 ANNUAL REPORT

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Property and Business Taxes



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First District

**Fiona Ma, CPA**  
Second District

**Jerome E. Horton**  
Third District

**Diane L. Harkey**  
Fourth District

**Betty T. Yee**  
State Controller

**David J. Gau**  
Executive Director

February 2017

Mr. David J. Gau  
Executive Director

Dear Mr. Gau:

I am pleased to present the Taxpayers' Rights Advocate's 2015-16 Property and Business Taxes Annual Report. This report:

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

This year a number of new bills pertinent to tax programs administered by the Board of Equalization (BOE) have become law. Whether sponsored by the BOE or not, many bills signed into law have significant effects on California businesses. For example, in 2015 I suggested that the BOE sponsor legislation to amend Revenue and Taxation Code section 7094 and equivalent special taxes statutes. One of the main benefits of the law change was to increase from \$1,500 to \$2,300 the amount of levied funds the Advocate is authorized to return to tax and fee payers who can demonstrate they have suffered or are about to suffer a health or welfare issue. As AB 1277 made its way through the legislature and eventually wound up on the Governor's desk, I assisted the BOE's support of the bill by testifying at legislative committee hearings. The amendments became effective as of January 1, 2016. Over the years there have been a number of bills that the Taxpayers' Rights Advocate Office either proposed or partnered on with BOE Departments or Board Members to make a positive change and to ensure taxpayers' rights were protected.

Because new laws or changes to existing laws generally go into effect each January, it's vital for tax and fee payers to pay attention to what may become a law. On a routine basis the BOE updates its website, sends press releases to media outlets, and sends special news bulletins and eblasts; in addition to holding telephone townhalls, webinars, and outreach events to inform business owners and individuals about upcoming tax law changes. Knowing ahead of time how a law or rule may affect a business or an individual can eliminate problems down the road.

Respectfully submitted,

A handwritten signature in black ink that reads "Todd C. Gilman". The signature is written in a cursive, flowing style.

Todd C. Gilman  
Taxpayers' Rights Advocate

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# TAXPAYERS' RIGHTS ADVOCATE OFFICE

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## VISION

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

## MISSION

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

## GOALS

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

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

## PROFILE

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

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* (see [Appendix 1](#)) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits and consumer use tax accounts, which currently include approximately 950,000 taxpayers, are provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax and fee programs administered by the BOE, currently affecting approximately 1,028,000 taxpayers in more than 31 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The *Morgan Property Taxpayers' Bill of Rights* (see [Appendix 2](#)) was added in January 1994, governing the assessment, audit, and collection of property tax, with the goal of ensuring that millions of taxpayers receive fair and uniform treatment under the property tax laws.

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

### Legal Responsibilities of the Taxpayers' Rights Advocate

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

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by BOE and county employees;
- Monitors all tax and fee programs administered by the BOE and property tax programs administered by counties for compliance with the Taxpayers'

Bills of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;

- Works with BOE staff to ensure that taxpayer educational materials are clear and understandable; and
- Coordinates statutory Business and Property Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members.

### How the Taxpayers' Rights Advocate Office Fulfills its Legal Responsibilities

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

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

- Have been unable to resolve a matter through normal channels;
- Want information regarding BOE and county procedures;
- Claim their rights have been violated in the assessment or collection of tax; or
- Seek confirmation that staff action is lawful and consistent with approved policy.

The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff.

Occasionally a taxpayer or a BOE employee contacts the TRA Office complaining about discrimination or harassment. TRA Office staff work with appropriate BOE management to resolve the complaint. Likewise, alleged taxpayer discrimination or sexual harassment toward BOE staff is not tolerated and is appropriately addressed.

The Advocate oversees the Tax Appeals Assistance Program, which allows taxpayers who have filed an appeal with the BOE the opportunity to seek free legal assistance. For more information, see the *Tax Appeals Assistance Program* chapter.

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

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

The TRA Office routinely takes part in ongoing policy discussions, adding the perspective of taxpayers' rights, by participating in BOE committees' interested parties meetings and division chiefs meetings; conducting focused issues discussions with department management or designees; and taking part in inter-departmental working groups charged with the development of policy change recommendations.

Starting this year, the Advocate has undertaken key roles related to the BOE's focus on customer service. The Advocate now serves as the executive liaison to the Board's Customer Service and Administrative Efficiency Committee. In addition, the Advocate serves as the Chair of the BOE's Customer Service Action Committee, which addresses enterprise-wide policies and practices related to how the BOE interacts with tax and fee payers.

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

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

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

The TRA Office is responsible for making arrangements, in cooperation with the Board Proceedings Division, for yearly property tax and business taxes hearings in both Northern and Southern California. After the hearings, the TRA Office

works with appropriate areas of the BOE or counties to address issues and concerns conveyed to Board Members by presenters and provides follow-up reports to the Members when appropriate. The TRA Office also prepares responses to presenters outlining how their concerns were addressed and posts those responses on the BOE website.

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

The BOE's Advocate meets quarterly with the Taxpayer Advocates from the Franchise Tax Board (FTB), the Employment Development Department (EDD), and the Internal Revenue Service (IRS), as well as the Small Business Advocate in the Governor's Office of Business and Economic Development (GO-Biz) to discuss common problems and systemic issues facing California taxpayers. These meetings, along with close working relationships among the advocate offices, have allowed all the tax agencies serving California taxpayers to have a better understanding of taxpayer issues. California taxpayers also benefit from the TRA Office's ongoing relationships with the other California Advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the Advocates.

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

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

#### ***Business taxes***

The BOE is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Executive Director has administrative control over these functions and the staff carrying them out. The Advocate reports directly to the Executive Director and is independent of all BOE departments. When complaints relating to the BOE's business taxes programs are received in the TRA Office, the office has direct access to all BOE

information and staff involved in the taxpayers' issues. The TRA Office acts as a liaison between taxpayers and BOE staff in resolving problems. If the Advocate disagrees with actions taken by BOE staff and is unable to resolve the situation with program management, the issue may be brought to the Executive Director for resolution. In addition, the Advocate has the authority under the Taxpayers' Bills of Rights to take certain actions to protect taxpayers from irreparable harm, such as issuing a stay of collection action, releasing levies, or ordering the return of levied funds. The Advocate may also make the decision to release or subordinate a lien when that action will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

### Property tax

In contrast to the way the TRA Office resolves business taxes issues, property tax cases are primarily resolved directly with the county assessors, tax collectors, and auditor-controllers (all elected officials), as well as clerks of the assessment appeal boards. Additionally, the TRA Office works with the BOE's Legal Department and the County-Assessed Properties Division when required. The TRA Office also works cooperatively with the California Assessors' Association on statewide issues. Although the TRA Office does not have the legal authority to overturn local actions, TRA Office staff are generally successful in soliciting cooperation and ensuring that taxpayers receive proper treatment under the law. In cases where there is no procedural or legal authority to remedy a problem – and a change does appear justified – the TRA Office recommends specific policy, procedural, and/or legislative changes.

The *Business Taxes Issues* and *Property Tax Issues* chapters of this report include examples of how taxpayers' complaints are resolved in each of these areas.

## PUBLIC OUTREACH

The public becomes aware of the services offered by our office in a number of ways. For example, information is included about the TRA Office in many BOE publications, is accessible on Internet sites, and is provided by TRA Office staff in presentations at public events.

## Publications

- **Publication 70**, *Understanding Your Rights as a California Taxpayer* (September 2011), contains information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights, and is available in all BOE offices and on the BOE's website.
- **Publication 231**, *Hit the Wall Trying to Solve Your Tax Problem? We Can Help* (October 2012), briefly summarizes how the TRA Office can help when normal channels do not work. Publication 231 is provided at many public events and is available on the BOE website.
- **Publication 215**, *Free Legal Help... Do You Qualify?* (April 2016), explains to prospective clients what help is available from the Tax Appeals Assistance Program, which is overseen by the Advocate (see the *Tax Appeals Assistance Program* chapter of this report).
- **Publication 145**, *California Taxpayer Advocates – We're Here for You* (September 2016), provides contact information for the Advocates from the BOE, FTB, EDD, IRS, and GO-Biz. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center website, [www.taxes.ca.gov](http://www.taxes.ca.gov). This year publication 145 was reformatted and contact information was added for GO-Biz.
- Many BOE publications prepared for permit or license holders reference the TRA Office's toll-free telephone number.
- The TRA Office's toll-free number is printed on all BOE-issued permits and licenses.
- Articles reminding taxpayers about their rights and referencing publication 70 are published each year in BOE newsletters.
- Contact information for key TRA Office staff can be found at the back of this Annual Report.

## Internet and Telephone

- The California Tax Service Center website, [www.taxes.ca.gov](http://www.taxes.ca.gov), contains links to all California Taxpayer Advocates' webpages and the publication 145 directory (see page 4) via the "Your Rights" option.

- The TRA Office's webpage, [www.boe.ca.gov/tra](http://www.boe.ca.gov/tra), can be accessed from any page of the BOE's website. The webpage contains a video message from the Advocate introducing the TRA Office and provides a means for taxpayers to communicate with the TRA Office directly via email.
- The TRA Office's toll-free number is available as an option on many BOE offices' phone trees.
- The TRA Office's toll-free number is now included in the AT&T white pages in major areas of California.

## Public Events

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

- Monthly Board meetings: Copies of publications about the TRA Office and taxpayers' rights and the Advocate's current annual report are provided for individuals arriving for their appeal hearings before the Board.
- Board Member-sponsored events: The Advocate or designee attends Small Business Fairs and Seminars and Nonprofit Seminars throughout the state. At these Board Member-sponsored events, the TRA Office interacts with business owners and charitable organization representatives, makes presentations, and provides written materials about the TRA Office.
- Non BOE-sponsored events: Direct contacts with the public and some presentations are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such as the IRS Nationwide Tax Forum, the annual meeting of the California Tax Bar and California Tax Policy Conference, and the California Small Business Day in Sacramento. The BOE Advocate also partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals.

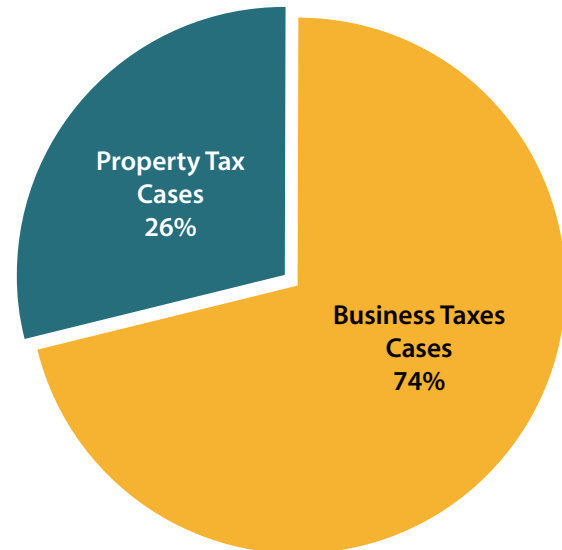
## CONTACTS RECEIVED IN FISCAL YEAR 2015-16

### Cases

The TRA Office recorded 658 new cases in fiscal year 2015-16 compared to 784 cases in the previous fiscal year. The TRA Office caseload was comprised of 74 percent business

taxes cases and 26 percent property tax cases.

As is generally the case, the BOE website and BOE publications accounted for the largest sources of referrals for TRA Office cases. The *Property Tax Issues and Business Taxes Issues* chapters include listings of other important means by which taxpayers learned about the TRA Office.



### Telephone Calls

Telephone call volume in fiscal year 2015-16 decreased from the previous year, at an average of 564 calls per month (not including calls that resulted in new cases), compared to 664 calls per month in fiscal year 2014-15. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the TRA Office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their disagreements with the BOE or counties through normal channels. Some callers have questions or concerns that need to be addressed by another state agency such as the FTB. TRA Office staff responds by directing the caller to the appropriate BOE section or individual, county office, information resource such as the BOE or county website, or to the appropriate state agency, with an invitation to call again if the caller is unsuccessful in making contact with the office to which they were referred.



# PROPERTY TAX ISSUES

## CASE RESOLUTION

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

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

### About the Property Tax Case Statistics

#### County of origin

The TRA Office recorded 169 new property tax cases in fiscal year 2015-2016 compared to 227 cases in the previous fiscal year. The TRA Office tracked the number of cases by county of origin and found, for the most part, that the population of the county tends to determine the number of cases from each county. See [Appendix 3](#).

The overwhelming majority of property tax cases are resolved in conjunction with local county assessors, tax collectors, and assessment appeals board clerks. The remaining cases are resolved through state agencies such as the BOE or the State Controller's Office. Multiple offices are often involved in the resolution of taxpayers' cases.

#### Types of cases

In fiscal year 2015-16, 63 percent of property tax cases were in the valuation category which includes topics such as value reductions, changes in ownership, appraisal methodology, exclusions, exemptions,

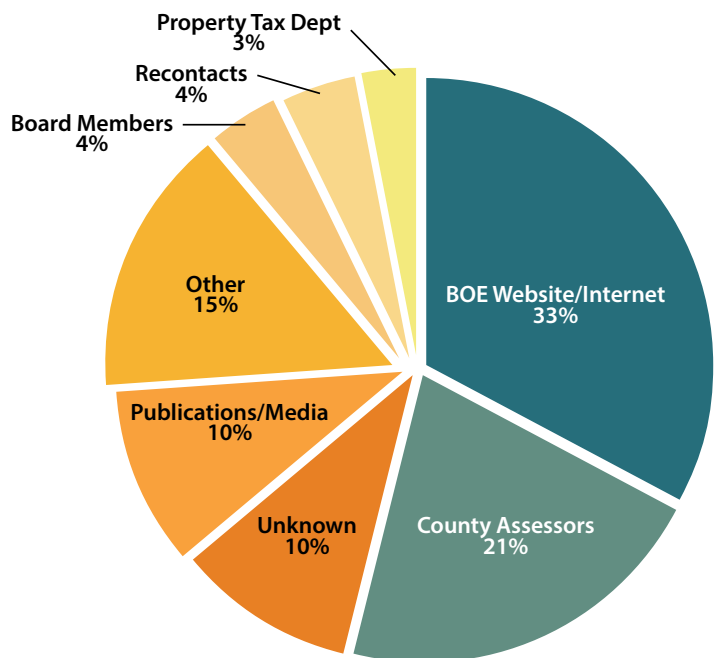
assessment appeals, new construction, general property tax information and definitions, and actual enrollment of values. The administrative category, making up the remaining 37 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data. See [Appendix 3](#).

#### Specific property tax issues leading to TRA Office contacts

Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 4](#).

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

In an effort to gauge the effectiveness of the TRA Office's outreach efforts and improve public service, the TRA Office tracks the source of referrals to its office. This year the BOE website was the largest source of referrals, accounting for 33 percent of the property tax cases while county assessors accounted for 21 percent.



2 The "Other" category consists of various types of referrals, each comprising two percent or less of the total, including county appeals boards, county tax collectors, county auditor controllers and legislators.

## Examples of Property Tax Cases

The following cases illustrate how taxpayers' issues are resolved by the TRA Office staff and indicate the range of services provided by the property tax technical advisors. Our role usually involves review and explanation of processes and methodologies, as well as facilitation of resolutions between taxpayers and county departments.

### *Refund not processed after taxpayer won assessment appeal*

**Issue.** When an assessment appeals board renders a decision in favor of the taxpayer and that decision creates a reduction in value, a refund will be made of excess taxes paid, based on the original assessed value. The refund process is virtually automatic if all parties timely complete their part of the process. In this case the refund was stalled in the system for a longer time than typical for the specific county.

**Resolution.** After verifying what actually occurred at the assessment appeals hearing and determining which department was responsible for the various portions of the process, the source of the problem was located. In this case, the tax collector was behind in processing refunds but had all the information they needed to issue the refund. Once the tax collector's office was aware that the refund was ready to be issued, they processed it immediately and the taxpayer received their refund shortly thereafter.

**Summary – Services Provided.** The TRA Office's understanding of the assessment process allows them to locate problems and affect changes expeditiously.

### *Exemption lost after nonprofit organization changed their name*

**Issue.** When a nonprofit organization's application for a welfare exemption under Revenue and Taxation (RTC) section 214 is approved, assuming the subsequent annual statements are filed timely and the organization still qualifies, the exemption will continue. The exemption was denied in this case even though only the name of the entity changed.

**Resolution.** The TRA Office and assessor's office discussed why the exemption was originally removed. The TRA Office advised the assessor that the removal was incorrect since this was a name change only. The

assessor agreed and the exemption was reinstated.

**Summary – Services Provided.** Exemptions can be complicated and the process of filing for them can be confusing for taxpayers. The TRA Office's understanding of the available exemptions and the process for obtaining them allows exemptions to be granted when warranted. In this specific case the exemption allowed the organization to avoid paying over \$50,000 in property tax.

### *Taxpayer prevails in hearing for three assessment appeals*

**Issue.** A taxpayer disputed several assessments and discussed the assessments with the assessor. Those discussions were productive but the assessor felt the assessed values were still proper and the taxpayer was advised to file appeals for the three years. At that point the taxpayer contacted the TRA Office for advice on the appeals process.

**Resolution.** The TRA Office, after first discussing the value issue with the taxpayer, consulted with the assessor but there remained a dispute over the values enrolled for each of the three years. We then proceeded to discuss the appeals process with the taxpayer including what should be presented and how. We discussed the formal exchange of information process and what would happen at the actual hearing. Following this guidance, the taxpayer presented her case and was successful in the three assessment appeals and ultimately paid less in property taxes.

**Summary – Services Provided.** Most taxpayers will not need to go through the assessment appeal process. If they choose to appeal, however, they are still faced with how to present their case in the best light. The TRA Office's understanding of how assessments are calculated and the methods for disputing assessments assists taxpayers going through the challenging process.

## ISSUE RESOLUTION

The two primary functions of the TRA Office are to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and laws

to improve and ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, suggestions received from BOE staff and other agencies, and issues identified by TRA Office staff, the issues are resolved with the appropriate department or departments.

### Work in Process – Issues Identified

As a result of taxpayer contacts, discussions with county assessors and the annual Morgan Property Taxpayers' Bill of Rights hearings, the TRA Office has identified two issues which are currently pending resolution.

***Application of RTC section 69.5, base year value transfer, when the applicant already owns a portion of the replacement property.***

**Background.** When a person reaches the age of 55 years or older or is permanently disabled, they have the opportunity to transfer their tax base from one home to another under certain conditions. One of the conditions is that the replacement home must be purchased. BOE has consistently held that "purchase" as used in RTC section 69.5 means a one hundred percent purchase.

**Issue.** At a conference attended by the Advocate, an attorney explained a difficult situation experienced by the attorney's client. She attempted to transfer the base year value under RTC section 69.5 from her original home to her deceased parents' home that she owned jointly with her two siblings. This request was denied since she had purchased only two thirds of the replacement dwelling. She then filed a claim to transfer the base year value of her original home to the newly constructed residence, which was also denied. At the suggestion of the Advocate, the attorney advised his client to present the issue at one of this year's Taxpayers' Bill of Rights hearings.

**Work in Process.** The Legal Department and the Property Tax Department are considering the question of whether or not 100 percent of the value of land on which a replacement dwelling is newly constructed must be purchased to qualify for the RTC section 69.5 base year value exclusion. The TRA Office is participating in the discussion. If the question is answered in the negative, it may result in the base

year value transfer being granted in this case. The TRA Office will work with the Property Tax Department and the Legal Department if new policy guidance is needed.

***Application of RTC section 63.1, parent to child transfer, when property is owned by a closely held family corporation.***

**Background.** RTC section 63.1 allows for certain property transfers between parents and children to be excluded from reassessment. The end result is that the children retain the same assessed values of their parents instead of a new assessment which would likely create a higher tax liability. However, the law does not allow legal entities such as corporations to receive this benefit.

**Issue.** At a Taxpayers' Bill of Rights hearing, a taxpayer explained he inherited a family farm along with his sibling. They applied to have the property's tax base passed down from their parents under RTC section 63.1. This exclusion from reassessment was denied because the property transferred was held in the family corporation before and after the parents transferred their interests to the children.

**Work in Process.** The TRA Office participated in discussions about this issue with the Property Tax Department and the Legal Department. The consensus opinion was that the exclusion sought in this situation would require a change to the statute. A farm industry group representative is considering drafting proposed legislation for consideration by an elected representative, and the BOE's Legislative Division is assisting him. The TRA Office will continue to monitor the potential legislation, and work closely with the BOE's Legislative Division on providing input to the Legislature should a bill be drafted to address this situation.

## TAXPAYER SERVICE IMPROVEMENTS BY COUNTIES

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

## Alameda County

Alameda County just completed the third year of a seven-year project to upgrade their current valuation program to a web-based platform. They also completed the initial phase of a three-year project that will integrate the real property and business property systems for increased functionality and efficiency.

## Napa County

Napa County is updating the assessment categories on value notices and public inquiry computer screens to provide more easily understandable information to property owners. The value notice and inquiry categories of real property fixtures and personal property fixtures are being clearly labeled and rearranged to show the difference between the two types of fixtures. The new format should be available for the 2017-2018 assessment year notices and inquiry screens.

## Riverside County

Riverside County improved their discovery and assessment process for locating and valuing new business accounts by developing a specially trained five member team. This process improvement also allowed the office to conduct more audits so that more taxpayers received proper tax bills and all taxpayers are treated equally.

## Sacramento County

Sacramento County hosted a training session for staff making decisions regarding exemptions and property transfers. Over 100 staff, from multiple counties, attended. This is a good example of one county taking the lead on improving an aspect of the assessment process for the benefit of all counties.

## San Bernardino County

The San Bernardino County Assessor granted about 8,000 previously unclaimed homeowner exemptions by using technology to identify properties likely to be entitled to the exemption. Each exemption enrolled saves the homeowner an average of \$70 in property tax, and the total tax savings to taxpayers resulting from the assessor's efforts was approximately \$560,000.

## Santa Clara County

Santa Clara County published an exhaustive annual report that details every aspect of the property tax system from assessment to distribution to local agencies. The detail of information is useful to the public and other agencies alike. The annual report is available on the Santa Clara County Assessor website along with other useful information.

## Multiple-County Project

Forty three counties have extended their use of two key computer systems that have greatly improved usefulness for taxpayers and office processing efficiency. Since the cost of these systems is shared by multiple counties, the cost per county is more affordable and implementation of the systems is more efficient than if each county developed their own systems for taxpayer interface functions.

Some noteworthy benefits achieved by these two growing systems are:

- Taxpayers have downloaded more than 930,000 forms in a PDF format and 60 percent of these downloads were made after office hours and on weekends.
- Business property statements can be uploaded from one of the two systems and, as of this year, there have been over one million business property statements submitted to the counties for processing.
- More forms are becoming readily accessible as the system grows.

# BUSINESS TAXES ISSUES

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## CASE RESOLUTION

Approximately two-thirds of the Taxpayers' Rights Advocate (TRA) Office's cases consist of businesses and individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the Board of Equalization (BOE). All of these tax and fee programs are collectively referred to in this publication as "business taxes." The *Property Tax Issues* chapter discusses the remainder of the cases worked by the TRA Office.

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

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

### About the Business Taxes Case Statistics

During fiscal year 2015-16, the TRA Office recorded 489 new business taxes cases, compared to 559 cases in the previous fiscal year.

### *Outcome of business taxes cases*

Appendix 5 provides important information about the business taxes cases, categorized by office of origin. A specific BOE field or Headquarters office or Other Government Agencies was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "Other" was normally designated as the office of origin in cases where individuals wanted general information; cases where the office was not disclosed;

or, generally, Headquarters offices with less than two cases recorded. The TRA Office tracked broad case types (see below) and critical outcomes of the cases.

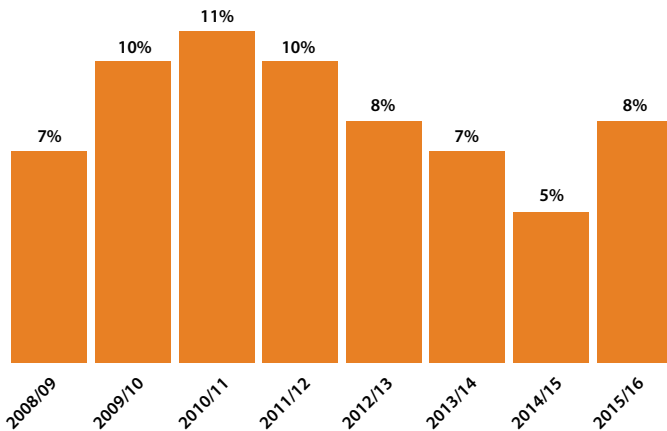
**Customer Service Concerns.** The TRA Office closely monitors the number and type of customer service concerns that taxpayers bring to its attention because the manner in which taxpayers are treated is an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers' Bill of Rights. Accordingly, complaints from taxpayers regarding customer service are brought to the attention of the District Administrator or Headquarters section manager with a request to conduct an investigation into the taxpayer's allegations and inform the TRA Office of the findings. If the TRA Office notes a trend or pattern in either the types of complaints or complaints regarding specific BOE offices, the matter is brought to the attention of the Deputy Director, Field Operations Department.

Customer service concerns are categorized as:

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

Both the number and percentage of customer service complaints were up the year (see Appendix 5 and Appendix 6). The percentage of business taxes cases in recent years expressing concerns related to customer service is illustrated on page 12.

### Percentage of Business Taxes Cases with Customer Service Concerns



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

**Disagreed with Case Handling.** After investigating a taxpayer’s concerns, the TRA Office is often able to confirm that staff’s handling of the situation was consistent with legal, regulatory, and procedural mandates. Nevertheless, it is still possible that staff’s handling of the case could change. This may happen due to additional information coming to light through the TRA Office’s investigation and communication with staff and the taxpayer; or as a result of the TRA Office’s recommendation of a different approach to produce a result that is satisfactory to both the BOE and the taxpayer.

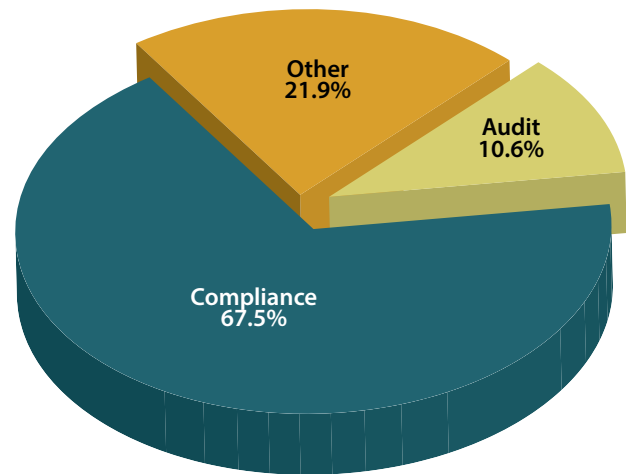
Occasionally, however, the TRA Office disagrees with one or more aspects of how BOE staff handled a case. These instances typically comprise a small percentage of the business taxes cases – less than two percent in fiscal year 2015-16 (see [Appendix 5](#)). A case is recorded as “disagreed with case handling” only when the TRA Office finds that:

- Staff did not adhere to the law or approved policies or procedures;
- Staff acted contrary to what the taxpayer was told by staff;
- Staff caused unreasonable delays; or
- Staff violated the taxpayer’s rights.

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

### Taxpayer inquiries cover a wide range of issues

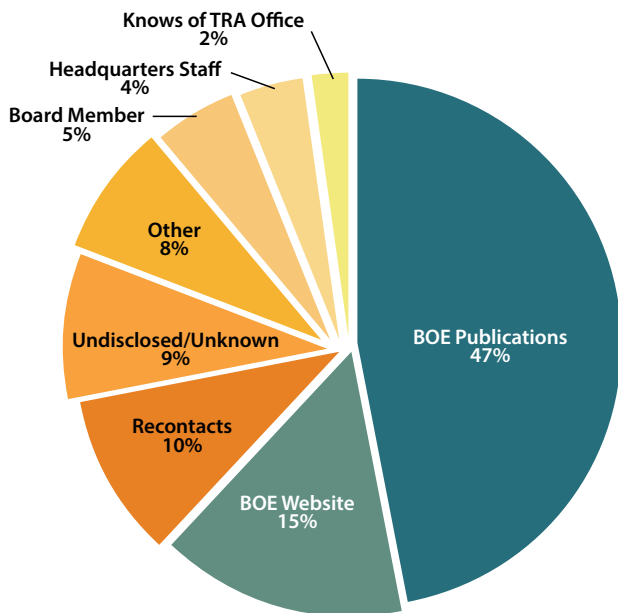
**Types of Cases.** Business taxes cases are sorted broadly into “compliance,” “audit,” or “other” categories. The “other” category represents consumer complaints, general information requests, and many of the matters involving other state agencies.



**Specific Issues Leading to TRA Office Contacts.** Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 6](#).

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

## How taxpayers were referred to the TRA Office



In an effort to gauge the effectiveness of the TRA Office's outreach efforts and improve public service, the TRA Office tracks the source of referrals to its office. As is generally the case, the BOE website and BOE publications accounted for the largest sources of referrals.<sup>3</sup>

### Examples of Business Taxes Cases

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

#### *Penalties arising from Electronic Funds Transfer (EFT) are not billable under Revenue and Taxation Code (RTC) section 6829*

**Background.** Pursuant to RTC section 6829, any responsible person who willfully fails to pay or to cause to be paid any taxes of a corporation that has been terminated can be held personally liable for the unpaid taxes of that corporation including the interest and penalties on those taxes.

RTC section 6829 provides in part:

*Upon the termination, dissolution, or abandonment of the business of a corporation... , any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation... shall... be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation...*

Regulation 1702.5, *Responsible Person Liability*, provides in part:

*Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a corporation... shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination...*

**Issue.** The TRA Office was contacted by a taxpayer regarding his RTC section 6829 determination. The taxpayer contended that he was only an employee and should not have been held personally responsible for the sales and use tax liability of the corporation. The TRA Office researched the case and found that the taxpayer's Petition for Redetermination had already completed the BOE's appeal process and his petition had been denied. Although the taxpayer had exhausted his remedies, the TRA Office conducted an independent review and agreed that the taxpayer was a responsible party under RTC section 6829. However, the TRA Office's review indicated that the taxpayer had only been billed for unpaid penalties. Some of the penalties were for failure to pay by EFT. Based on RTC section 6829 and Regulation 1702.5, a person can only be held liable for any unpaid taxes and interest and penalties on those taxes. All payments were made timely by the corporation. Since EFT penalties are not based on unpaid taxes but are imposed solely because the taxes were not paid by EFT, these penalties cannot be included in the determination under RTC section 6829.

**Resolution.** The TRA Office brought their findings to the District Administrator who agreed that the

<sup>3</sup> The "Other" category consists of various types of referrals, each comprising less than two percent of the total, including Taxpayers' Bill of Rights Hearings, legislator, district staff, outreach event, other government agencies, and TRA Office information printed on permits.

EFT penalties are not subject to a section 6829 dual determination. A recommendation was submitted to the Petitions Section to make an adjustment for the penalties. As a result, the EFT penalties were deleted from the dual determination.

**Summary - Services Provided.** Even when all remedies have been exhausted by a taxpayer, important details of a case can be overlooked. In this case, the TRA Office's knowledge and understanding of RTC section 6829 was instrumental in deleting penalties that are not subject to a RTC section 6829 dual determination.

### *Taxpayer qualified for exemption – use tax was not owed*

**Background.** Pursuant to Sales and Use Tax Regulation 1620, when a vehicle is purchased and first functionally used outside of California and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that it was acquired for storage, use, or other consumption in California and subject to use tax. However, under certain circumstances purchases of vehicles may be exempted or excluded from tax. Any claim that the vehicle is not subject to use tax must be substantiated with satisfactory documentary evidence.

BOE's Compliance Policy and Procedures Manual (CPPM) provides the types of evidence that can be used to rebut the presumption and show that the vehicle was purchased for use outside California during the first 12 months of ownership. This evidence may include, but is not limited to:

- Proof of out-of-state vehicle registration,
- Proof of payment of property tax to another state,
- Apartment lease, rental agreement, or other evidence showing residence in another state,
- Proof of change in employment status, or
- Anything else that will reasonably establish that at the time of purchase, the purchaser did not intend to use the vehicle, vessel, or aircraft in California.

In some instances, the purchaser may claim that at the time of purchase, the intent was not to use the vehicle in California, but subsequent circumstances changed the purchaser's plans (e.g. change in job assignment). BOE policy provides that, to overcome the presumption that the vehicle was purchased

for storage, use, or other consumption in this state, the following two factors must be present: (1) at the time of purchase, the purchaser did not contemplate bringing the property to California for use in the state, and (2) the subsequent change of intent was beyond the control of the purchaser.

**Issue.** A taxpayer contacted the TRA Office because he disagreed with a determination for use tax issued to him regarding a vehicle that was purchased in Canada several months before accepting a job offer which required him to move to Southern California. The taxpayer filed an exemption claim and although he believed he had provided sufficient evidence to prove that his move to California was beyond his control, the Consumer Use Tax Section (CUTS) denied it, telling him that the exemption did not apply because his acceptance of the job and move to California was "voluntary." The taxpayer paid the amount in full. After speaking with the TRA Office, the taxpayer filed a petition for redetermination and filed a protective claim for refund.

**Resolution.** After reviewing the taxpayer's evidence, the TRA Office brought this case to the attention of CUTS and asked why the taxpayer's exemption was denied. CUTS reasoned that the taxpayer had to establish that he never intended to use the vehicle in California at the time he purchased the vehicle, and that the subsequent use of the vehicle in California was solely the result of an unforeseen change in circumstance *beyond the taxpayer's control* that resulted in a change to an original intent not to use the vehicle in California. Although the taxpayer moved to California to accept a job offer, it was *voluntary* and therefore, did not constitute a change of intent beyond the control of the taxpayer.

The TRA Office, on the other hand, asserted that the BOE has historically focused on the intent at the time of purchase. This taxpayer purchased the vehicle in Canada prior to the job offer, registered it, and paid Canadian tax. In fact, the taxpayer did not bring the vehicle into California until almost seven months after purchasing the vehicle. Clearly, his intent at the time of purchase was to use the vehicle in Canada, not in Southern California.

The TRA Office reviewed the facts of the case as they related to the law and questioned the legal basis



for the policy reliance on “change of intent.” After the facts of the case were pointed out to CUTS, they accepted the taxpayer’s argument that the change of intent was beyond his control and granted the exemption. The billing was cancelled and the taxpayer received a refund.

**Summary - Services Provided.** The TRA Office’s intervention quickly resolved the issue without the taxpayer having to go through the BOE’s appeals process.

This case and other cases brought to the TRA Office’s attention with the “voluntary move” issue led the TRA Office to question guidance provided to staff. After extensive discussions about this issue with the Business Tax and Fee Department (BTFD) management on a number of similar cases, the TRA Office requested a legal opinion. See “Revisions needed to interpretation of law regarding taxpayers voluntarily moving to California with 12 months of purchasing a vehicle, vessel, or aircraft” in the *Issues Resolution - Work in Process* section of this chapter.

### *Amended returns should not have been completed by staff*

**Background.** The purpose of the Statewide Compliance and Outreach Program (SCOP) is to educate business owners regarding their sales and use tax reporting responsibilities, make sure businesses have the required state tax and fee permits, provide a field presence for the BOE, and address the tax gap that exists between sales and use tax revenue due under existing laws and the actual amount that is reported and paid. In order to accomplish this, SCOP representatives conduct door-to-door visits to non-residential businesses based on zip code. If areas of non-compliance are identified by SCOP staff, potential underreporting referrals could be generated.

**Issue.** A taxpayer contacted the TRA Office because she was issued a notice of determination that was based on amended returns. According to the taxpayer, the returns were not completed by her, but were in fact, completed by SCOP staff without reviewing her books and records. The taxpayer felt pressured into signing the returns although she did not agree with them. Once she was billed, the taxpayer hired a tax attorney to help her. Although the taxpayer had been working with the district office to adjust the billing, she believed she was treated unfairly by SCOP staff and wanted to

bring this to the TRA Office’s attention.

**Resolution.** The TRA office reviewed the books and records of the taxpayer and concluded that the amended returns completed by SCOP staff were overstated. Based on the TRA Office’s advice, the taxpayer submitted new amended returns along with supporting documents. As a result, the returns were accepted and the billing was significantly reduced.

Only under very limited circumstances can BOE employees prepare tax returns for taxpayers. Preparing returns on behalf of a taxpayer without the taxpayer having requested this assistance is against BOE policy. When staff does not follow BOE policies, there could be violations of taxpayers’ rights. It can also place unnecessary burdens on taxpayers such as in this case when the taxpayer had to hire an attorney. Because of our concern that staff may continue to disregard established policy and procedure, the TRA Office has brought this issue to the attention of the District Administrator. Furthermore, the TRA Office will continue to monitor the policies and procedures of SCOP, along with training provided to SCOP staff, to ensure that taxpayers are treated fairly.

**Summary - Services Provided.** This case illustrates the important function of the TRA Office to independently review actions by staff to determine if approved policies and procedures are being followed and taxpayers are being treated fairly. In this case, it was determined that the actions staff took were not part of the BOE’s policies and procedures. Although this taxpayer’s issues were resolved, this was not an isolated case. Therefore, the TRA Office will continue to monitor this area of concern, and will work with department management to appropriately address any continuing issues. See “Recommendations provided to better protect taxpayer rights in the Statewide Compliance and Outreach Program” in the *Issues Resolution – Work in Process* section of this chapter.

### *Identifying the correct application of use tax allowed taxpayer to file a claim for refund*

**Background.** Under RTC section 6901.5, when a retailer collects more sales tax reimbursement from a customer than is due, the excess tax reimbursement must either be returned to the customer or paid to the state. Under section 6901, to obtain a refund of

the excess sales tax reimbursement previously paid to the state, the retailer must submit a claim for refund to the BOE. However, if the retailer collected use tax directly from the purchaser, any overpayment of the use tax can be refunded directly to the purchaser.

**Issue.** An individual contacted the TRA Office for assistance and guidance because a claim for refund was denied and they wanted to appeal the decision. This individual was a customer who had been paying sales tax reimbursement to a retailer and believed the transactions were improperly taxed. Originally, a claim for refund had been submitted by the retailer on behalf of the customer. The BOE denied the claim but the customer wanted to pursue the case. However, because the individual was the purchaser and not the retailer, they could not obtain a direct refund and needed to go through the retailer or have the retailer assign his or her right to the refund to them. However, the retailer refused.

**Resolution.** The TRA Office reviewed the case and determined that the transaction was actually a use tax transaction. As a result, the customer was now able to directly submit a claim for refund to the BOE, eliminating the need for the retailer to become involved.

However, another problem arose. If the customer filed a claim for refund, it would be denied as the statute of limitations had passed. The TRA Office contacted the Refund Section to discuss this individual's situation. The Refund Section agreed to transfer the original claim for refund to the customer, keeping the claim within statute.

**Summary - Services Provided.** TRA Office's knowledge of sales and use tax can play a vital role in resolving taxpayer issues with the BOE. In this case, because of the TRA Office's knowledge of sales and use tax law and detailed review of the individual's situation, the TRA Office discovered that the transaction actually involved use tax instead of sales tax, which allowed them to pursue a claim for refund without the retailer's involvement. In addition, the TRA Office worked with the Refund Section to ensure the claim for refund was accepted as timely.

## ISSUE RESOLUTION

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

### Accomplishments – Changes Implemented, Concerns Resolved

The following changes to business taxes laws, policies, and procedures; or improvements to the training and education provided to BOE staff and the public were accomplished this past year.

#### *Taxpayers will be provided with an explanation when their Board hearing is postponed*

**Issue.** A tax practitioner making a presentation during the 2016 Taxpayers' Bill of Rights hearing brought to the Board's attention his concerns regarding the lack of communication with taxpayers and their representatives when appeals cases are removed from the Board hearing calendar. Under current Board policy, taxpayers are notified in writing by the Board Proceedings Division (BPD) when their appeals case is removed from the calendar. However, no explanation is given to the taxpayer regarding the reason why the case was removed and no time frame is given as to when the hearing will be rescheduled. The tax practitioner suggested that the taxpayers be provided with an explanation when their Board hearing is postponed and when to expect it to be rescheduled.

**Resolution.** The TRA Office worked with the BTFD to address this issue. As a result, taxpayers will now be informed by the BPD of the reason why their case has been postponed. In addition, the section handling the case will provide the taxpayer a written status update every 90 days until the case is resolved or the BPD is notified to place the case back on the calendar for Board hearing.

### *Guidance provided to staff on administrative protests*

**Background.** When a taxpayer disagrees with a Notice of Determination (NOD), that person may file a petition for redetermination. It must be filed within 30 days of the date of the NOD to be accepted as a timely petition. A petition is invalid if it is not filed within that time period. However, the BTFD may accept the invalid petition into the appeals process as an administrative protest pursuant to the Rules of Tax Appeals section 5220 when the BTFD Deputy Director, or his or her designee, determines there is a reasonable basis to believe that there may be an error with the taxpayer's NOD.

**Issue.** A tax practitioner making a presentation during the 2016 Taxpayers' Bill of Rights hearing brought to the Board's attention his concerns regarding the review and denial of administrative protests. He suggested that when an administrative protest is denied, it should be reviewed by a second level to ensure the decision is correct and that the BOE erred on the side of giving taxpayers the opportunity to have their case heard.

**Resolution.** The TRA Office worked with the BTFD to address this issue. As a result, tax or fee payers may now request reconsideration from the section assigned to review the appeal when their administrative protest is not accepted. If the section continues to believe the appeal should not be accepted as an administrative protest, the tax or fee payer's reconsideration request will be submitted to the Deputy Director, BTFD for final review and decision. Furthermore, guidance has been issued to staff clarifying when to accept an invalid petition as an administrative protest, including lists of circumstances under which invalid petitions are accepted, and not accepted, as administrative protests.

The TRA Office will provide input to the BTFD as the new staff guidance is incorporated into Audit Manual Chapter 14, *Appeals Procedures*, and staff becomes familiar with the policy guidelines.

### Work in Process – Issues Identified

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

#### *Notice of Proposed Determination letters should be issued for dual determinations other than RTC section 6829*

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

This procedure is working well and is providing taxpayers an opportunity to resolve their liability at an early stage and, in some cases, eliminates the need to go through a lengthy petition process. The TRA Office believes all taxpayers being held personally liable for the debt of another entity should be afforded the same due process and, accordingly, proposed that the BTFD adopt the same process of issuing Notice of Proposed Determination letters to responsible persons under RTC section 6829 for all other types of dual determinations, such as successors, predecessors, questionable ownership, and corporate suspension.

**Work in Process.** The TRA Office continues to work with the BTFD on proposals for additional notification letters on dual determinations, and drafted a proposed letter to successors for consideration. In addition, the TRA Office has met with the Special Operations Branch in the Legal Department, regarding the impact of new letters and procedures on its review and billing operations for the dual determinations.

### *TRA Office participation in the evaluation of RTC section 6829 dual determination processes*

**Background.** In 2013, the TRA Office took part in the preparation of extensive revisions and updates to the guidance used by staff for processing determinations (billings) issued to corporate officers and other individuals who have been held personally liable for unpaid tax, interest, and penalties incurred by terminated corporations, partnerships, limited partnerships, limited liability partnerships, or limited liability companies (entities) under RTC section 6829. In March 2014, the revisions were incorporated into CPPM sections 764.080-764.180.

In 2014-15, the TRA Office participated in a workgroup assembled by the BTFD to address the need for improvement in work processes related to dual determinations. The workgroup analyzed these processes and developed recommendations and an action plan to implement the recommendations.

**Work in Process.** The TRA Office continues to work with the BTFD as improvements to processes and guidance for BOE staff and taxpayers are developed. For example, in 2015-16 the TRA Office:

- Reviewed the draft of revisions to several sections of the CPPM proposed as a result of the decentralization of dual determination processing; the TRA Office's substantive suggestions for changes were accepted.
- Participated in interested parties meetings regarding proposed amendments to Regulation 1702.5, *Responsible Person Liability*; our comments and views were incorporated into the final draft and the Board adopted the regulation amendments on August 30, 2016.
- In response to taxpayer requests, performed independent reviews of RTC 6829 determination cases in appeal and in one case requested reconsideration by the Appeals Division.

### *Policy and procedure updates are needed regarding BOE audits of electronic records*

**Issue.** As California businesses' use of electronic business records, along with the discontinuance of the production of paper records, has become

more commonplace, audit staff is faced with the challenge of locating, accessing, and viewing "source documents" to verify the accuracy of taxpayers' summary records without violating the taxpayer's privacy. The challenges are not merely technological. Audit policy and procedures also need to keep pace with rapid changes in record-keeping methodologies and modern software such as point-of-sale systems.

**Work in Process.** Last year, the TRA Office brought to the attention of BTFD management the concerns expressed by taxpayers undergoing audits of their electronic records, and recommended the BTFD consider updating guidance to staff in the Audit Manual to ensure current policy and procedures are adequate to assist audit staff in performing their duty of ensuring taxpayers are accurately reporting transactions, while avoiding the violation of taxpayers' rights.

This year, the TRA Office participated in the review of new guidance to staff on auditing businesses in which transactions are recorded on a point-of-sale system, and the BTFD is reviewing our suggested revisions.

### *Revisions needed to interpretation of law regarding taxpayers voluntarily moving to California within 12 months of purchasing a vehicle, vessel, or aircraft*

**Background.** RTC section 6248 establishes a rebuttable presumption that out-of-state purchases of vehicles, vessels, and aircraft brought into California within 12 months of purchase are subject to tax in California under certain conditions. The presumption can be rebutted by evidence showing that the vehicle was not purchased for use in California. This evidence may include evidence of registration in the state it was purchased and other evidence that will help show that at the time of purchase the buyer did not intend to use the vehicle in California.

**Issue.** In 2014, CPPM Chapter 8, *Consumer Use Tax*, was revised. The revision added language that required a purchaser's move to California to be involuntary to rebut the presumption of section 6248. As a result, BOE staff were denying clearance requests and all exemption claims from taxpayers who otherwise qualified under RTC section 6248 and Regulation 1620. The TRA Office believed this paragraph was in conflict with the presumption of use test in the regulation and requested a legal opinion from the BOE's Legal Department.

**Work in process.** The legal opinion was issued and confirmed the TRA contention that a move to California did not have to be involuntary in order for a rebuttal to the 6248 presumption to be considered. In their written opinion, the BOE Legal Department found, in part, that a purchaser's voluntary move to California did not automatically prevent the purchaser from overcoming the presumption that a vehicle, vessel, or aircraft was purchased for use in California. Instead, a voluntary move was to be considered a factor to consider, along with all of the other facts and circumstances used in determining whether a vehicle, vessel, or aircraft was purchased for use outside of California. They also recommended that CPPM section 820.005 be revised to reflect their analysis and discussion. The TRA Office is working with the BTFD on updating the CPPM and BOE publication 52, *Vehicles and Vessels: Use Tax*, which also contains the involuntary move language, to reflect the correct application of the law.

***Policy proposed to provide Advocate the authority to modify terms of payment agreements and earnings withhold orders in case of hardship***

**Background.** The Taxpayers' Rights Advocate has the legal authority to intercede in collection processes in certain circumstances. For example, RTC section 7083, *Taxpayers' Rights Advocate*, provides in part:

*7083(a). . . The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. . .*

RTC section 7094, *Release of Levy*, provides in part:

*7094(b). The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.*

Procedures implementing RTC section 7094 are found

in CPPM section 155.022, Section 7094, *Release of Levy*, which provides that, when there is a continuing disagreement between a taxpayer and staff regarding a claimed hardship following a hardship hearing, a report by collection staff is prepared and a referral made to the Advocate for review and decision.

**Issue.** For the most part, when a taxpayer cannot resolve a disagreement over terms of a payment plan or an earnings withhold order and turns to the TRA Office for assistance, the TRA Office is able to work with both parties and bring about a mutually agreeable resolution. However, on occasion, there is a difference of opinion between the TRA Office and collection staff regarding the need to adjust the terms of the agreement or the order to avoid subjecting the taxpayer to a hardship.

**Work in process.** In November 2015 the Advocate proposed to BTFD management, as a logical extension of the authorities granted to the Advocate by RTC sections 7083 and 7094, a revision to policy allowing the TRA Office to be the final arbiter of disputes about the terms of payment plans or earnings withhold orders when the taxpayer claims a hardship. The Advocate is now discussing with the BTFD Deputy Director whether or not new policy should be written specifying that the Advocate has the final authority to decide on hardship cases in which the collection unit and the taxpayer are not in agreement.

***Consideration should be given to revising time frames for payment plans***

**Issue.** Currently, taxpayers can request payment plans online in limited circumstances. According to BOE's CPPM section 770.012, plans can be accepted without financial documents when the final balance is less than \$10,000. If the account is active, the final balance must be paid in full within 12 months and on closed accounts the final balance must be paid in full within 24 months. To be more consistent with Franchise Tax Board policy, the TRA Office has suggested that active accounts be allowed up to 18 months to pay in full and closed accounts be allowed up to 36 months.

**Work in process.** The TRA Office has been meeting with the BTFD staff to review the BOE's policies regarding online payment plans and the possibility of revising criteria for them. Although it is possible to make revisions at this time, it is likely that any new

criteria agreed upon will be incorporated after the BOE's new Centralized Revenue Opportunity System (CROS) is implemented. The TRA Office will continue to work with BTFD on policy revisions.

### ***Recommendations provided to better protect taxpayer rights in the Statewide Compliance and Outreach Program***

**Background.** The purpose of the Statewide Compliance and Outreach Program (SCOP) is summarized in BOE publication 165:

*As part of the Statewide Compliance and Outreach Program (SCOP), BOE representatives (SCOP specialists) conduct door-to-door visits to nonresidential businesses. They visit individual businesses to educate business owners regarding their tax responsibilities, to make sure the business has the required state tax and fee permits they need, and to make sure the business has a city or county business license, if one is required. In addition, they verify/update BOE account information and review business operations compared to returns filed to provide guidance on proper reporting. The visits are intended to educate business owners and help keep our tax system fair by making sure all business owners are properly permitted and licensed, and follow the law by paying the correct amount of taxes due.*

**Issue.** Two tax practitioners made presentations at the 2016 Taxpayers' Bill of Rights Hearings expressing the following concerns about SCOP practices, based on their clients' experiences:

- BOE staff preparing amended returns for the taxpayer's signature based on information other than the taxpayer's books and records;
- Using intimidation or threats of audit to get the taxpayer to sign and submit the amended returns; and
- Going beyond the original intent of SCOP's compliance role by conducting audits.

Some of the concerns expressed at the Taxpayers' Bill of Rights Hearings this year mirror that of the TRA Office, based on complaints voiced by taxpayers seeking the TRA Office's assistance. For example, a limited review by the TRA Office disclosed that at least one SCOP staff member had completed amended returns after making initial contact with taxpayers but before meeting with the taxpayer at the BOE office. This is clearly against BOE policy.

Pursuant to the BOE's CPPM section 505.045 a BOE employee should never prepare a return without the taxpayer being present. Pursuant to CPPM Chapter 10, when potential reporting discrepancies are noted based on a review of the facts and records, SCOP staff must:

- Discuss with the business owner the potential discrepancy;
- Provide him/her with supporting evidence of under- or over-reporting; and
- Allow the business owner an opportunity to provide documents and information supporting the reported amounts.

It further states that if staff believes the taxpayer is underreporting, staff should recommend that the taxpayer submit amended returns. If amended returns are not provided after several attempts including sending a letter requesting the returns, staff may proceed with further action, such as recommending the issuance of a Field Billing Order (FBO) or referring the account for audit.

In addition, the TRA Office has learned of the burden experienced by some taxpayers who are asked, without being provided any options, to bring a large number of records into a BOE office for review by SCOP specialists. This practice is not consistent with the audit program process of offering options for auditors to review records at the place of business or at the taxpayer's accountant's office.

**Work in process.** The TRA Office is working with the BTFD and the Field Operations Department to address concerns about the SCOP. Although complaints have not been voiced about SCOP teams in all areas of the state, the TRA Office has recommended considering the following adjustments to SCOP policies to enhance the protection of taxpayer rights:

- Revise SCOP publications 164 and 165 to mention the possibility of amended returns, billings, or referral for audit;
- Provide consistent and timely training to all SCOP staff. Training should include a thorough review of BOE policies as found in CPPM Chapter 10, *Statewide Compliance and Outreach Program*, other areas of the CPPM, and the Audit Manual; as well as customer service best practices.
- When a review of records by SCOP staff is deemed necessary, always provide options. To accommodate

taxpayers, staff should coordinate with each taxpayer to determine whether the location of meetings or exchange of supporting documentation should be at the business location, at the taxpayer's representative's office, or at a BOE office.

### *Concerns about possible implementation of automated collection actions*

**Background.** One of the main responsibilities of the BOE is to collect all amounts due under the tax and fee programs it administers. To accomplish that task, it is necessary to have an efficient and effective collection program. However, in most cases, it is preferable to begin working a collection case by utilizing passive collection efforts such as contact by mail or phone first. Per BOE policy, personal contact with tax or fee payers should be initiated by staff before employing active collection procedures such as liens or levies. Doing so allows the BOE representative to explain the nature of the liability, provide options, such as a payment arrangement, and answer any questions the taxpayer may have.

**Issue.** In anticipation of the BOE's new Centralized Revenue Opportunity System (CROS), the automation of liens and levies is being considered as an enhancement to the BOE's collection process. However, the TRA Office believes that the issuance of liens and levies without direct involvement by staff has the potential of greatly infringing upon taxpayer rights. Moreover, it is the BOE's policy to maximize voluntary compliance prior to taking collection action. This priority is also expressed in the Taxpayers' Bill of Rights. RTC section 7081 and equivalent Special Taxes statutes provide, in part, that it is the intent of the legislature to promote enhanced voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws. Section 7081 and its counterparts also state that the BOE shall allow the taxpayer every opportunity to present all relevant information pertaining to their liability. Often, this educational process and exchange of information occurs during the initial contact phase in the collection process.

The TRA Office believes that each taxpayer has a unique circumstance and payment history that should be evaluated before making decisions on collection actions. Also, the BOE administers many tax and fee programs and taxpayers are not always familiar with

the laws and policies of these programs. Furthermore, BOE policy emphasizes that proper discretion be used before making the decision to send a levy. If staff is not involved in making decisions regarding these collections actions, taxpayers will be deprived of their opportunity to resolve any issues prior to collections. As a result of the automated issuance of liens and levies, the TRA Office believes that complaints to the TRA Office, the Customer Service Center, and the Board Member offices could increase significantly.

Other advocate offices have also voiced concerns regarding the automation of liens and levies. The Franchise Tax Board Advocate Office experienced negative outcomes such as increased numbers of wrong person liens and levies, and noted that lag time for receiving and posting payments is not accounted for when collection actions are automated. In addition, the IRS National Taxpayers' Advocate also noted concerns with automated collection actions in her annual report and urged more personal contact by collectors in the early stages of collections.

**Work in process.** On September 10, 2014, the Advocate expressed his concerns regarding this matter to the Executive Director, offering the TRA Office's assistance in developing strategies that will ensure taxpayer rights are protected when CROS is implemented. In addition, the TRA Office understands that the BTFD recognizes there are pros and cons associated with the automated collection actions being considered for CROS. Any changes in policy regarding automated collection actions are subject to Board approval.

# TAX APPEALS ASSISTANCE PROGRAM

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## ABOUT THE PROGRAM

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

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

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

### Franchise and Personal Income Tax Appeals

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

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

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

### Business Taxes Appeals

The TAAP is available to assist individual and businesses who have filed appeals under \$20,000 with the BOE in the following tax and fee programs:

- Consumer use tax billings;
- Cigarette and Tobacco Products Licensing Act violations;
- Dual determinations;
- Cigarette internet purchases;
- Underground storage tank maintenance fee;
- Environmental fee;
- Generator fee;
- Successor fee; or
- Use tax leads from U.S. Customs.

The TAAP has been well received by all eight law schools and the program's clients. The Advocate will continue to work with the Appeals Division and the Business Tax and Fee Department to develop guidelines and parameters for adding additional business taxes appeals to the program as needed.

## CASE RESOLUTION

During fiscal year 2015-16, 941 individuals and businesses were informed about the program, 320 new cases were accepted, and 273 cases were resolved.

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

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



achieves more efficient and cost effective resolution of taxpayer petitions.

## Examples of Tax Appeals Assistance Program cases

The three cases listed below demonstrate the services provided by TAAP.

### *TAAP representation helped reduce a Cigarette and Tobacco Products Licensing 20-day suspension to zero*

**Background.** The Cigarette and Tobacco Products Licensing Act of 2003 (CTPLA) authorizes the BOE to inspect any location where cigarettes or tobacco products are sold, produced, or stored, or any site where there is evidence of tax evasion related to cigarette or tobacco products or non-compliance with the Master Settlement Agreement (MSA) (RTC section 30435). Consequently, BOE staff and law enforcement officers may inspect a location and seize any untaxed cigarettes and/or tobacco products, including cigarettes without tax stamps, with stamps from other states, or with counterfeit tax stamps. Any retailer or wholesaler in possession of untaxed cigarettes and/or tobacco products is subject to fines and penalties, such as suspension of its license.

**Issue.** The petitioner is a retailer of cigarettes and tobacco products. An inspection conducted by the BOE found that the retailer was in violation of the CTPLA by purchasing tobacco products from an out-of-state distributor who did not hold a valid BOE Cigarette and Tobacco Products Distributor's License. The retailer was issued a civil citation under Business and Professions Code (B&P) section 22974.3(b), regarding sale or possession of untaxed tobacco for which tax is due, and B&P section 22980.2(a), regarding unlicensed sales of cigarettes or tobacco products. As a result, all untaxed tobacco products were seized and the retailer faced a 20-day suspension of his license. The retailer filed a petition, appealing the 20-day suspension and requesting the release of the seized tobacco products, and subsequently accepted TAAP's offer to represent him.

**Resolution.** A law student intern helped the TAAP client understand how the provisions of the CTPLA affected his business operations. As a result of the intern's counseling, the client realized that although

the violation was unintentional, he had violated the law. The intern represented the client at an appeals conference. At the conference, the intern explained that the client now understood that he unintentionally violated the CTPLA. Further, the intern explained that the client regretted his mistake and was now doing everything he could to ensure that he would be in compliance in the future. As a result, the 20-day suspension was reduced to zero.

**Summary – Services Provided.** In this case the law student intern helped the client understand his responsibilities under the law so that going forward he would be in compliance. Moreover, the intern was successful in removing the 20-day suspension, which would have caused a hardship for the petitioner.

### *Victim of fraud determined not personally liable for unpaid tax*

**Background.** As provided by RTC section 6829 and interpreted by Sales and Use Tax Regulation 1702.5, *Responsible Person*, any responsible person who willfully fails to pay or to cause to be paid any taxes of a corporation that has been terminated can be held personally liable for the unpaid taxes of that corporation, as well as interest and penalties. "Willfully fails to pay or to cause to be paid" means that the failure was the result of a voluntary, conscious, and intentional course of action, and this failure may be willful even though such failure was not done with a bad purpose or motive (Regulation 1702.5(b)(2)).

**Issue.** The taxpayer was issued a determination under RTC section 6829 and filed a timely petition. The taxpayer contended she was not a responsible person and should not have been held personally responsible for the sales and use tax liability of the corporation. However, during the course of the appeals process, the taxpayer was unsuccessful in her arguments. The taxpayer was in the appeals process for three years before accepting an offer to be represented by TAAP.

**Resolution.** A law student intern was assigned to assist the taxpayer. The intern helped the taxpayer understand the law, listened to the taxpayer's situation, and assisted her regarding the evidence needed to support her contentions. Once the intern had gathered all the evidence, it was determined that the taxpayer was not willful because she was a victim of fraud and forgery. During the appeals conference, the

intern successfully argued that the taxpayer did not willfully fail to pay the corporation's sales tax liability. Consequently, the determination was cancelled.

**Summary – Services Provided.** It is often difficult for a taxpayer to represent themselves in regard to a complex legal matter during the BOE's appeals process; moreover, the added costs of legal representation can be a burden. In this case, at no cost to the taxpayer, the law student intern provided advice, assisted the taxpayer in gathering evidence, represented the taxpayer at the appeals conference, and successfully resolved the taxpayer's petition by expertly presenting the case. As a result, the liability was deleted in its entirety.

### *TAAP representation resulted in the elimination of a 25 percent demand penalty*

**Background.** RTC section 19133 authorizes the FTB to impose a penalty of 25 percent of the amount of tax assessed to taxpayers who do not file a return in response to a formal notice and demand from the FTB.

FTB Regulation 19133 states in part:

*(b) Imposition of Penalty. For individuals subject to tax under part 10 (Personal Income Tax Law), the notice and demand penalty under Revenue and Taxation Code section 19133 will only be imposed by the FTB if:*

- (1) the taxpayer fails to timely respond to a current Demand for Tax Return in the manner prescribed, and*
- (2) the FTB has proposed an assessment of tax under the authority of Revenue and Taxation Code section 19087, subdivision (a), after the taxpayer failed to timely respond to a Request for Tax Return or a Demand for Tax Return in the manner prescribed, at any time during the four-taxable-year period preceding the taxable year for which the current Demand for Tax Return is issued.*

**Issue.** The FTB issued a Notice of Proposed Assessment (NPA) because the taxpayer failed to timely respond to a Demand for Tax Return and two deferral letters. Because the taxpayer did not respond timely to these notices, the FTB imposed a demand penalty. However, the taxpayer contended that the FTB granted additional time to file by issuing a Second Demand for Tax Return, and therefore, the NPA should not have been issued and the 25 percent demand

penalty was not due. The taxpayer paid the penalty and filed a claim for refund.

**Resolution.** A TAAP law student intern gathered all letters and notices sent from the FTB to the taxpayer. After reviewing all documents, the intern discovered a second Demand for Tax Return which had been previously overlooked by FTB. The second Demand for Tax Return revealed that there was a new deadline for the taxpayer to respond to. Because of this letter, the intern successfully argued that, based on the new deadline, the taxpayer responded timely to all notices sent by the FTB. Therefore, she did not owe the demand penalty. Ultimately, the demand penalty was removed and the taxpayer was issued a refund.

**Summary – Services Provided.** It is very important to review all evidence and to know how it applies to the law. In this case, because of the intern's diligence, important evidence was found showing that the taxpayer did respond timely to all correspondence. Consequently, the FTB conceded and eliminated the 25 percent demand penalty.

# APPENDIX 1

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## THE HARRIS-KATZ CALIFORNIA TAXPAYERS' BILL OF RIGHTS

(Revenue and Taxation Code Sections)

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

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

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

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

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

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

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

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

- (1) Taxpayers newly registered with the board.
- (2) Taxpayer or industry groups identified in the annual report described in Section 7085.
- (3) Board audit and compliance staff.

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

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

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

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

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

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

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

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

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

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

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

(B) The amount of tax involved.

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

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

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

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

(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

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

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

**7086. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

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

(1) To evaluate individual officers or employees.

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

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

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to

productivity and the efficient use of time.

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

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

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

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

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

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

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

**7091. Reimbursement to taxpayer. (a)** Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

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

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

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

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

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

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

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

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

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

**7092. Investigations for nontax administration purposes. (a)** An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

**(b)** Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil

Service Act, including dismissal from office or discharge from employment.

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

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

**(e)** For the purposes of this section:

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

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

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

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

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

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

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

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

(2) The total amount in dispute.

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

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

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

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

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

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

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

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

**(g)** Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

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

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

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

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

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

**(b)** For purposes of this section, "a final tax liability" means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

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

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association

with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and a compromise shall not be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means any of the following:

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

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

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

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

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

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

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

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

**(e)** Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

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

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



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

(1) The taxpayer shall establish that:

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

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

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

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

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

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

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

(1) The name of the taxpayer.

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

(3) The amount offered.

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

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

**(m)** A compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

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

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

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

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

**(n)** A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

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

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

**(o)** For purposes of this section, "person" means the taxpayer, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

**(p)** This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

#### **7094. Release of levy.**

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

**(b)** (1) (A) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to two thousand three hundred dollars (\$2,300) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(B) The amount the Taxpayers' Rights Advocate may release or return to each taxpayer subject to a levy or notice to withhold, is limited to two thousand three hundred dollars (\$2,300), or the adjusted amount as specified in paragraph (2), in any monthly period.

(C) The Taxpayers' Rights Advocate may order amounts returned in the case of a seizure of property as a result of a jeopardy determination, subject to the amounts set or adjusted pursuant to this section and if the ultimate collection of the amount due is no longer in jeopardy.

(2) (A) The board shall adjust the two-thousand-three-hundred-dollar (\$2,300) amount specified in paragraph (1) as follows:

(i) On or before March 1, 2016, and on or before March 1 each year thereafter, the board shall multiply the amount applicable for the current fiscal year by the inflation factor adjustment calculated based on the percentage change in the Consumer Price Index, as recorded by the California Department of Industrial Relations for the most recent year available, and the formula set forth in paragraph (2) of subdivision (h) of Section 17041. The resulting amount will be the applicable amount for the succeeding fiscal year only when the applicable amount computed is equal to or exceeds a new operative threshold, as defined in subparagraph (B).

(ii) When the applicable amount equals or exceeds an operative threshold specified in subparagraph (B), the resulting applicable amount, rounded to the nearest multiple of one hundred dollars (\$100), shall be operative for purposes of paragraph (1) beginning July 1 of the succeeding fiscal year.

(B) For purposes of this paragraph, "operative threshold" means an amount that exceeds by at least one hundred dollars (\$100) the greater of either the amount specified in paragraph (1) or the amount computed pursuant to subparagraph (A) as the operative adjustment to the amount specified in paragraph (1).

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

**(d)** Except as provided in subparagraph (C) of paragraph (1) of subdivision (b), this section shall not apply to the seizure of any property as a result of a jeopardy assessment..

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

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

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

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

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

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

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

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

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

**(b)** Claims pursuant to this section shall be filed within 90 days from the date the bank and third-party charges were incurred by the taxpayer. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

**7097. Preliminary notice to taxpayers prior to lien.** **(a)** At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording

of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

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

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

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

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

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

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

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

- (1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.
- (2) Reasonable litigation costs, as defined for purposes of Section 7156.

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

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

**7099.1. Protection of taxpayer communications.** **(a)** (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communications.

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

(3) For purposes of this section:

(A) "Federally authorized tax practitioner" means any individual who is authorized under federal law to

practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

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

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

**(b)** The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

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

# APPENDIX 2

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## THE MORGAN PROPERTY TAXPAYERS' BILL OF RIGHTS

(Revenue and Taxation Code Sections)

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

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

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

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

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

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

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

**5903. "Advocate."** "Advocate" as used in this part means the "Property Taxpayers' Advocate" designated pursuant to Section 5904.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.

(2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.

(3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.

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

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

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

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

**5908. Educational assistance.** Upon request of a county assessor or assessors, the advocate, in conjunction

with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

**5909. Written rulings. (a)** County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

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

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

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

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

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

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

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



## APPENDIX 3

### COUNTY OF ORIGIN AND TYPES OF PROPERTY TAX CASES

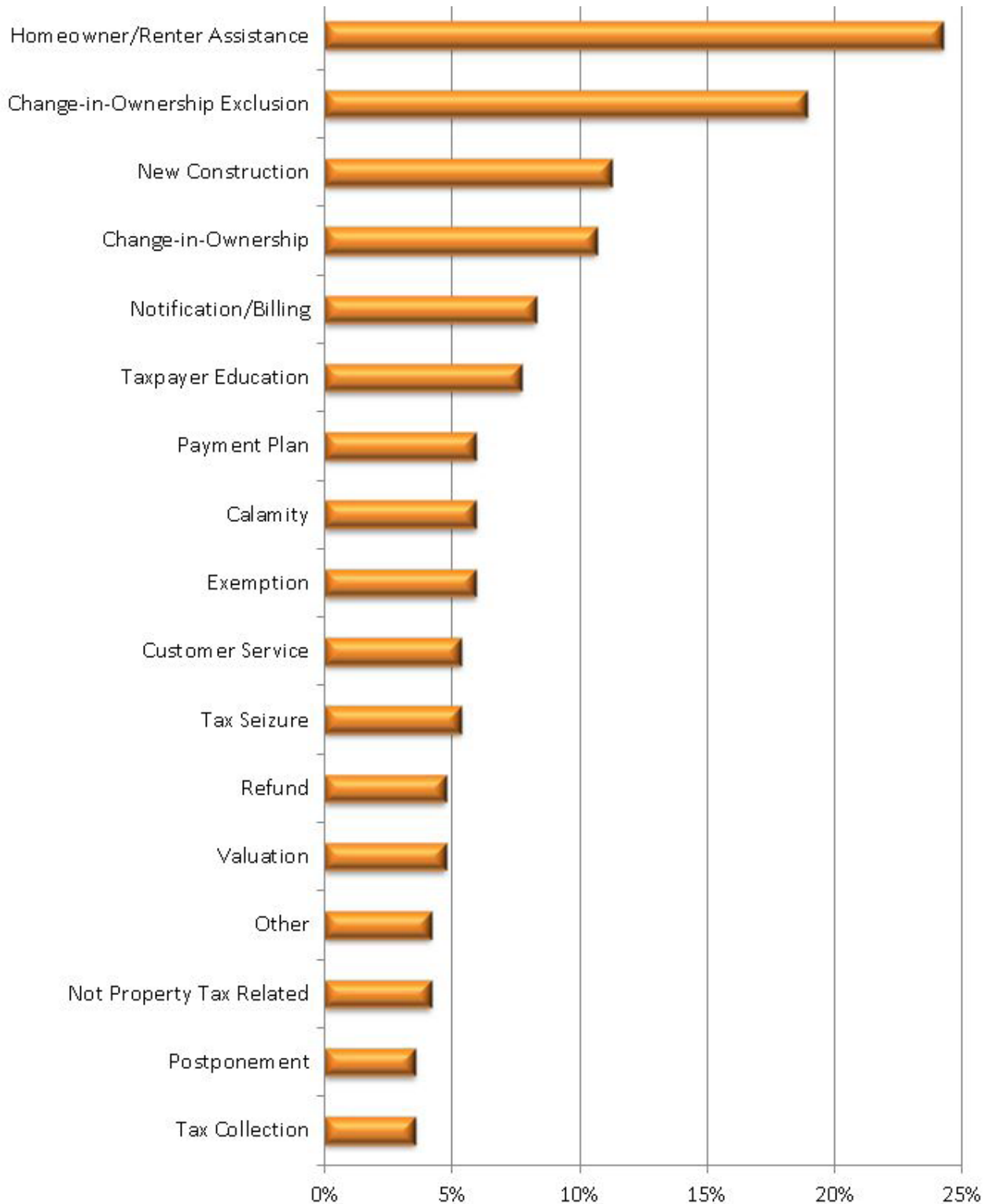
County of Origin	Cases by Type		Total Cases	County of Origin	Cases by Type		Total Cases
	Valuation	Administration			Valuation	Administration	
Alameda	4	4	8	Placer	3	1	4
Alpine	0	0	0	Plumas	0	1	1
Amador	1	1	2	Riverside	6	6	12
Butte	0	0	0	Sacramento	5	2	7
Calaveras	0	0	0	San Benito	0	1	1
Colusa	0	0	0	San Bernardino	4	2	6
Contra Costa	2	1	3	San Diego	10	4	14
Del Norte	1	0	1	San Francisco	8	2	10
El Dorado	0	2	2	San Joaquin	4	0	4
Fresno	0	1	1	San Luis Obispo	1	0	1
Glenn	0	0	0	San Mateo	3	3	6
Humboldt	0	2	2	Santa Barbara	2	0	2
Imperial	0	0	0	Santa Clara	6	4	10
Inyo	0	0	0	Santa Cruz	1	2	3
Kern	2	0	2	Shasta	0	0	0
Kings	0	0	0	Sierra	0	0	0
Lake	2	0	2	Siskiyou	1	1	2
Lassen	0	1	1	Solano	1	0	1
Los Angeles	21	5	26	Sonoma	0	0	0
Madera	0	0	0	Stanislaus	2	0	2
Marin	1	0	1	Sutter	0	0	0
Mariposa	0	0	0	Tehama	0	0	0
Mendocino	1	0	1	Trinity	1	1	2
Merced	0	0	0	Tulare	1	4	5
Modoc	0	1	1	Tuolumne	2	2	4
Mono	0	0	0	Ventura	2	1	3
Monterey	0	0	0	Yolo	1	1	2
Napa	0	0	0	Yuba	0	1	1
Nevada	0	1	1	County Not Specified	2	4	6
Orange	5	1	6	<b>TOTAL</b>	<b>106</b>	<b>63</b>	<b>169</b>

*Note:*

An explanation of the types of cases categorized as “Valuation” and “Administration” can be found in the Property Tax Issues chapter under “Types of cases.”

# APPENDIX 4

## MOST COMMON ISSUES IN PROPERTY TAX CASES



**Note:**

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

# APPENDIX 5

## OUTCOME OF BUSINESS TAXES CASES

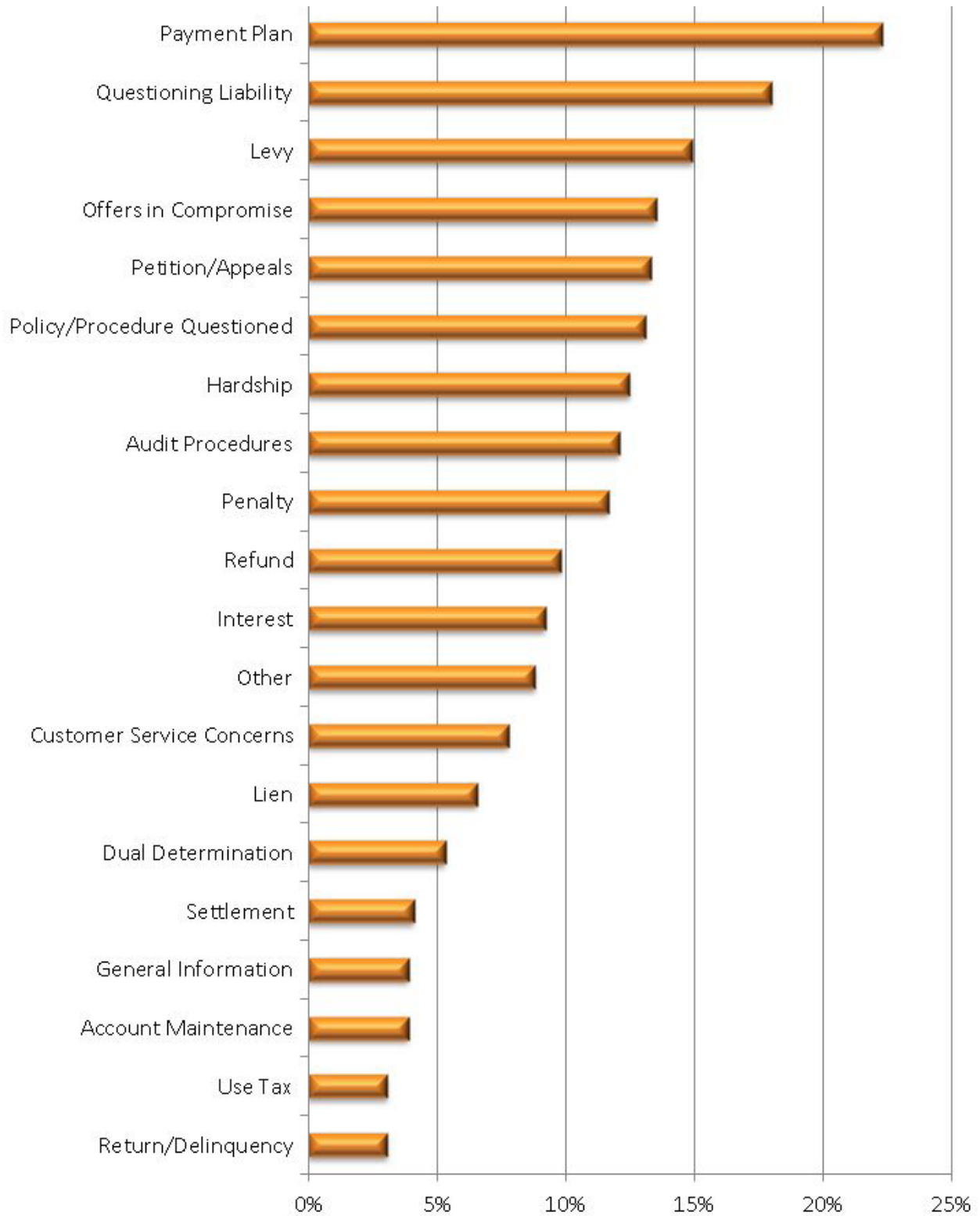
Office of Origin	Types of Cases			Total Cases	Customer Service Concerns	Disagreed with Case Handling (1)	Case Handling Changed
	Audit	Compliance	Other				
Norwalk (AA)	1	8	1	10	1	0	2
Glendale (AC) (2)	2	16	3	21	3	0	4
West Covina (AP)	3	3	1	7	1	0	4
Ventura (AR)	1	3	2	6	0	0	3
Culver City (AS)	2	14	2	18	2	0	5
San Francisco (BH)	1	14	1	16	1	0	1
Oakland (CH)	1	10	2	13	1	0	1
Fresno (DF)	0	5	0	5	1	0	2
Bakersfield (DFB)	0	6	1	7	1	0	2
Irvine (EA)	3	15	2	20	1	0	5
Riverside (EH)	2	16	4	22	1	0	3
Rancho Mirage (EHC)	1	1	1	3	0	0	1
San Diego (FH)	3	13	1	17	1	0	5
El Centro (FHA)	0	1	0	1	0	0	1
San Jose (GH)	2	9	0	11	1	0	1
Salinas (GHC)	1	8	0	9	0	1	2
Santa Rosa (JH)	3	6	1	10	0	0	2
Fairfield (JHF)	0	7	1	8	2	0	0
Sacramento (KH)	2	32	3	37	4	0	7
Redding (KHM)	2	2	0	4	1	0	1
Out-of-State (OH, OHA, OHB, OHC)	2	3	1	6	0	0	1
Rancho Cucamonga (RC)	0	4	2	6	1	0	1
Santa Clarita (SO)	1	7	2	10	4	0	3
Appeals Division	1	5	0	6	1	0	5
Audit Determination and Refund Section	2	2	1	5	0	0	0
Board Proceedings	0	0	2	2	0	0	2
Centralized Collection Section	0	22	0	22	4	0	11
Consumer Use Tax Section	1	10	4	15	0	0	4
Offer in Compromise Section	0	8	0	8	0	0	2
Petitions Section	1	3	0	4	0	0	0
Return Analysis Unit	0	3	0	3	1	0	2
Special Operations Branch	0	3	1	4	0	0	0
Special Taxes and Fees	2	24	7	33	0	0	4
Statewide Compliance and Outreach Program	1	3	0	4	3	0	1
Use Tax Administration Section	0	4	4	8	0	0	1
Other Government Agencies	0	16	23	39	0	0	0
Other (3)	11	24	34	69	2	0	3
<b>Total</b>	<b>52</b>	<b>330</b>	<b>107</b>	<b>489</b>	<b>38</b>	<b>1</b>	<b>92</b>

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

- (1) In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate department head and division manager detailing cases in which the TRA Office disagreed with how BOE staff handled the case. See the Business Taxes Issues Chapter for additional information on Disagreed with Case Handling.
- (2) On the 2014-15 report, Glendale's compliance cases should have been 21, not 0.
- (3) The category of "Other" under Office of Origin includes cases that have no particular office of origin—for example, contacts from the public requesting general information; cases where the office was not disclosed; or, generally, Headquarters offices with less than two cases recorded.

# APPENDIX 6

## MOST COMMON ISSUES IN BUSINESS TAXES CASES



**Note:**

Individual business taxes cases may involve a variety of issues that caused the taxpayer or their representative to contact the Taxpayers' Rights Advocate Office. All issues in each case were tracked and the most common issues are displayed here.

## **TAXPAYERS' RIGHTS ADVOCATE OFFICE CONTACT INFORMATION**

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Tim Treichelt, *Tax Counsel*

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or by downloading from the website shown above.

