

Memorandum

To : Ms. Cynthia Bridges
Executive Director (MIC 73)

Date: February 26, 2014

From : Jeffrey L. McGuire, Deputy Director
Tax Policy Division, Sales and Use Tax Department (MIC 92)

Handwritten notes:
Cynthia Bridges
2/26/14

Subject : Board meeting March 25-26, 2014
Item N: Administrative Agenda
Proposed Revisions to Compliance Policy and Procedures Manual
Chapter 7, Collections

In accordance with the established procedures for audit and compliance manual revisions, I am submitting the proposed revisions to Compliance Policy and Procedures Manual (CPPM) Chapter 7, *Collections*.

The proposed revisions have been reviewed and approved by SUTD management, provided to Board Members, and posted at <http://www.boe.ca.gov/sutax/pmr.htm> to solicit comments from interested parties. No comments were received from interested parties with regard to these revisions, however there were concerns presented by Board Member staff. In addition, there were recent policy changes affecting two of the sections. Therefore, the following sections have been removed from the revision until outstanding issues can be resolved:

- CPPM section 703.030, *When to Proceed on BOE-Assessed Liabilities* and subsection, *Returned Mail*.
- CPPM section 708.020, *The Delinquency Process*
- CPPM section 732.010, *Policy Regarding Collection From Successor*
- CPPM section 764.160, *Guidelines for Preparing a Dual Request*, only subsection, *Address Verification*
- CPPM section 770.010, *Payment Agreement Guidelines*

The revised sections are attached for your reference. We request your approval to forward the proposed revisions to the Board Proceedings Division for placement on the Administrative Agenda as a consent item at the March 2014 meeting. If you have any questions, please let me know or contact Ms. Susanne Buehler at 324-1825.

JLM:rs
Attachment

Approved:

Handwritten signature of Ms. Cynthia Bridges
Ms. Cynthia Bridges
Executive Director

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the February 26, 2014 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Item N4
03/25/14

cc: (all with attachment)
Mr. Wayne Mashihara (MIC 46)
Ms. Susanne Buehler (MIC 92)
Mr. Kevin Hanks (MIC 49)

IMPORTANCE OF COLLECTION ACTIVITY

702.010

One of the main responsibilities of the ~~BOE Board~~ of Equalization (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. The primary objective is to maximize the collection of unpaid tax and fee liabilities while minimizing effort, cost, and time.

To reach this objective, staff in the collections program must be thoroughly familiar with the provisions of the laws pertaining to collections under the BOE's various tax and fee programs, and there must be proper control of collection assignments. This chapter provides collection staff with basic tools to:

1. Interview tax and fee payers,
2. Locate missing taxpayers and assets, and
3. Perform collection actions as necessary.

The BOE uses the Automated Compliance Management System (ACMS) to control all collection assignments. In addition to other functions, ACMS prioritizes collection cases into separate work lists starting with the highest probability of successful collection (the ACCES A work list) and descending to the lowest (the ACCES E work list). New collectors learn about the ACMS system through the ACMS Computer Based Training ~~M~~odule.

To advise taxpayers of the BOE's collection policies, [publication 54](#), *Tax Collection Procedures*, is available on the BOE's ~~web-site-at-~~ [Collectors should be prepared to provide information about publication 54 and advise taxpayers how to obtain it.](#) Although each taxpayer should be given a chance to pay voluntarily (except in situations where delay jeopardizes the chance of collection), prompt and effective collection action should be taken when necessary. When promises are broken, the taxpayer should be contacted promptly and advised that appropriate remedies will be taken unless payment is made immediately. Failure to promptly ~~follow-up~~ with appropriate collection action when a promise is broken sends a message to the taxpayer that payments can be easily delayed or avoided and may encourage some taxpayers to procrastinate when future payments become due.

As used in this manual, "full collection efforts" means and includes the entire range of activities pertaining to collecting from delinquent taxpayers. "Passive collection efforts" include contacting the taxpayer by mail and phone, skip tracing and ~~locating assets-location~~. "Active collection actions" are actions imposed upon the taxpayer such as levying bank accounts, filing liens, etc. In most cases, it is preferable to begin working a collection case by utilizing passive collection efforts first. Whenever possible, staff must speak to the taxpayer before employing active collection procedures.

STANDARD RULES FOR APPLYING A PAYMENT

707.020

The standard rules for [the application of](#) a remittance or payment [should be made as follows](#) [the sequence](#):

1. [As directed by the taxpayer at the time of voluntary payment.](#)
2. [Collection costs \(billed, unbilled\) if the payment is a warrant payment. In the case of a warrant, advance fees are identified as a difference from inception. Advance fees and collection costs are not billed until the BOE receives the warrant fee invoice and writ of execution.](#)
3. [Billed collection costs if the payment is not a warrant payment.](#)
- ~~3.4.~~ [Self-assessed tax liabilities, which have been established but are not yet due.](#)
- ~~4.5.~~ [Tax liabilities on non-final determinations for which a dual determination has not been issued, excluding petitioned liabilities.](#)
- ~~5.6.~~ [Tax liabilities on non-final determinations for which a dual determination has been issued, excluding petitioned liabilities.](#)
- ~~6.7.~~ [Most current delinquent tax liability \(by billing date\) for which a dual determination or successor billing has not been issued.](#)
- ~~7.8.~~ [Delinquent tax liability for which a dual determination has been issued.](#)
9. [Delinquent tax liability for which a successor billing has been issued.](#)
10. [Self-assessed lumber assessment liabilities, which have been established but are not yet due.](#)
11. [Lumber assessment liabilities on non-final determinations for which a dual determination has been issued, excluding petitioned liabilities.](#)
- ~~8.12.~~ [Most current delinquent lumber assessment liability \(by billing date\) for which a dual determination or successor billing has not been issued.](#)
13. [Most current collection cost recovery fee \(by billing date\).](#)
- ~~9.14.~~ [Most current delinquent interest liability \(by billing date\) for which the taxpayer is primary.](#)
- ~~10.15.~~ [Delinquent interest liability for which a dual determination has been issued.](#)
- ~~11.16.~~ [Delinquent interest liability for which a successor billing has been issued.](#)
- ~~12.17.~~ [Most current delinquent penalty liability \(by billing date\) for which the taxpayer is primary.](#)
- ~~13.18.~~ [Most current penalty liability for which a dual determination has been issued.](#)
- ~~14.19.~~ [Most current penalty liability for which a successor liability has been issued.](#)
- ~~15.20.~~ [Non-final petitioned liabilities.](#)
- ~~16.21.~~ [As directed by the district office or CCS.](#)
- ~~17.~~ [Collection costs \(billed, unbilled\) if the payment is not a warrant payment.](#)

The Special [Procedures Section Operations Branch](#) (SPSOB) may, in accordance with BOE policy and Civil Code section 1479, change the payment application order of numbers 2 through [1721](#).

Security payments are applied first to establish liabilities designated as “pending security” and then any excess is applied in accordance with the standard rules for application of payments.

Payments received from warrants can only be applied to the specific periods covered by the warrant. ~~Therefore, to maintain the integrity of the warrant, liabilities covered by a warrant should stay intact as long as possible.~~

ACCESSING INFORMATION FROM EXTERNAL AGENCY DATABASES

720.030

The BOE has agreements with the Department of Motor Vehicles (DMV), Franchise Tax Board (FTB), Employment Development Department (EDD), and credit reporting agencies that allow authorized staff (Resource Persons) to access the information databases maintained by those agencies. The [External Access Tracking \(EAT\) system](#) allows these Resource Persons to electronically request [and track](#) information from the databases of the above agencies. [The EAT request page is found on eBOE under the "Sales Tax" tab. -and track those requests.](#) For information security purposes, the ~~specifics of the~~ EAT program [specifics](#) are confidential. Therefore, the following information is only an overview of the program.

The district offices, CCS, and specified headquarters units designate a person (or persons) from their own staff who is authorized to access the external agencies' databases via the [EAT program](#). Only ~~these~~ designated Resource Persons may access the external agency databases. They are normally given rights to access a specific agency database. Staff in the district offices, CCS, and certain headquarters units may access external agency information through the [EAT program](#) only by requesting the information through the appropriate Resource Person(s) in their office, section or unit.

Resource Person Guidelines

~~With the implementation of the EAT program, Resource Persons no longer need to record their activity on paper requestor logs.~~

1. Resource Persons are authorized to obtain information only from a specified agency. For example, if ~~you have the authorization~~ [authorized](#) to access FTB information, the Resource Person must not attempt to access other government agency databases.
2. Resource Persons are responsible to ensure [to the best of their knowledge](#) that requests for confidential information are for valid BOE business use only, ~~to the best of their knowledge.~~ [Requests are tracked through the EAT system.](#)
3. Resource Persons may not access other agencies' information for their own assignments. Resource Persons must route the request(s) for information to the office's other resource person (~~except in pre-defined situations~~ [with limited exceptions](#), i.e., Consumer Use Tax Section (CUTS)). With regard to requests for credit reports, if there is only one credit Resource Person in the unit/office, that credit report Resource Person may request credit report information for use in working his or her assigned cases.
4. Resource Persons may print a copy of the original request for their records; however, when there is no longer a "business need" to maintain the printout, **it must be destroyed using the destruction methods for confidential information.** See BEAM section 7406.1, *Destruction of Confidential Records*. **The [destruction date of the material](#) ~~was destroyed~~ must be documented in [the EAT system](#) by the Resource Person.**

Resource Person Guidelines

5.4.—Unless there is an extenuating circumstance, such as litigation of a case, aAll requested FTB, EDD, and DMV documents **must be** returned to the Resource Person for destruction within 10 days upon completion of the case for which they were requested, or when their retention is no longer necessary. Under normal circumstances, documents not returned to the Resource Person by the requestor within 10 days will be flagged for supervisory follow-up.—Resource Persons will promptly confidentially destroy the returned documents in a confidential manner and enter the destruction date in the EAT system.

5.6. Credit bureau reports requested through the EAT system will not be returned to the Resource Persons, but will be confidentially destroyed by staff upon the completion of the case for which they were requested or when their retention is no longer necessary. It is not necessary to enter a destruction date for credit bureau reports.

6.7. The EAT ~~system~~program must be updated with the destruction date of all printouts. This includes situations where database information is printed in one month but is not destroyed until the following month (or later). A list of all undestroyed documents older than three years is generated through the EAT system. Supervisors are responsible to periodically review the list to determine if a need still exists to retain the material. The Internal Security ~~and Audit~~ Division (ISAD) conducts periodic reviews to ensure that printouts of information are confidentially destroyed and the destruction is properly documented by the Resource Person(s).

Requestor Guidelines

The requestor may request a database search for external agency information when a valid BOE-related business use exists. Requestors must submit all requests for external agency information from DMV, FTB, EDD, and credit reporting agencies via the EAT systemprogram.

1. Using the EAT systemprogram, the Requestor enters the request for information in the “Enter an Access Request” area and then clicks on “Submit.” The applicable Resource Person will receive an e-mail notification that a request has been submitted. The “Enter Online Accesses Made” link must only be used by those in pre-defined situations (e.g. CUTS) who are authorized to access information on their own cases.
2. The requestor of the search must request information **only** from the authorized ~~r~~Resource ~~p~~Person(s) within the requestor’s office/section/area of responsibility. Also, because FTB/~~r~~ DMV/~~r~~ EDD/~~r~~ and credit report ~~r~~Resource ~~p~~Persons often are not the same individuals, requestors may need to send separate requests to more than one ~~r~~Resource ~~p~~Person. For example, a request made for DMV information from an FTB ~~r~~Resource ~~p~~Person will not be carried out and must be returned to the requestor for proper routing.
3. The requestor must complete a separate request for each “person” (individual, corporation, ~~or~~ partnership, or each individual partner of a partnership).
4. The EAT systemprogram provides a list of request “purpose” options. If the purpose of the request is not found in the options provided, the requestor must select “other” and enter an explanation of the purpose for the request.

5. Documents ~~must be~~ returned to the resource person for destruction within 10 days, unless there is an extenuating circumstance. Documents not returned within 10 days will be red flagged for supervisory follow-up may be retained for valid business reasons including, but not limited to, write-off account reviews, quarterly collection reviews, dual determination investigations, petitions, claims for refund, and for training purposes. During the time the documents are retained, they must remain attached to the casework in a secure area to prevent unauthorized access. When retention of the documents is no longer necessary, FTB, EDD, and DMV documents are to be promptly returned to the EAT Resource Person for confidential destruction. Credit bureau reports will be promptly and confidentially destroyed by BOE staff.
6. Due to the requirement for destruction of printouts of confidential information, **it is imperative that requestors review the printouts as soon as possible after receipt.** Delays in reviewing the information and returning it to the Resource Person may compromise the ability to document the proper destruction of printouts. External agency information obtained through the EAT system is confidential and is protected from disclosure by law, regulation, and policy, as is all other taxpayer information. This information is to only be used for valid BOE-related business purposes.
7. Pursuant to information exchange agreements with both the IRS and FTB, information contained in IRS or FTB printouts or tax returns may not be transcribed into collection notes. Federal tax data information (FTI) never loses its identity. Federal tax return information may accompany the FTB documents provided. For example, if a collector receives federal data FTI from any source the IRS, and transcribes the data into notes from the hardcopy provided by IRS, and destroys the original, the Internal Revenue Service (IRS) still considers the transcribed notes to be federal tax data FTI even if the original document is destroyed. ACMS has an IRS Summary feature in which the user must record if any FTI is documented. It is crucial for the user to properly record FTI data using the IRS Summary. Documents may be confidentially retained until there is no longer a business need to retain them.

Supervisor Review Guidelines

The information available from these external agencies is an important collection tool and should be fully utilized by staff in handling their cases/assignments. However, to ensure that the information is only being requested for valid business purposes, supervisors and managers will conduct random periodic reviews of the requests made through the EAT system program.

DEPARTMENT OF MOTOR VEHICLES – PICTURES/PHOTOGRAPHS

720.032

California Government Code section 15618.5 authorizes the BOE to obtain copies of full-face engraved pictures (i.e., copies of full licenses) or photographs (hereafter “photographs” for both) directly from the Department of Motor Vehicles (DMV).

Authorized staff in district, branch, and satellite offices performing field compliance and audit duties may request a photograph of a client/taxpayer from DMV for the purpose of positively identifying that client/taxpayer. Any request not directly related to this business need constitutes a violation of the BOE’s privacy policy and Government Code section 15618.5 and may subject the requestor to disciplinary action.

A requestor code (hereafter “photograph code”) for requesting photographs was granted to BOE by DMV. DMV issued a separate photograph code to each district office for use by the respective district, branch, and satellite office. Knowledge of the photograph code is limited to compliance supervisors in the SUTD’s Field Operations Division (except the Out-of-State District Office and CCS), and supervisors in Special Taxes and Fees (STF) division. The photograph code is not to be shared with other BOE staff.

Staff needing a photograph of a client/taxpayer must first secure supervisory approval. The request and approval comments will be made on a specific account in ACMS. If the account is not active in ACMS, staff must first create one using the manual case setup process (see ACMS Cheat Sheets on eBOE).

Audit staff requiring a photograph of a client/taxpayer should make their request through the compliance section. The request will be made at the audit supervisory level. An adequate explanation as to why a photograph is needed should first be entered in online comments by the audit staff. When the request is granted, it must also be noted in ACMS.

Initiating a Request

Compliance staff requiring a photograph of a client/taxpayer will access ACMS and open the account for which a photograph is to be requested, create a permanent note and explain the need for a photograph. Staff will then complete DMV Form INF 254 “Gov’t. Agency Request for Driver License/Identification Record Information,” containing the following information:

1. All the client/taxpayer information, except the “Requestor Code” field.
2. Under “Information Requested, check the ballot box for “Other” and write in, “Photo of Subject.”
3. Check the ballot box for “Status and Record,” if that information is needed.
4. On the return address fields:
 - a. On the line marked “Attn,” print the name of the staff member’s supervisor and the staff member’s initials in parentheses.
 - b. Complete the return address as instructed on the form (four-line limit, each line not to exceed 35 characters).
5. The account number must be entered in the available space at the upper right hand of the form above the word “Record Information.”

Staff will place the completed INF 254 in their supervisor’s in-box.

Approving or Denying the Request

To approve or deny the request, the supervisor will:

1. Access the account in ACMS to ensure that the INF 254 request is for the client/taxpayer on the account.
2. Verify that the permanent notes entered adequately explain the need for a photograph.
3. Grant or deny approval of the request by entering a permanent note in ACMS. The note should state the approval is granted or, if denied, the reason for denial.
4. Enter the photograph code on the INF 254 and put the form in an envelope, and seal it.
5. Check that the address on the envelope is correct.
6. Ensure the envelope is sealed and securely deposited in the outgoing mail.

If a request is denied, the supervisor will write "Denied" at the bottom right corner of the INF 254, initial it, return the form to the requestor, and enter comments in ACMS specifying the reason(s) for the denial. The returned form will prompt the requestor to access ACMS and read the reason(s) for the denial.

Processing Requests Returned from DMV

To keep knowledge of the photograph code secure, mail received from DMV, whether marked confidential or not, should remain unopened and be delivered to a supervisor. The supervisor receiving the INF 254 which bears the photograph code should enter notes in ACMS that the photograph was received. The supervisor will remove and destroy the INF 254 before giving the photograph to the staff person who requested it.

Sharing DMV Information with other Agencies

The BOE has agreements to share information it acquires or develops with other specific agencies. However, the photographs acquired from DMV may only be shared with local law enforcement, the California Highway Patrol, and local district or city attorneys. The photographs may only be released to these agencies for the purpose of positively identifying the client/taxpayer and providing an address or location if a civil or criminal action has been initiated by the BOE against that client/taxpayer.

Record Retention and Destruction

While in their possession, staff must safeguard the DMV photographs by securing them in a locked drawer or cabinet. Staff must retain photographs securely for as long as necessary while resolving a case or assignment. When the business need for the photograph no longer exists, the photograph must be returned to the supervisor for destruction. Retaining a photograph for possible future use does not constitute a valid business need. If a photograph is needed again, it should be requested again.

Supervisors should shred or otherwise destroy photographs in a manner that ensures that the remnants cannot be reconstructed. Photographs should never be deposited in a confidential destruction bin intact. Destruction of photographs should be documented in the ACMS notes.

CONTACT AND INTERVIEW

722.000

THE COLLECTION INTERVIEW

722.020

All assignments will be performed in a professional manner. It is the BOE's policy to administer its laws and policies fairly and efficiently, with the expectation that employees will conduct themselves with dignity, integrity and courtesy. In addition, discretion must be exercised to avoid disclosing confidential information to unauthorized parties. (See [publication 353](#).)

To a considerable degree, collection productivity will ~~be controlled by~~ depend on the manner in which the collection interview is conducted and by the impression the collector makes on the taxpayer. Whether the interview is conducted over the phone, in a BOE office or elsewhere, the interview will be conducted with courtesy and professionalism; but at the same time, the collector should be firm and direct.

The most successful collection case, aside from a paid-in-full account, is one where the taxpayer fully understands the consequences of failing to pay the liability promptly. If the taxpayer perceives that the collector is inexperienced or uncertain, or if the collector does not convey a sense of urgency to resolve the situation, the taxpayer may attempt to postpone payment of the liability through excuses or insincere promises. Therefore, the impression the collector should strive to create is one where the taxpayer understands that the interviewer is a trained professional who:

1. Is knowledgeable about the situation,
2. Is able to apply pertinent laws and regulations to the situation,
3. Will treat the taxpayer fairly, but
4. Will follow through, if necessary, with actions to compel payment.

The collector must always be prepared to answer taxpayer questions about collection procedures, ~~and~~ taxpayer rights, and appeal rights. [Publication 54](#), *Tax Collection Procedures*, ~~and~~ [publication 70](#), *Understanding Your Rights as a California Taxpayer*, and [publication 17](#), *Appeals Procedures – Sales and Use Taxes and Special Taxes*, contain excellent information covering ~~both~~ these areas. The collector should also be prepared to discuss with taxpayers the publications available and how to obtain them. A statement directing the taxpayer to the BOE website to read publication 54 for information about BOE's collection procedures is on all billing notices for accounts in ACMS. Publication 54, which is automatically provided to all accounts entering ACMS, Publication 54 also briefly describes the taxpayer's rights and appeal rights and references Publications 70 and 17.

CORRESPONDENCE WITH TAXPAYER REPRESENTATIVES

722.027

When a taxpayer is represented by a third party, and a valid power of attorney is on file, copies of all correspondence sent to the taxpayer must also be sent to the representative. When a representative is involved with an audit, petition, or claim for refund, there is an expectation that the representative will receive copies even though a specific request has not been made. All online correspondence, notices, statements or reports must also be copied to the taxpayer's representative.

In the online system, staff can check for a specific representative or listing of representatives by using the "APL MH" screen:

1. Input the taxpayer's account number after the "APL PR" jump code. This displays a "Browse Case Preliminary Review" screen.
2. Place a "V" in the field next to the appropriate case with "PED RED" or "REF REF" in the "Case Type" and "Sub Type" columns and press "Enter." The "APL MH", "Maintain/Inquire Case Header" screen is displayed.
3. When viewing the "APL MH" screen, directly below the "TP Name" field is the "TP Agent" field. If there are no representatives on record, this field will be blank. If there is at least one taxpayer representative, the representative's name will be displayed here. Place an "M" in the "TP Agent" field to view a list of all taxpayer representatives.
4. Placing an "M" in the "PHO NBR" column will display the "CTS CM" screen. This screen contains the representative's telephone number and address.

Copies of power of attorney documents should be sent to Taxpayer Records Unit using Documentum procedures on eBOE. Those documents can then be retrieved via Documentum.

LIABILITY OF PARTNERS

724.020

As noted previously, all general partners are jointly and severally liable for all the debts and obligations incurred by the partnership. Partners in a LLP (accountants, attorneys and architects) have limited liability except for liabilities arising from their own professional malpractice. In a limited partnership, a limited partner has no liability for debts of the partnership unless the limited partner takes part in the control of the business (Corporations Code section 15507).

If the partnership is no longer operating and all partnership assets have been distributed, collection action may be taken against the individual assets of the former partners without concern as to whether equal amounts are collected from each of them. BOE staff should not lead any general partner to believe that the partner will be relieved of further liability if a payment equal to their partner's particular percentage ownership of the partnership is made. The fact that one or more members of a partnership may be making payments is not a reason to withhold action against other partners. Until the liability is paid in full, collection action should be imposed against any or all of the partners.

It should be noted that each individual partner, depending on that partner's period of association with the partnership, may be held responsible for all, part or none of the total liability of the partnership. Because the partnership liability may vary between partners, the [IRIS-online](#) system tracks each partner separately (through the creation of a RUPA account) so that the proper collection action may occur when necessary.

~~Whether voluntarily or by expulsion, when a partner "dissociates" from a partnership the partner's liability does not automatically terminate for the debts and obligations incurred by the partnership after the separation. RUPA does not require the dissociating partner to give any notice of the separation. If the dissociating partner notifies the BOE directly, this is "actual" notice and the partner's liability terminates as of the date of such notification. If the dissociating partner elects to file a *Statement of Dissociation* with the Secretary of State, this constitutes "constructive" notice and RUPA limits the dissociating partner's liability to 90 days from the date the notice was filed. If no notice is given, RUPA extends the dissociating partner's liability to two years from the date of separation for debts incurred by the continuing partnership after that date. When a partner dissociates from a continuing partnership, that partner is generally not liable for partnership obligations incurred after the date of dissociation. There are two exceptions to this general rule, both of which are contained in the Corporations Code (CC).~~

- ~~1. CC section 16308(a) states that persons that hold themselves out as partners, or who consent to others making representations that they are partners, are liable to any third parties who enter into transactions in reliance on such representations, whether or not a true partnership obligation exists.~~
- ~~2. CC section 16703(b) makes the dissociated partner liable to any third parties who enter into transactions with the partnership within two years after the date of dissociation, but only if the third party reasonably believed that the dissociated partner was then a partner and the third party did not have notice of the partner's dissociation.~~

~~Both of the exceptions provided by CC sections 16308(a) and 16703(b) exist for the purpose of protecting creditors who enter into transactions based upon a representation that a specific person was a partner. These exceptions do not pertain to unpaid sales and use tax or property and special tax and fee liabilities incurred by a continuing partnership. As such, a partner that dissociates from a continuing partnership but who does not notify the BOE, either directly or by~~

filing a Statement of Dissociation with the Secretary of State, is not liable under RUPA for taxes and fees incurred by the continuing partnership after the date of dissociation.

If a partner fails to notify the BOE of their dissociation from a continuing partnership, evidence provided by the partner should be examined to determine if the partner did, in fact, dissociate from the partnership and the date of the dissociation. The dissociated partner has the burden of proving the date of dissociation which may involve providing substantiating documentation such as:

1. Federal and state income tax returns for the periods in question for the dissociated partner and the business. Schedule K-1 of form 1065, U.S. Partnership Return of Income, should list each partner and its individual share of income from the partnership business.
2. Statement of Partnership Authority, Statement of Denial, and/or Statement of Dissociation filed with the California Secretary of State.
3. Registration records and tax returns from other government agencies.
4. Public records, such as a city business license, fictitious name statement, liquor license, etc.
5. Copy of business premises lease agreement, utilities billings, etc.
6. Cancelled business checks and bank records showing authorized signers.
7. Any other evidence that will assist in substantiating the true ownership of the business during the period in question.

The date of a partner's dissociation must be captured in the online system by entering the date of dissociation in **both** the End Date and Legal End Date fields in the Client Taxpayer System.

~~When an individual general partner, without notifying the BOE, withdraws from a partnership, and thereby causes a change in the ownership of the partnership, RTC section 6487.2 limits the liability of the individual general partner to three years after the last day of the quarter in which the general partner withdrew. This limitation extends beyond the time provided by RUPA for a partner to be held liable for partnership obligations occurring after dissociation (90 days or two years). RTC section 6487.2 states that a "change in ownership" means a new "person" is established. Under RUPA, however, a partner's withdrawal from the partnership does not mean that a new person is formed, unless the partnership agreement so specifies. Therefore, application of RTC section 6487.2 is limited to those situations in which the partner's withdrawal causes the termination of a partnership, in which case any continuation of the business would be by a new partnership or other entity. If a partnership is dissolved as a result of a partner's dissociation or dissolved within 90 days after a partner dissociates, the partner will continue to be liable to the partnership's creditors for all of the obligations the dissolving partnership incurs until it winds up its affairs, including a predecessor liability pursuant to RTC section 6071.1 and Sales and Use Tax Regulation 1699(f), and CC sections 16701.5 and 16807. A predecessor liability could arise in any situation where the BOE was not informed that a partnership dissolved and post-dissolution liabilities were incurred by an entity that continued operating the business under the dissolved partnership's seller's permit. Information regarding predecessor's liability is provided in CPPM 734.000, *Predecessor's Liability for Successor's Tax*.~~

RTC section 6071.1 provides the consequences for failure of a permit holder to surrender a seller's permit upon transfer of a business. The transferor (predecessor) may be held liable for up to four quarters for taxes incurred by the transferee (successor) after the transfer. Since a partner's dissociation does not cause a partnership to terminate under RUPA (unless so

stipulated in the partnership agreement), application of RTC section 6071.1 applies in the rare case where the dissociation triggers the termination of the partnership and the partnership business continues, with no actual or constructive notice being received from the dissociating partner or the partnership.

PARTNERSHIP BILLINGS

724.022

RUPA noticing requirements for billing purposes apply to the *assertion* of liability. These requirements do not apply after a liability has been assessed and has become final. Therefore, the BOE is only obligated to apply RUPA rules for noticing (billing) the partnership and the partners when issuing a *Notice of Determination* or a *Notice of Redetermination*, and for initial billings for tax, penalty, and interest due to receiving a [non-remittance or partial remittanceNR/PR](#) return, a dishonored check(s), etc. The BOE has determined, however, that the RUPA noticing rules will be followed for all billings generated by ~~IRIS~~ [the online system](#) to partnership accounts. This is because the first 30-day lien warning (required by the Taxpayer's Bill of Rights, RTC section 7097) does not appear in ~~IRIS~~ [online system](#) billings until the demand billing is sent, which occurs substantially after the original *Notice of Determination* (or *Notice of Redetermination*) has become final.

[Compliance staff issuing online compliance assessments \(CAS\) to closed-out partnership accounts shall ensure that the names and addresses of all general partners are input into the online system.](#)

[Requesting a RUPA Demand](#)

[If the liability of an individual partner of a closed partnership is less than the partnership's overall liability, a RUPA account may be established for the individual partner. Staff must select "RUPA ARB" from the pop-up screen in the online system to generate a RUPA account. After the account is generated, the collector must identify the RUPA account number by inputting a comment on the primary \(partnership\) account in ACMS.](#)

[After a RUPA account is established, a demand notice should be issued to the partner identifying the specific liability for which the partner is liable. To request a demand notice, staff will prepare a BOE-200-A, *Special Operations Branch Action Request*, in ACMS. In the section marked "Other Request," the name of each partner for whom a RUPA account was established and for which a demand notice is being requested must be identified. Each partner's RUPA account number, mailing address, and period\(s\) of liability must be included in the request. The liability period\(s\) is determined by the partner's "Start Date" through, and including, the partner's "Legal End Date" shown online. Staff should attach to the BOE-200-A all documentation such as copies of partnership documents, BOE correspondence \(BOE-400-PD\), or other material relating to the partner's association/dissociation activity with the business. After supervisory approval, the package should be sent to the Special Operations Branch \(SOB\). SOB staff will review the request, and if approved, issue a dual billing under the RUPA account.](#)

ACTIVE ENTITIES AND RTC SECTION 6829

726.015

The best time to gather evidence to support personal liability under RTC section 6829 is while an entity's business is active. While working an active entity's account, staff should ask and document in ACMS the answers to the following questions:

- Who is responsible for sales and use tax matters? When did the responsibility begin? Who ultimately determines which bills get paid? Is this person aware of the delinquency/liability owed?
- Is the corporate officer/member/partner information on record with the BOE current? If it is not, obtain what is necessary to update the information in the BOE's registration system. The start and end dates for each officer/member/partner should be entered into ACMS and IRIS.
- Does the entity add sales tax reimbursement to its sales? If so, request a copy of an invoice or receipt that demonstrates how tax is reimbursed. Does the entity collect use tax on its sales? If so, request a copy of an invoice or receipt.
- What other bills are currently being paid? If the taxpayer is requesting a payment arrangement and financial information is being requested, the material should be retained in the case drop file until the liability is paid in full. Once the liability is paid, all documents should be sent to the Taxpayer Records Unit and notes should be entered into ACMS.

If staff is made aware of an impending closeout of an entity's business, staff should inform officers/member/partners of RTC section 6829 and its implications should any outstanding liability of the entity remain unpaid when the entity's business terminates.

PENALTY AND INTEREST— SUCCESSOR'S LIABILITY

732.100

~~A seller's sales and use tax liabilities incurred with regard to the business or stock of goods up to the date of the purchase includes all the sales taxes the seller owes for taxable sales made up to the time the sale is consummated, the penalties imposed thereon (i.e., failure to file, failure to pay, negligence, fraud, etc.) and any interest that accrues on such taxes up to the date of the sale, regardless of whether the liabilities have been reported, billed, or become final.—The liability incurred by a successor with regard to the purchase of a business or stock of goods includes all amounts incurred by the predecessor, or any former owner, from the operation of the business, including amounts incurred from the sale of the business, even though such amounts may not be determined as of the date of purchase. All tax, interest, and penalties incurred by the predecessor, up to the amount of the purchase price, shall be billed to the successor. However, negligence or fraud penalties assessed to the predecessor after the date of purchase will not be due from the successor pursuant to Regulation 1702(b) unless there is a relationship between the successor and the predecessor. Such penalties may be relieved under certain circumstances. (See RTC section 6814 and Regulation 1702.)~~

~~RTC section 6814 (b)(1) states:~~

~~“If the board finds that a successor's failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.”~~

~~RTC section 6814(b)(2) states:~~

~~“Any successor seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.”~~

~~Also, Sales and Use Tax Regulation 1702(d)(2) states that:~~

~~“On or after January 1, 1990, a successor shall be relieved of any penalty originally imposed upon the predecessor included in the notice of successor liability regardless of when the notice was issued where there is no relationship between the successor and predecessor. A relationship exists between the successor and predecessor if there is any common ownership or if the successor was a responsible person defined in Sales and Use Tax Regulation 1702.5(b)(1) in the predecessor entity. A successor seeking relief of a penalty must file a written statement with the Board [of Equalization] under penalty of perjury stating the facts upon which he or she bases the claim for relief.”~~

REQUESTING A SUCCESSOR BILLING

732.115

All requests for successor billings are made through ACMS using [Form BOE-200-A](#), *Special Procedures-Operations Branch Action Request*. The BOE-200-A is sent to [SPS-SOB](#) along with copies of the supporting documentation and a separate memo that describes the reason for the request and basis for the assessment. The memo may also contain observations from field calls and other information developed from personal contacts.

[If approved, SOB will issue the successor billing by preparing a BOE-1266-A and will forward a copy to the Petitions Section if the predecessor liability is in petitions status.](#)

PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY

732.120

A notice of "successor's liability" billing may be issued no later than three years after the BOE is notified in writing of the purchase of the business or stock of goods. ~~However, t~~The statute of limitations for issuing the notice of successor's liability ~~does not begins~~ to run once until the BOE has been notified ~~in writing~~ of the purchase of the business. ~~If there is no notification, there is no statute of limitation, assuming there was a timely billing to the predecessor under RTC section 6487.~~

Issuing a notice of successor's liability can occur as soon as there is evidence of a successor. Some examples of appropriate times to request a notice of successor's liability include:

1. The predecessor's liability is in petition status and is not yet final.
2. After an audit has been completed, billed, but is not yet final on the predecessor's account.
3. As soon as a liability on the predecessor's account becomes final.
4. The predecessor's account is closed-out with established non-final liabilities.

Issuing a notice of successor's liability prior to the predecessor's liability becoming final does not violate any statutory requirement. The notice can be issued at any time during the three years after the BOE is notified of the purchase of the business or stock of goods. Billing early allows the successor to respond to the potential liability in a more timely manner and helps protect the state's ability to collect the outstanding balance once the petition is resolved.

~~Once a notice of successor's liability becomes final, collection from the successor may be enforced using all collection actions. Active collection action may be used at any time within ten years after the finality date of the liability. The period may be extended by recording a Notice of State Tax Lien or abstract against the successor in any county before the expiration of the ten-year period and may be further extended by a new recording before the expiration of ten years from the date of the original recording.~~

HEADQUARTERS' RESPONSIBILITY — SUCCESSOR BILLINGS

732.130

Although SPSSOB successor liability billings are generated by SPSSOB, the Petitions Section processes, acknowledges, and controls all petitions for reconsideration of a notice of successor liability. The Petitions Section is charged with the responsibility of seeing that petitions are resolved expeditiously and, if possible, without the necessity of an appeals conference preliminary and/or Board hearing(s).

After being notified by SOB of a successor billing on a petitioned predecessor account, the Petitions Section will place a sundry withhold (SW) on the successor account. This will cause an "SW" indicator to appear on the successor's liability difference. The Petitions Section will be responsible for the removal of the "SW" indicator once the predecessor liability is removed from petition status.

Since successor billings may be based on limited information, the Petitions Section may refer a taxpayer's petition to the responsible district for additional investigation. Petitions referred to the district will be directed to the District Administrator for assignment to the appropriate section. Periodically, the Petitions Section will request a progress report to ensure that the district of control is handling the petition on a priority basis.

NOTIFICATION TO SURETIES

735.020

~~When SOB prepares thea demand for payment is issued against a surety bond posted by a taxpayer whose security is in the form of a surety bond, notification of the delinquency is generally sent by the Special Procedures Section (SPS) to the surety as a security deposit. Making a demand on the surety may only be used as a last resort (see CPPM 735.035).~~

In order to keep sureties informed of the status of the accounts of their principals, they are also notified when ~~SPS SOB~~ files claims in bankruptcies, assignments, or probates, ~~and in certain cases, when installment proposals are accepted.~~

RECOMMENDATIONS FOR DEMANDS ON SURETIES, DISTRICT RECOMMENDATIONS

735.030

~~As soon as it is apparent payment cannot be expected from the taxpayer, A collector The district office may recommend making demand on the surety if all of the following conditions are met:~~

- ~~1. The liability exceeds \$50.~~
- ~~2. Collection from the taxpayer is not possible.~~
- ~~3. There is no corporate officer personal liability, and~~
- ~~4. There are no assets upon which to levy.~~

~~The collector should submit the request to SOB on ACMS a BOE-200-A, Special Operations Branch Action Request.~~

DEMANDS ON SURETIES, CORPORATE ACCOUNTS

735.035

~~While tThe district or CCS recommendation can be initiated as soon as collection from the taxpayer appears doubtful, However, Civil Code section 2845 states:~~

~~“A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor’s power that the surety cannot pursue, and that would lighten the surety’s burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced.”~~

Therefore, the BOE must exhaust all collection avenues and investigate all other available remedies prior to making demand upon a surety bond unless the surety has similar remedies. If a bond is indemnified by the corporate officer(s) who would also be the individual(s) billed by the BOE, similar remedies exist.

~~Consequently in view of the above~~, the following procedures will be followed when a surety bond secures liability on a corporate account.

1. If collection cannot be made from the corporation, and the corporate officer(s) indemnify the bond, and the liability for the secured bond does not exceed the penal sum of the bond plus \$500 (normal minimum amount of liability required to issue a dual determination), a request for demand on the bond is in order.
2. If the liability for the secured period exceeds the penal sum of the bond by more than \$500, corporate officer/employee liability must be explored. If the review for individual liability is negative, a request for demand on the bond is in order. If the review is positive, the individuals should be billed, and demand on the bond deferred, until the potential for collection from the individual(s) has been thoroughly explored.

IDENTIFICATION OF BANKRUPTCY STATUS

740.030

General notice that a bankruptcy case is commencing may come from many different sources such as actual written notice, verbal notice from a taxpayer, attorney or trustee, a search in PACER, or the [newsmedia](#). After receiving notification and verifying that a bankruptcy case has commenced, the bankruptcy information should be entered into the [IRIS-online](#) legal subsystem if the BOE has either a current interest (current liability due or active account) or future interest (potential liability due) in the case.

Either PACER information or an actual written notice of a taxpayer's bankruptcy is required in order to update accounts in [IRIS-the online system](#) with the legal status ~~indicator flag ("lgl")~~.

For sales and use tax accounts, the district offices, headquarters sections, ~~Centralized Collection Section (CCS)~~, and ~~SPS-SOB~~ collectively are responsible for designating bankruptcy legal status for accounts in [IRIS the online system](#). Also, the Property and Special Taxes Department (PSTD) collection staff and ~~SPS-SOB~~ are collectively responsible for designating bankruptcy status for PSTD accounts in [IRIS the system](#). ~~Sales and Use Tax Department (SUTD)~~ and PSTD staff should enter the bankruptcy information into the [IRIS](#) legal subsystem when:

1. A notice regarding the commencement of a bankruptcy case is sent directly to a BOE district office.
2. Collection staff is made aware of a bankruptcy filing by a taxpayer or the taxpayer's representative and verifies the filing with the court.
3. Staff becomes aware of an immediate deadline in a bankruptcy case. If such a deadline occurs, ~~SPS-SOB~~ must be notified without delay after entering the bankruptcy information.

[Creating the legal case in the online system requires input from audit staff regarding pending audits. The section/district that created the legal case in the system is responsible for communicating with district audit staff to determine if an audit is anticipated and if so, when it will be completed.](#)

When a notice regarding commencement of a bankruptcy case is sent directly to the headquarters office of the BOE, ~~SPS-SOB~~ will enter the bankruptcy information into the [IRIS](#) legal subsystem. ~~SPS-SOB~~ does not forward the bankruptcy notice to the districts, CCS, or divisions within PSTD.

All other bankruptcy related notices received by SUTD district offices, CCS, or divisions within PSTD should be sent to ~~SPS-SOB~~ (MIC 55). See CPPM 740.230 regarding procedures for inputting information into the legal subsystem.

In the California bankruptcy court registries, the BOE has designated the following address to be used for notification of all general bankruptcy matters: California State Board of Equalization, Account Information Group, MIC 29, P.O. Box 942879, Sacramento CA 94279-0029.

CATERING TRUCKS AND THEIR SUPPLIERS

749.035

The BOE may, by written notice, require any person making sales to operators of catering trucks operated out of that person's facility, who resell the property in the regular course of business, to:

1. Obtain evidence the operator is a holder of a valid seller's permit.
2. Submit a list of all operators on file, who purchase goods from that person, not more than three times each year. Each list shall:
 - a. Be provided to the BOE within 30 days of the BOE's request.
 - b. Contain names and seller's permit numbers of operators with valid seller's permits.
 - c. Contain names, address and telephone numbers of operators who did not provide a valid seller's permit.
3. Promptly notify the BOE if a new purchasing operator does not provide evidence of a valid seller's permit within 30 days from first purchase.

Persons required, but who fail to do any of the above actions, may be subject to a penalty not to exceed \$500 for each failure.

Persons making sales to operators who do not have seller's permits, or whose permit has been revoked, shall report and pay the tax on property as if the property were sold at retail at the time of sale. RTC section 6074 does *not* relieve the operator of the catering truck from his or her obligations as a seller.

District Responsibility

As part of an ongoing compliance program, the following procedures are recommended:

1. Periodically identify and contact all catering commissaries (houses) located within the district to advise them of the requirements of this legislation.
2. Use BOE-570-A, *Notice of Revocation to Principal's Suppliers*, to notify the suppliers of the catering truck operator when the operator's seller's permit is revoked. Upon reinstatement of the seller's permit, BOE-570-B, *Notice of Reinstatement to Principal Suppliers*, must be sent to inform suppliers that the permit is valid and a resale certificate from the operator may be accepted– (See CPPM 751.140).
3. Issue a request to each house for a listing of mobile truck caterers (operators) purchasing from them. The law does not specify the format in which the list should be supplied (e.g., alphabetically). Attempt to secure the list in a format that will minimize the time expended in verification by using BOE-12, *Request for Listing of Catering Truck Operators*.
4. When the list is received:
 - a. Verify information where seller's permit numbers are provided.
 - b. Contact any operators without valid seller's permits to apply for a seller's permit immediately, following the normal district procedures for non-permitted sellers.
 - c. The following guidelines should be used to determine whether a catering truck driver is an independent contractor or an employee of the catering house. Indicators of employee status are:

- 1) The driver's contract with the house does not identify the driver as an independent contractor.
- 2) The driver receives a salary or commission from the house and the house withholds taxes and social security payments, and carries unemployment or worker's compensation on the drivers.
- 3) The house retains complete control over the detail of work performance (e.g. pricing, purchasing, etc.).
- 4) Drivers must account to houses for all receipts.
- 5) For income tax purposes, the house reports gross truck sales as their income and the driver reports as an employee.

Indicators of independent contractor status are:

- 1) The contract between the catering house and driver specifies that the driver is an independent contractor.
- 2) The driver does not receive a salary from the house, nor does the house withhold social security payments, unemployment or worker's compensation.
- 3) The catering truck drivers are not required to purchase all food and supplies from the catering house leasing the truck.
- 4) No accounting is made by the driver to the house for sales. The net profit from their sales is their income.
- 5) For federal income tax purposes, the driver prepares a Schedule C "Profit or Loss from Business".

5. When the list is not received within the specified time:

- a. Send the BOE-12 again, using certified mail.
- b. If the house fails to comply with provisions outlined in RTC section 6074(a), send BOE-13, *Follow-up for Listing of Catering Truck Operators*, using certified mail.
- c. If no response, create a compliance assessment in the online system to apply the \$500 penalty as provided by Section 6074.
- d. After the determination is issued and/or collected, issue another request for the list, using certified mail. If cooperation is still not obtained, repeat the process of assessing and collecting the penalty until compliance is obtained.

The list request procedure should be repeated when the district deems the procedure necessary to encourage compliance but no more than three times in a calendar year. Staff may also consider, if appropriate, requesting a subpoena for the records. For further information regarding subpoena requests, see CPPM section 774.010.

EFFECT OF REVOCATION

751.070

Upon service of the revocation notice in person or by mail, all of the rights or privileges granted under a particular law are revoked or suspended until the license or permit is properly reinstated. Operation of the business after revocation of the permit or license is a misdemeanor. Taxpayers or officers of a corporation who continue operating the business after revocation of the permit or license may be subject to prosecution, punishable as provided in RTC section 7153.

In addition, revocation of the seller's permit of a motor vehicle dealer also affects the dealer's status with DMV. Upon revocation of a dealer's seller's permit, under California Vehicle Code sections 11518(e), 11617(a)(6) and 11721(f), the dealer's license is automatically canceled as well. Sales and use tax accounts requiring a dealer license include, but are not limited to, accounts with NAICS codes 441110 (new motor vehicle dealers), 441210 (automobile trailer dealers), 441120 (used automotive dealers), 441222 (boat dealers), 441221 (motorcycle dealers), and 423100 (wholesalers).

When in contact with a delinquent taxpayer with a valid dealer's license, the taxpayer **must** be informed that, upon revocation of the seller's permit, the motor vehicle dealer's license is automatically canceled too. Notes regarding the conversation should be entered in ACMS. Additionally, a BOE-78-A, *DMV License Cancellation Warning Letter*, must be sent to the taxpayer at least 15 days prior to contacting DMV. The taxpayer should be advised that once the DMV dealer's license is canceled, it cannot be reinstated. If canceled, the taxpayer must apply for a new dealer license and go through the process of qualifying for a new license, including posting a new bond.

When a taxpayer with a valid dealer license fails to pay the self-assessed delinquent sales and use tax liability, the seller's permit should be cited for failure to pay. In addition, if a security deposit requirement is not met, the account may be cited for revocation for failure to post security. If the taxpayer does not clear the citation and the seller's permit becomes revoked, all conditions for reinstatement must be met prior to reinstating the seller's permit. For final audit-determined balances, the taxpayer can be required to pay the balance due in full or may be allowed to enter into a payment agreement prior to reinstating the seller's permit.

CONDITIONS OF REINSTATEMENT

751.090

To reinstate a revoked account, the taxpayer must clear the cause for revocation by:

1. Filing all delinquent returns and paying the taxes/fees, penalty and interest due.
2. Paying all self-assessed delinquent balances due according to the records of the BOE.
3. Paying, or entering into an installment payment agreement, for audit-determined liabilities.
4. Posting required or additional security on sales tax accounts. Arrangements to post the security deposit in installments may be accepted in lieu of requiring full payment of the security, at the district's discretion.
5. Paying the applicable amount of the reinstatement fee (currently ~~fifty dollars~~\$100 per active location) and completing all required forms.
6. Clearing any other causes for revocation of the permit or license.

The taxpayer may be requested to comply with any other provisions of the laws or regulations such as keeping adequate records or reporting tax liability according to prescribed rules.

If the revocation is to be cleared on the basis of entering into a payment agreement, supervisory approval and a substantial initial payment should be obtained. The amount of the payment and terms of the agreement should be documented on ~~Form~~ BOE-407, *Installment Payment Agreement*. (See CPPM 770.000.) Unless payment and acceptable arrangements are received, the account should remain revoked.

If the taxpayer files bankruptcy, the account will be reinstated without any of the above conditions being met. ~~Form~~ BOE-16, *Cancellation of Revocation*, will be prepared and the bankruptcy information will be added to the account by district office personnel through ~~IRIS~~Online system on the LGL LC screen. Putting a bankruptcy flag on the account does not restrict efforts to clear delinquent periods, as long as the efforts are restricted to passive collection actions only.

After reinstatement, if the taxpayer fails or refuses to respond to any demand for compliance with the law or regulations, revocation proceedings should again be instituted. The show-cause portion of the ~~Form~~ BOE-420, *Notice to Appear*, must indicate the particular cause(s) for which the permit is proposed to be revoked.

REINSTATEMENTS AFTER REVOCATION— FEES

751.100

To reinstate a revoked seller's permit, ~~Under the provisions of the Revenue and Taxation Code RTC section 6069, reinstatement after revocation~~ requires payment of a ~~\$50-100~~ fee for each active business location listed under the seller's account number. The district office staff will determine the number of active sub-permits to be reinstated and collect a ~~\$50-100~~ fee for each (this number may be different from the number of active sub-locations shown in ~~IRIS~~~~the on-line~~~~online system~~).

Note: A fee is not collected for any sub-locations that are not active at the time of reinstatement and which were closed out using code 8 in ~~IRIS~~~~the online system~~. If an ~~inactive~~ sub-location ~~closed-identified~~ with a close-out code 8 ~~in IRIS~~ should ~~re-activate~~~~reopen~~ within 18 months ~~after close-out of the permit~~, the reinstatement fee is due at the time of reactivation.

WARRANT REQUEST AUTHORITY — TILL-TAPS AND KEEPERS

753.025

A supervisor must approve all requests to issue till-tap or keeper warrants and will ensure that both of the following items have been addressed:

1. The business is actively operating and is of a type (generally cash-based) that will support the keeper or till-tap. Note: a keeper warrant may be ordered on a closed-out permit as long as it is to be installed at the ~~exact~~ same owner's active business location, which may have a different account number.
2. The average daily sales are enough to realistically expect payment above and beyond the fees associated with service of the warrant.

Warrant requests are initiated through ACMS using ~~Form~~ BOE-200-W, *Special ~~Procedures Operations Branch~~ Warrant Request*. When the responsible collector determines that a keeper or till-tap warrant is appropriate, the case must be manually routed in ACMS to the collector's supervisor for approval. Upon supervisory approval, a BOE-200-W is generated in ACMS and sent to ~~SPS-SOB~~ for processing.

Till-Taps - Use of the California Highway Patrol

Requesting the California Highway Patrol (CHP) to serve a till-tap warrant can be costly.; Therefore staff is encouraged to utilize the Sheriff instead of the CHP whenever possible. However, using the Sheriff instead of the CHP is dependent upon the area for service and whether the CHP can more quickly or efficiently serve the till-tap warrant in comparison to the Sheriff.

There are eight CHP divisions that process and serve BOE till-tap warrants (see table at the end of this section). When requesting a till-tap to be served by the CHP, the correct CHP division address must be entered on the warrant to ensure that it is mailed to the proper CHP division for service. If the taxpayer is located in a city not shown in a division, SOB staff will contact the CHP to determine which CHP division will serve the warrant.

The request for a warrant must include:

1. The address for service for the till-tap.
2. The type of business.
3. The normal business hours and preferred hours for service.
4. The specific number of days the CHP must go to the business location.

Since a till-tap may not be successful in obtaining payment in full, limiting the number of days the CHP must go to the business location will allow district compliance staff to:

1. Assess the effectiveness of the till-tap warrant and determine if more days should be requested, or
2. Consider other collection remedies.

Prior to preparing the warrant, SOB staff will contact the appropriate CHP division and request an estimated amount to process the till-tap. This amount will then be entered as the Cost of Collection (COC) difference in the online system. In some cases where CHP cannot provide an amount, SOB staff will enter \$999 for the COC. Once the actual cost of collection has been determined, the COC difference will be adjusted accordingly. For that reason, compliance staff should take notice that the COC difference in the online system may not be exact and the amount will be adjusted upon receipt of the billing from the CHP. Compliance staff should contact SOB to determine if the COC amount is correct and resolve any issues concerning an outstanding COC.

CALIFORNIA HIGHWAY PATROL DIVISION AND AREA LOCATIONS

NORTHERN DIVISION
(Redding)
2485 SONOMA ST
REDDING CA 96001
1-530-225-2715

Crescent City
Humboldt
Garberville
Red Bluff
Redding
Susanville
Yreka
Mount Shasta
Ukiah
Clear Lake
Williams
Willows
Quincy
Alturas
Trinity River

VALLEY DIVISION
(Gold River)
11344 COLOMA RD,
SUITE 850
GOLD RIVER CA
95670
1-916-731-6400

Auburn
Gold Run
Truckee
Grass Valley
Oroville
Chico
Placerville
South Lake Tahoe
North Sacramento
South Sacramento
San Andreas
Stockton
Tracy
Woodland
Yuba-Sutter
Amador

GOLDEN GATE
DIVISION
(Oakland)
1515 CLAY ST,
SUITE 1602
OAKLAND CA 94612
1-510-622-4609

Contra Costa
Napa
Redwood City
San Francisco
San Jose
Hayward
Marin
Santa Rosa
Solano
Oakland
Castro Valley
Dublin

CENTRAL DIVISION
(Fresno)
5179 N GATES AVE
FRESNO CA 93722
1-559-277-7250

Bakersfield
Sonora
Buttonwillow
Fort Tejon
Fresno
Hanford
Madera
Mariposa
Oakhurst
Merced
Los Banos
Modesto
Visalia
Porterville
Coalinga

SOUTHERN DIVISION
(Los Angeles)
437 N VERMONT AVE
LOS ANGELES CA
90004
1-323-644-9550

Baldwin Park
South Los Angeles
East Los Angeles
Newhall
Antelope Valley
Santa Fe Springs
West Los Angeles
Altadena
West Valley
Central Los Angeles

BORDER DIVISION
(San Diego)
9330 FARNHAM ST
SAN DIEGO CA
92123
1-858-650-3620

Winterhaven
El Centro
Indio
San Diego
Oceanside
San Geronio Pass
Blythe
Westminster
Santa Ana
El Cajon
Temecula
Capistrano

COASTAL DIVISION
(San Luis Obispo)
4115 BROAD ST,
SUITE B-10
SAN LUIS OBISPO CA
93401
1-805-549-3261

Santa Cruz
Hollister-Gilroy
Monterey
King City
Templeton
San Luis Obispo
Santa Maria
Buellton
Santa Barbara
Ventura
Moorpark

INLAND DIVISION
(San Bernardino)
847 E BRIER DR
SAN BERNARDINO
CA 92408
1-909-806-2400

Bridgeport
Bishop
Mojave
Needles
Barstow
Riverside
Victorville
Morongo Basin
San Bernardino
Arrowhead
Rancho
Cucamonga

ADVANCE PAYMENT OF FEES AND EXPENSES

753.050

The BOE is authorized to make advance payments of fees and expenses, other than fees and expenses incurred under the Cigarette and Tobacco Products Tax Law. That law provides for payment of fees and expenses upon completion of the services of the levying officer.

When an advance payment is necessary and a warrant request is transmitted to SPSSOB, the ~~amount of advance payment and the~~ entity to ~~whom-which~~ it should be paid must be indicated. The collector will determine the amount of the advance fees required and, in most cases, SPS SOB will send the warrant and warrant instructions to the district office along with a check covering ~~any-the~~ advance fees. ~~although, a~~At times however, the warrant and instructions are sent directly to the County Sheriff, etc, with copies provided to the ~~district office~~collector that made the request.

~~When a warrant, for which an advance payment has been made, results in full or partial payment, separate remittance advice forms must be used to transmit the payment so the amount of reimbursement for the advance is clearly identified. Form GA-904, Advice of Miscellaneous Receipts, is used to transmit all non-tax items such as the reimbursement of the levying officer's fees and expenses. Unless this is done, the account of the taxpayer will be credited with the amount of the reimbursement, instead of the payment being diverted to the proper fund.~~

When the BOE issues a warrant for collection to law enforcement entities, the Accounting Section prepares a check for advance fees, made payable to the law enforcement entity. The advance fees are drawn on the BOE's Revolving Fund.

Upon receipt of payment, compliance staff will first apply the money to the cost of collection (COC) differences in the online system. Any amount remaining after these costs have been paid in full will be applied to the liability indicated on the warrant.

Warrant Logs

District offices are required to maintain a log for all outstanding warrants and costs of collection requested from SOB. The BOE-418, Warrant Log, may be used unless a Cost of Collection tracking log tailored for the district office is used.

Staff must ensure that all unused advance fees, and any funds collected as a result of the warrant, are returned to the BOE along with the original warrant. The compliance supervisor responsible for approving requests for fees and warrants should review the Warrant Log on a monthly basis. This is done to ensure that staff is following up for the return of the advance fees and the original warrant, and reconciling the COC differences in the online system.

Unused Cost of Collection Fees

There may be instances where the warrant is canceled and not served. In this situation, the Sheriff returns the unused advance fees. Staff will return the warrant and the unused fees back to SOB. SOB will forward the check for the unused advance fees back to the Accounting Section for further handling. The advance fees that are being returned unused should not be applied to the taxpayer's liability. The unused fees for the COC are not the taxpayer's money and staff should not apply the funds to the taxpayer's liability.

COSTS AS AN OBLIGATION OF THE TAXPAYER

753.054

The advance payment required, ~~as well as~~ and any costs incurred in the use of a warrant, becomes the obligation of the taxpayer and should be collected by the officer making the levy. Whenever costs are incurred through a levy from which no satisfaction is obtained, whether an advance was made or costs were later billed to ~~the~~ BOE, the amount of the costs should be added to the tax liability and collected along with the tax when collection becomes possible. ~~Those cost items are not posted to the accounts receivable, therefore, the district offices must develop other controls. When payments include reimbursement for previously paid costs, remittance advice forms will contain an explanatory statement.~~

CHECKLIST FOR MAKING A NOMINEE LIEN REQUEST

753.130

1. Determine that the real property on which a nominee lien is desired is not currently deeded to the taxpayer.
2. Document the date of the transfer (copy of current deed).
3. Document the date the taxpayer first became aware of the pending tax liability.
4. Obtain copies of grant deeds, quit claim deeds, and deeds of trust in the chain of title from taxpayer forward (attach to request).
5. Obtain current county assessor's property tax assessment and parcel number.
6. If property was never titled in taxpayer, obtain the documentation to validate the request (attaché to request).
7. Document all facts that support the case, i.e. for example, relationship, consideration or lack of consideration, ~~etc.~~

NOTICE OF LEVY

753.205

The *Notice of Levy* contains two copies of the levy. The first copy is sent to the entity being levied, i.e., a bank, savings and loan association, credit card processor~~ete.~~, who is known as the “garnishee.” The second copy is sent directly to the tax debtor informing them of the levy. ~~Form~~ The BOE-425-L3, *Information Sheet*, should will be attached to included with the copy of the levy sent to both the tax debtor and the garnishee.

Taxpayers are entitled to various exemptions provided in the United States Code and in the California codes, primarily the Code of Civil Procedure (CCP). ~~Form~~ BOE-425, *Exemptions from the Enforcement of Judgments*, must accompany the copy of the levy notice sent to the tax debtor. This mailing is required by CCP section 700.010.

Generally, the tax debtor’s copy, including the information sheet and exemptions list, shall be mailed to the tax debtor ~~three within ten business calendar~~ days after the levy has been mailed to the garnishee. This period will allow time for the financial institution, including banks with a centralized levy processing system, to receive and process a BOE levy. If the levy notice is being served on a financial institution’s out-of-state processing center, the tax debtor’s copy should be mailed five business days after the copy mailed to the financial institution.

Per CCP section 703.520, the taxpayer has ten days from the date of receipt of the *Notice of Levy* to file a claim of exemption with the office that issued the levy. If the tax debtor contacts the district office and asserts that they qualify for an exemption from enforcement of the levy, staff will provide the tax debtor with an additional three days to file the claim of exemption. Staff should request the financial institution place a hold on any funds captured for an additional three days.

THIRD-PARTY CLAIMS

753.210

A third party may claim ownership or the right to possession of ~~the levied~~ property pursuant to CCP section 688.030. Third parties claiming ownership or security interests may file a third-party claim on the property seized by the BOE following the service of a warrant or a notice of levy. A third-party claimant should file its third-party claim with the ~~district BOE~~ office that issued the *Notice of Levy*. The ~~district~~ office issuing the levy is responsible for advising the third-party claimant of all the requirements for a valid claim and determining whether a third-party claim conforms ~~with~~to the requirements of CCP section 720.130. The levying office is also responsible for analyzing the claim and, when appropriate, releasing the third-party property that was levied in error.

Claimants must be advised that CCP sections 720.120 and 720.130 requires that a third-party claim ~~must~~ be made by the person claiming ownership and submitted prior to the BOE receiving the levied funds. If a third-party claim is received after the BOE has deposited the funds, ~~the only recourse available to BOE staff should advise~~ the claimant that the only recourse available is to follow the claim for refund process.

The third-party claim must be signed under penalty of perjury and contain all of the following:

1. The name of the third-party and an address in this state where service by mail may be made upon the third-party.
2. A description of the property in which an interest is claimed.
3. A description of the ownership interest claimed, including a statement of the facts upon which the claim is based.
4. An estimate of the market value of the interest claimed.

~~A copy of any~~Copies of supporting documentation ~~upon which the claim is based~~ should be attached to the third-party claim. However, documentation need not be provided in order for a third-party claim to be valid.

All third-party claims conforming to CCP section 720.130 which cannot be resolved by the office or unit that initiated the levy should immediately be referred to the Legal Affairs Litigation Division in the BOE's Legal Department ~~as follows, using the following procedures:~~

1. Notification of receipt of a third-party claim ~~should is to~~ be sent via email to the Assistant Chief Counsel of the Legal Affairs Litigation Division with ~~a copy~~iesy to the respective appropriate SUTD ~~e~~Division ~~e~~Chief, and SOB.
2. The third-party claim along with documentation, if any, is to be immediately faxed to the Assistant Chief Counsel of the Legal Affairs Litigation Division and the hard copy will ~~follow~~be sent by inter-office mail to MIC 82. The hard copy must include:
 - a. A copy of the warrant or notice of levy, including all spousal blurbs or affidavits.
 - b. A brief summary of action taken to levy on the property. The summary should include any known information regarding the relationship between the tax debtor and the third-party, any information substantiating the tax debtor's ownership of the property, and any other information that may assist Legal Affairs in evaluating the third-party claim.

An attorney in the Legal Affairs Litigation Division will determine whether to release the levy or request SOB to prepare the referral for ~~the matter to~~ the office of the Attorney General for commencement of a third-party claim legal proceeding.

EXEMPTIONS AVAILABLE TO TAXPAYERS

753.260

~~Form BOE-465, Notice of Withhold, does not create a lien; service of the notice merely “freezes” the asset up to 60 days during which a warrant is issued so the sheriff, marshal constable, or CHP can levy on the property.~~

Code of Civil Procedure (CCP) sections 703.010 through 704.995-210 allows tax debtors to claim exemptions from levy (see ~~Form BOE-425, Exemptions from the Enforcement of Judgments~~). CCP section 703.510 et seq., details the procedures for determining the validity of claimed exemptions.

~~As explained in CCP section 704.080, certain types of property are not subject to levy and a Claim of Exemption does not need to be filed for them. Included in this category are “social security benefits” and “public benefits.”~~

~~“Social security benefits” are payments authorized by the Social Security Administration for regular retirement and survivors benefits, supplemental security income benefits, coal miners’ health benefits, and disability insurance benefits.~~

~~Under CCP 704.080, exempt social security benefits for 2008 include:~~

- ~~1. The first two thousand four hundred twenty five dollars (\$2,425) where one depositor is the designated payee of directly deposited social security payments.~~
- ~~2. Three thousand six hundred fifty dollars (\$3,650) where two or more depositors are the designated payees of directly deposited social security payments.~~
- ~~3. If those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exempt amount is two thousand four hundred twenty five dollars (\$2,425).~~

~~The amounts under CCP 704.080 change annually so staff should periodically check for updated amounts at www.leginfo.ca.gov.~~

~~Under the Welfare and Institutions Code, “public benefits” means aid payments authorized pursuant to section 11450(a), payments for supportive services as described in section 11323.2 and general assistance payments made pursuant to section 17000.5.~~

~~As set forth in CCP 704.080, exempt public benefits include:~~

- ~~1. The first one thousand eight hundred twenty five dollars (\$1,825) where two or more depositors are the designated payees of the directly deposited public benefits payments.~~
- ~~2. If those depositors are joint payees of directly deposited public benefits payments that represent a benefit to only one of the depositors, the exempt amount is one thousand two hundred twenty five dollars (\$1,225).~~

~~The table below summarizes amounts exempt from levy under CCP sections 704.010 to 704.100, effective April 1, 2013. These amounts are adjusted every three years as provided by CCP section 703.150. (A table of current dollar amounts of exemptions from the enforcement of judgments, form EJ-156, is available at www.courts.ca.gov.)~~

<u>CCP Section</u>	<u>Type of Taxpayer Property</u>	<u>Exemption Amount</u>
<u>704.010</u>	<u>Motor vehicle</u>	<u>\$2,900</u>
<u>701.030</u>	<u>Material for the repair or maintenance of a residence</u>	<u>\$3,050</u>
<u>704.040</u>	<u>Jewelry, heirlooms, art</u>	<u>\$7,625</u>
<u>704.060</u>	<u>Personal property used in taxpayer's or taxpayer's spouse's business or profession</u>	<u>\$7,625</u>
<u>704.060</u>	<u>Commercial motor vehicle used in taxpayer's or taxpayer's spouse's business or profession</u>	<u>\$4,850</u>
<u>704.060</u>	<u>Personal property used in taxpayer's and spouse's common business (co-ownership) or profession</u>	<u>\$15,250</u>
<u>704.060</u>	<u>Commercial motor vehicle used in taxpayer's and spouse's common business (co-ownership) or profession</u>	<u>\$9,700</u>
<u>704.080</u>	<u>Deposit account with direct payment of social security benefits with one depositor as payee</u>	<u>\$3,050</u>
<u>704.080</u>	<u>Deposit account with direct payment of social security benefits with two or more depositors as payee</u>	<u>\$4,575</u>
<u>704.080</u>	<u>Deposit account with direct payment of public benefits with one depositor as payee</u>	<u>\$1,525</u>
<u>704.080</u>	<u>Deposit account with direct payment of public benefits with two or more depositors as payee</u>	<u>\$2,275</u>
<u>704.090</u>	<u>Inmate trust account (spouse also entitled to exemption)</u>	<u>\$1,525</u>
<u>704.090</u>	<u>Levy of funds on inmate trust account per a restitution order</u>	<u>\$300</u>
<u>704.100</u>	<u>Non-mature life insurance or annuity policies, excluding the loan value (spouse also entitled to exemption)</u>	<u>\$12,225</u>

As explained in CCP section 704.080, certain types of property are not subject to levy and a Claim of Exemption does not need to be filed for them. Included in this category are "social security benefits" and "public benefits."

Within ~~40~~ten days, the financial institution shall provide the levying officer with a written notice stating that the deposit amount is one in which payments of public benefits or social security benefits are directly deposited by the government or its agent, but the balance of the deposit account exceeds the exemption. ~~Promptly upon receipt of the notice, the levying officer shall serve the notice on the taxpayer personally or by mail.~~ The taxpayer BOE has five days after the ~~levying officer~~financial institution serves~~sends~~ the notice to the BOE in which to file an affidavit alleging that the excess amount is not exempt. Banks and other financial institutions normally also notify depositors of withholds and levies against accounts and inform the depositors of their right to certain exemptions. The levying officer must be notified to release the money if the amount of the funds levied on is less than the statutory exemption claimed (or

allowable, in cases where no claim is required) and ~~the district~~the BOE cannot show by affidavit on Notice of Opposition that the exemption is invalid or improper.

GENERAL PROBLEMS IN CONNECTION WITH LEVIES

753.270

As stated previously, RTC section 6703 authorizes the BOE to serve a Notice of Levy on persons having in their possession any credits or other personal property belonging to a taxpayer that is indebted to the BOE. In the case of a financial institution, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

Although serving multiple levies on the same financial institution is not prohibited, BOE staff will allow a financial institution time to respond to an outstanding levy prior to issuing another levy unless there is a valid business reason to levy again. This will reduce the incidence of over collecting by the BOE. In the event the BOE does over collect the liability by issuing multiple levies, staff should take appropriate action to remedy the situation as follows:

1. Return the check to the financial institution along with a modified levy, if the remaining balance due is less than the amount of the check received.
2. Return the check to the financial institution with an explanation that the levied amount has been satisfied, if that is the case.
3. Contact the financial institution to request that a stop payment be placed on the levy check, if the BOE has recently deposited the levy check.

If none of the above actions is possible, the taxpayer should file a claim for refund. Staff should follow the guidelines in CPPM 707.040, *Refunds of Excess or Erroneous Amounts Received*, when the taxpayer is instructed to file a claim for refund.

The manner in which assets are levied~~ds are made in certain situations~~ may vary. Therefore, the problems that can arise in connection with serving levies ~~are~~may also ~~many vary and varied~~. For ~~these~~ reasons, to describe all of these situations and attempt to set forth instructions covering all possible contingencies is not practical. When unusual situations arise, staff ~~are is~~ expected to use ~~their best~~sound judgment in handling the matter and, when necessary, obtain supervisory approval to ~~contact~~submit the problem to ~~SPS-SOB~~ for ~~assistance with~~ resolution.

Generally, a levy is in order when an entity that is indebted to the taxpayer has possession of, or control over, assets belonging to the taxpayer, or when personal property, owned free and clear by the taxpayer, has been located. Whenever a levy is made, the person requesting the levy should always be prepared to carry the action through to a sale of the property levied upon or, in the case of money, to seize all of the funds available or a sufficient amount to clear the liability plus costs.

Although proper discretion must be used in deciding whether to levy, there should be no hesitancy about using this ~~action-collection tool~~ when necessary. The levy procedure is ~~an~~ extremely effective ~~collection tool that~~and will frequently result in immediate payment. Even when payment is not immediate, the levy process provides the state with protection against the taxpayer's other creditors. Failure to make use of levies at the proper time often results in loss ~~of revenue~~ to the state.

EARNINGS WITHHOLDING ORDER FOR TAXES (EWO)

(CONT. 1) 755.020

Administrative Hearing

If the taxpayer requests an administrative hearing, the taxpayer should complete a financial statement prior to the hearing. Along with providing the taxpayer with Form a, BOE-403-E, *Individual Financial Statement*, the BOE, no less than seven days before the hearing, must advise the taxpayer of the time, place and date of the hearing. The taxpayer should present his or her completed financial statement to the hearing officer for review on or before the date set for the hearing.

If the person requesting a hearing refuses to furnish a financial statement, the person is required to disclose the information at the hearing. The EWO should not be modified or released, if the person does not disclose the requested financial information.

~~District offices will assist the Centralized Collection Section by conducting reconsideration or modification hearings on their behalf.~~ Hearings shall be informal and the hearing officer should be the lowest supervisory level. The hearing officer should not be the immediate supervisor of the employee who served the EWO. District offices will assist CCS by conducting reconsideration or modification hearings on their behalf.

The hearing officer must issue his or her written decision within 15 days after the request for reconsideration is received by the BOE. If the hearing officer determines that all or a part of the amount withheld is necessary for the support of the taxpayer's family, the EWO may be modified. The employer should be sent a *Modification of Order to Withhold Taxes*, Form BOE-425-M) containing either:

1. A new withhold amount.
2. Notification that the EWO is withdrawn.

Attempt to Evade by Employer

Code of Civil Procedure (CCP) Section 706.153 states that if staff discovers that an employer is deferring or accelerating an employee's earnings in an attempt to defeat or diminish the BOE's rights under the EWO, the BOE may bring civil action against the employer. In these cases, notify the Special Operations Branch - Procedures Section (SPSSOB) so action to recover from the employer may be initiated.

The BOE is authorized to hold a taxpayer's employer liable for earnings the employer withheld pursuant to an earnings withholding order (wage garnishment), but failed to remit to the BOE. The taxpayer must provide substantiating evidence (e.g., payroll documentation) to the BOE identifying amounts withheld as the result of a wage garnishment that were not remitted to the BOE. Prior to holding an employer personally liable, the BOE must provide written notification to the employer regarding the missing payments and allow 15 days for the employer to remit payment. Should the employer fail to remit payment for the withheld amounts, the BOE will issue a tax determination against the employer.

The tax determination issued against the employer will include the amount of the withheld payments the employer failed to remit and will be billed as a tax liability, regardless of the composition of the taxpayer's liability. For example, the missing wage garnishment payments will be billed to the employer as a tax liability even if the taxpayer's account balance is only comprised of penalty and/or interest amounts. If several wage garnishment payments were not

remitted by the employer, they can be billed as one tax liability with interest accruing on the entire amount billed from the date the first unremitted payment was withheld from the taxpayer's earnings. (A determination can be issued against an employer up to seven years from the date the first unremitted wage garnishment payment was withheld from a taxpayer.) As with other tax determinations, a 10% finality penalty will accrue if the liability is not paid prior to the finality date. The same appeal rights available for other determinations issued by the BOE apply to determinations issued to employers under RTC section 6704.

Immediately upon an employer's liability becoming due and payable (i.e., a "final liability"), an adjustment will be made to the taxpayer's account, whether or not payment from the employer has been received. In essence, RTC section 6704 allows the BOE to shift the liability (for the amount of the unremitted wage garnishment payments) from the taxpayer to the employer.

The employer will be held liable for the amounts as if it were a tax liability, and all remedies available to the BOE in collecting tax liabilities are also available in collecting liabilities created under section 6704.

Instances involving section 6704 are rare; however, when they do arise, staff should investigate them thoroughly. The starting point of the investigation should involve obtaining documentation identifying the amounts the employer withheld but failed to remit to the BOE. In most cases, taxpayers can provide this information by submitting copies of their -paycheck stubs. Should these documents be unavailable, or if they do not provide the necessary information, other substantiating evidence provided by the taxpayer such as documentation identifying amounts withheld from taxpayer's earnings may also be considered. If the taxpayer is unable to provide sufficient documentation, staff will inform the taxpayer the request cannot be processed. In these instances, no further action by staff is required.

Payment Verification

Upon receipt of the documentation, staff should review the taxpayer's account information in the online system to verify the payments have not been previously applied to the taxpayer's account. If the payments cannot be located, field staff should contact the taxpayer's employer by telephone to rule out the possibility of errors being made by the employer or the BOE. For example, the employer may have referenced an incorrect account number on the payments or may have directed the payments to another agency (e.g., Franchise Tax Board, Internal Revenue Service) in error. Likewise, the BOE may have made errors in processing the payments, causing them to be applied to an incorrect account.

In situations where the payments are found to have been applied to an incorrect account (either through the BOE's or the employer's error), staff should move the payments to the taxpayer's account. If staff is unable to move the payments, RAU staff should be contacted for assistance. After the misapplied payments have been moved to the taxpayer's account, field staff should generate a Statement of Account in the online system and provide it to the taxpayer.

If the employer remitted the payments to another agency in error, the taxpayer should be instructed to contact the other agency to resolve the situation. The BOE will not request payment from the employer or hold the employer liable in these situations. If the earnings withholding order is still in effect, staff should ensure the employer is aware of the correct BOE address where future wage garnishment payments should be directed.

Request Payment from Employer

When staff has confirmed the BOE has not received the withheld amounts, the employer will be requested to immediately remit payment for the missing amounts. BOE is required to provide the employer with a written request for payment for the unremitted amounts prior to holding the employer personally liable. Staff should mail a BOE-425-EM to the employer. When generating this letter, a taxpayer copy is also created and should be mailed to the taxpayer.

The BOE-425-EM identifies the amount withheld from the taxpayer's earnings as a result of the wage garnishment along with the total amount actually received by the BOE. Further, this letter requires the employer to provide payment of the unremitted amounts within 15 days to avoid being held personally liable. While BOE is required to provide the employer 15 days to respond, in some instances it may be appropriate to allow the employer additional time.

If the employer sends the payment, it should be applied to the taxpayer's account. Once the payment has been processed, staff should generate a Statement of Account and provide it to the taxpayer. No further action against the employer should be necessary. However, if the wage garnishment is still in effect, staff may need to review the taxpayer's account periodically to ensure all future wage garnishment payments are received from the employer.

If the response received from the employer indicates that payment for the identified amounts was previously remitted to the BOE, staff may need to contact the employer by telephone to rule out the possibility that the employer actually remitted payment to the BOE (and the payment was applied to an incorrect account) or remitted payment to another agency in error.

Holding Employer Liable

If the employer does not respond to letter BOE-425-EM, or if the response does not provide information necessary to confirm payments were remitted, staff will request that the employer be held liable. To accomplish this, staff will prepare a memorandum to SOB detailing the situation and requesting a determination be established and billed against the employer. The memorandum must include the following information:

1. Taxpayer's name and BOE account number.
2. Employer's name, mailing and business addresses, and BOE account number (if applicable).
3. Date the earnings withholding order was issued and the employer's response to the order.
4. Amounts withheld from the taxpayer's earnings which were not received by the BOE, including the dates each amount was withheld (if available).
5. Summary of staff's investigation, including the results of reviewing the taxpayer's account information in the online system and contacting the employer.
6. Statement indicating the date letter BOE-425-EM was mailed to the employer and the employer's response.
7. Copies of all pertinent documents (e.g., employer's response to earnings withholding order and payment documentation provided by taxpayer).

The District Principal Compliance Supervisor or District Administrator must approve the request prior to sending it to SOB. A copy of the approved request should be retained in the taxpayer's district collection notes.

Taxpayer's Liability

Staff must not require payment from a taxpayer for any amounts withheld but not remitted by the employer (i.e., amounts included in the request sent to SOB). Once the employer's determination is final, Petitions Section staff will perform the necessary adjustment to reduce the liability on the taxpayer's account.

Responsible Office

The district responsible for collection of the taxpayer's liability is also responsible for collection of the employer's liability, even if the employer is located in a different BOE district than the taxpayer. However, if liabilities existed on the employer's account prior to the billing of the determination, the office of control for that account is responsible for collection of all the employer's liabilities.

The office initiating the determination against the employer will be responsible for assisting the Petitions Section in the event the employer files a petition for redetermination.

Special Operations Branch Responsibilities

Staff in SOB is responsible for reviewing the district's request to ensure all necessary information is provided. If there are any questions regarding the request, SOB staff should contact the person who prepared the request. In the event the request is incomplete and cannot be processed, it should be returned to the requestor along with a clear explanation of why the request has been denied.

SOB staff will handle complete requests by verifying the employer has an active sales tax account. If the employer does not have an active account, SOB staff will establish an arbitrary account using the information provided in the request.

SOB staff will add comments to the taxpayer's and employer's accounts in the online system. The comments will include a cross-reference of the related account number and will include a brief description of how the accounts are related to each other. SOB staff will then contact a supervisor and provide him or her with all documentation pertaining to the request.

Return Analysis Unit (RAU) Responsibilities

Staff in RAU will create and bill determinations issued under section 6704. However, RAU will not be responsible for assisting with petitions for redetermination.

The primary/secondary liability functionality available in the online system (used to link liabilities on two or more accounts) cannot be used for cases involving section 6704. The inability to use this existing functionality stems from the fact that section 6704 requires the taxpayer's account to be adjusted when the determination issued to the employer is final. Adjustment of the taxpayer's account is not dependent upon receiving payment from the employer. Therefore, RAU staff must manually input local and district tax allocation information on the employer's account (based upon the local and district tax allocation on the taxpayer's account).

RAU staff will:

1. Create a One-Time (OTM) Financial Obligation (FO) on the employer's account using the REV FM screen. The revenue and payment due dates for the FO are the same date, the earliest date on which the employer first withheld amounts from the taxpayer's earnings.
2. Input revenue information on the REV RE screen for the one-time FO. The district and local tax allocation found on the taxpayer's account must be duplicated on the employer's

revenue information to ensure payments received from the employer are correctly allocated according to the taxpayer's business location(s). RAU staff may need the assistance of Local Revenue and Allocation Section staff to duplicate local tax allocation information.

3. Accept the revenue as "primary revenue" using the "EWO" difference adjustment reason code.
4. Create the employer's notice of determination using the DIF NN screen. Include Bill Note #138 which references the taxpayer's name, BOE account number, and mentions RTC section 6704. This bill note also references the date on which the BOE notified the employer in writing of the missing payments (BOE-425-EM) and identifies the telephone number of the BOE office the employer should contact for assistance. Staff will also include Bill Note #999 (free form text) to identify the wage garnishment payments (dates and amounts) the billing represents.

RAU staff will create a manual assignment in the online system on the employer's account for the Petitions Section. (The assignment is created on the employer's account since Petitions staff will need to ensure the employer's determination is final prior to adjusting the liability on the taxpayer's account.) Staff in the Petitions Section will be responsible for adjusting the taxpayer's account once the determination issued against the employer is final.

After displaying the difference detail (DIF DD) of the employer's determination, RAU staff will press the F24-ASC key and navigate to the Maintain Task (ASC MT) screen to input the necessary assignment information:

1. Business Action Code = "EWOADJ"
2. Due Date = 60 days after the date of the employer's determination
3. Office = "PETITION"
4. Workgroup = "ADJ/SPEC"
5. Role = "RED&ADJ"
6. Task Notes identifying the taxpayer's name and account number

RAU staff should forward all documentation pertaining to the determination to the employer's file in the Taxpayer Records Unit.

Petitions Section Responsibilities

An employer who disagrees with a determination resulting from RTC section 6704 will have 30 days from the date of the Notice of Determination to file a petition for redetermination. Petitions Section staff is responsible for handling the employer's petition by following existing appeals procedures. If necessary, the office that initiated the determination will provide assistance to Petitions Section staff.

Petitions Section staff will perform the adjustment to the taxpayer's account once the employer's determination is final. Staff should access their Assignment Control assignments (Business Action Code, "EWOADJ") on (or shortly after) their due dates, which is initially set at 60 days after the employer's Notice of Determination is generated. The assignment is linked to the employer's account since a review of the determination is necessary to confirm it is final prior to performing the adjustment on the taxpayer's account.

In the event the determination has been petitioned, staff will modify the due date of the assignment (allowing 30, 60, or 90 days depending upon the situation) for follow-up at a later

date. Staff should also modify the assignment due date (60 days) once a Notice of Redetermination has been issued.

Upon confirming the employer's determination is final, staff will perform the adjustment of the taxpayer's account using the Adjustment Type code "EWO" on the DIF LA screen (legal adjustment). When performing these adjustments, staff must be aware:

1. The adjustment is only for the total amount of the unremitted wage garnishment payments billed to the employer. The adjustment amount excludes any interest and penalty amounts the employer's determination may include.
2. The effective date of the adjustment is the same as the effective date of the employer's liability (see the period date for the employer's liability on the DIF DA screen).
3. The adjustment should first be made to the tax portion of the taxpayer's liability before adjusting any collection cost recovery fees, interest or penalty amounts.

Once the adjustment has been completed, Petitions Section staff will generate a statement of account for the taxpayer. Staff will include Bill Note #999 (free form text) to provide an explanation of the adjustment performed.

DUAL DETERMINATIONS UNDER RTC SECTION 6829 STATUTORY PROVISIONS

764.080

Revenue and Taxation Code (RTC) section 6829 and Regulation 1702.5 set forth the requirements for holding a responsible person personally liable for unpaid tax, interest, and penalties owed by a corporation, partnership, limited partnership, limited liability partnership or limited liability company (entity). In order to issue a Notice of Determination (NOD) for personal liability under RTC section 6829, each of the following four elements must be satisfied:

1. **Termination** (see CPPM 764.120) - Personal liability can only be imposed if there is a termination, dissolution, or abandonment of the business of an entity (RTC section 6829(a), Regulation 1702.5(a)). Termination of an entity's business includes discontinuance or cessation of business activities (Regulation 1702.5(b)(3)).
2. **Sales Tax Reimbursement and Use Tax** (see CPPM 764.130) - Personal liability can only be imposed if the BOE establishes that, while the person was a responsible person, the entity:
 - a. Sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or
 - b. Consumed tangible personal property and failed to pay the applicable tax to the seller or the BOE; or
 - c. Included use tax on the billing and collected the use tax or issued a receipt for use tax and failed to report and pay the tax (RTC section 6829(c), Regulation 1702.5(a)).
3. **Responsible Person(s)** (see CPPM 764.140) - Personal liability can be imposed only on a responsible person (RTC section 6829(a)). "Responsible person" means any officer, member, manager, employee, director, shareholder, 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 has a duty to act for the entity in complying with any provision of the SUT Law (RTC section 6829(a), Regulation 1702.5(b)(1)).

Additionally, the responsible person shall be liable only for transactions where the taxes became due during the periods he or she had the control, supervision, responsibility, or duty to act for the entity, plus the interest and penalties on those taxes (RTC section 6829(b)). For example, someone that first became a responsible person for an entity in 1Q12 is not a responsible person for reporting periods prior to 1Q12.

4. **Willfulness** (see CPPM 764.150) - Personal liability can be imposed on a responsible person only if the person willfully failed to pay or to cause to be paid taxes due from the entity (RTC section 6829(a), Regulation 1702.5(a)). "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action (RTC section 6829(d), Regulation 1702.5(b)(2)), and this failure may be

willful even though such failure was not done with a bad purpose or evil motive (Regulation 1702.5(b)(2)).

Accordingly, if each of these four elements is not established, then an NOD for personal liability under RTC section 6829 cannot be issued.

RTC SECTION 6829 OVERVIEW OF PROCESS

764.090

Once an entity's permit is closed in the Integrated Revenue Information System (IRIS) by district office staff and an entity has an outstanding liability, staff works the account to obtain payment for the entity's outstanding liability. Upon reviewing the case notes and file material, staff makes contact with officers/members/partners/potential responsible persons of the closed entity to request that the entity pay the outstanding liability in full or enter into a payment agreement. Additionally, staff discusses with the officers/members/partners/potential responsible persons RTC section 6829 and its implications with respect to personal liability should the outstanding liability of the entity remain unpaid. To expedite payment of the closed entity's liability, staff also determines if there are any outstanding assets of the closed entity that can be used to pay down the liability. Staff also determines whether other avenues of collection are appropriate and whether these avenues have already been investigated (e.g., successor liability).

Accounts that are appropriate for an RTC section 6829 investigation are investigated by the Centralized Collection Section (CCS). CCS staff reviews the evidence already obtained and also gathers additional evidence to determine whether one or more dual determinations under RTC section 6829 are warranted. If CCS staff believes the evidence supports a finding that it is more likely than not that all four requisite elements of RTC section 6829 have been established (i.e., termination, sales tax reimbursement/use tax liability, responsible person and willfulness), CCS staff prepares a request for a dual determination. The request includes (1) an interoffice memorandum addressed to the Audit Determination and Refunds Section (ADRS) that summarizes the facts and circumstances of the case, (2) a BOE-1512, *Dual Billing Worksheet*, (3) copies of all relevant documentation and information gathered during the investigation, and (4) a copy of the BOE-1515, *Notice of Proposed Determination*. (see CPPM 764.160) A designated reviewer in CCS is then assigned to review the request. If the reviewer concurs that, based on the existing evidence, the four requisite elements have been established, the reviewer approves the dual request(s) and authorizes the issuance of the BOE-1515, *Notice of Proposed Determination*, to each potential responsible person. (see CPPM 764.170)

Except in limited circumstances (e.g., a jeopardy determination) approved by the assigned Chief (CEA) or his/her designee, CCS then prepares and mails the BOE-1515 to each potential responsible person. The BOE-1515 generally must be mailed no later than one year prior to the expiration of the statute of limitations. (see CPPM 764.100) In limited circumstances, upon receiving approval by the assigned CEA or his/her designee, the BOE-1515 may be mailed less than one year prior to the expiration of the statute of limitations. The BOE-1515 process allows a potential responsible person that receives a BOE-1515 an additional 15 days to provide evidence that may warrant further investigation as to whether one or more of the requisite elements could potentially be disproved for any of the reporting periods at issue. If a potential responsible person responds to a BOE-1515, after any additional investigation that is warranted is completed, and if one or more of the requisite elements have been successfully disproved for any of the reporting periods at issue, the request for the dual determination is modified or withdrawn, as appropriate. If, after any additional investigation is completed, the reviewer believes the totality of the evidence still supports a finding that, for any of the reporting periods still at issue, it is still more likely than not that all four of the requisite elements have been

established, the request for the dual determination is revised, as needed, and finalized, taking into account any post-BOE-1515 evidence. If the potential responsible person does not respond to the BOE-1515 or responds and no information is brought forth for staff to consider or investigate, then staff will document this in ACMS and the request for the dual determination is finalized.

CCS then sends the request for the dual determination to ADRS. The request for a dual determination generally must be sent to ADRS at least 30 days prior to the expiration of the statute of limitations. In limited circumstances, upon receiving approval by the assigned CEA or his/her designee, the request for a dual determination may be submitted to ADRS less than 30 days prior to the expiration of the statute of limitations. Upon receiving a dual determination request from CCS, ADRS reviews the request and either approves the request and issues a NOD to the responsible person(s), or returns the package to CCS for further research. In the event the NOD is not issued, CCS is required to send a BOE-1516, *Cancellation of Proposed Determination*, to the responsible person(s).

An RTC section 6829 dual determination should still be investigated and billed accordingly in cases where the closed entity's liability is non-final (i.e., the entity filed a timely petition). However, when the closed entity's underlying liability is non-final, collection efforts against the responsible person will be suspended until the entity's liability is final. Additionally, if during the investigative process, staff discovers situations involving bankruptcy, assignment for the benefit of creditors, receivership, or probate, staff should consult with the Special Operations Branch (SOB) for guidance. (see also CPPM 740.000)

STATUTE OF LIMITATIONS FOR RTC SECTION 6829 DUAL DETERMINATIONS

764.100

Effective January 1, 2009, RTC section 6829 was amended to add subdivision (f), which provides that an NOD must be mailed within three years after the last day of the calendar month following the quarterly period in which the BOE obtains actual knowledge, through its audit or compliance activities, or by written communication by the entity or its representative, of the termination, dissolution, or abandonment of the entity's business activities, or, within eight years after the last day of the calendar month following the quarterly period in which the entity's business activities were terminated, dissolved, or abandoned, whichever period expires earlier.

Staff cannot rely solely on the closeout date or closeout process date as shown in the BOE's electronic records as the date that the BOE obtained actual knowledge of the termination, dissolution, or abandonment of the entity's business activities (closeout). The following sources, although not exhaustive, should be reviewed in order to determine the BOE's date of knowledge (DOK) of the closeout:

1. ACMS notes - review all ACMS notes available.
2. IRIS comments - review all comments.
3. Any relevant audit reports and BOE-414-Z, *Audit Assignment History*.
4. Entity's central file and desk file for the following:
 - a. Hardcopy returns where the entity may have indicated when the business closed (for filers who did not eFile).
 - b. Correspondence from the entity or a BOE-65, *Notice of Closeout for Seller's Permit*.

5. Successor's application for a seller's permit to determine whether the successor indicated it had purchased the business.

6. PACER and IRIS for any relevant bankruptcy or legal filings of the entity where the BOE was properly noticed as a creditor.

The statute of limitations can be determined once the DOK of the closeout is determined. For example, if the DOK of the closeout is identified as 5/12/12, then the statute of limitations would expire on 7/31/15. If the DOK of the closeout is determined to be 10/5/12, then the statute of limitations would expire on 1/31/16 (three years after the last day of the calendar month following the quarterly period in which the BOE obtained actual knowledge of the closeout of the entity's business activities).

ESTABLISHING AN RTC SECTION 6829 DUAL DETERMINATION – GENERAL

764.110

When investigating whether a dual determination under RTC section 6829 is warranted, the investigation of the case should focus on answering the following questions:

1. Were the entity's business activities terminated, dissolved, or abandoned?
2. For the period(s) of liability, who was responsible for sales and use tax matters while the sales occurred and when the taxes became due?
3. Is there evidence of sales tax reimbursement collected but not remitted? Is there evidence of the collection of use tax and the failure to report and pay the tax? Is there evidence of the consumption of tangible personal property and the failure to pay the applicable tax?
4. Is there evidence of willfulness?

All information and documentation received throughout the investigation should be retained and all relevant documentation must be included in the dual determination request submitted by CCS to ADRS. This includes information and documentation that staff obtains from the potential responsible person as well as evidence that appears to be contradictory or exonerating in nature. These investigations are findings of fact for each of the four elements and not all investigations will include/result in the same types of evidence. However, all of the evidence gathered and included in the dual determination request must support a finding that it is more likely than not that all four requisite elements for holding a responsible person personally liable under RTC section 6829 have been met.

The following actions, although not exhaustive, will assist staff in obtaining payment for the entity's outstanding liability and starting their investigation of whether an RTC section 6829 dual determination is warranted:

1. Contact and interview officers/members/partners/potential responsible persons found throughout ACMS notes and make them aware of the entity's outstanding liability. When discussing the entity's outstanding liability with these persons, staff should request that the entity make payment(s) towards the outstanding liability or enter into a payment agreement.
2. Discuss RTC section 6829 and its implications with respect to personal liability for the entity's outstanding liability with officers/members/partners/potential responsible persons found throughout ACMS.

3. Determine if there are assets of the entity that can be used to reduce or pay the liability in full (liquor license, vehicles, vessels, machinery and equipment, funds in a bank account, deposits with creditors, etc.).
4. Determine whether there is a successor and request a dual billing if appropriate.
5. Determine if the entity has been merged into another entity or converted into another entity. If there is a conversion or merger, see CPPM 726.033, *Business Conversions*, for more information on how to proceed.
6. If the entity does not pay the outstanding liability and does not enter into a payment agreement, collection action should be initiated against the entity (file liens, clear delinquencies, send levies, place withhold on ABC liquor license, etc.).
7. Apply liquid security or make demand on Surety Bond if appropriate (see CPPM 735.035).
8. Send relevant questionnaires to officers/members/partners, former employees, CPA, landlord, suppliers, creditors, and any other person or entity that may have information about the operation of the business (e.g., BOE-1508, *Dual Determination - Responsible Person Questionnaire*, BOE-1509, *Dual Determination - Business Operations Questionnaire*, or BOE-1511, *Dual Determination - Creditor/Supplier/Landlord*). These questionnaires may be used for purposes of determining the four elements of an RTC section 6829 dual determination (see CPPM 764.120, 764.130, 764.140, and 764.150) and are available in ACMS.
9. Request, record, and retain EDD information pertaining to wages reportedly paid to employees, names of the employees, and those listed as contacts for the entity with EDD. Such information may be used for purposes of determining who the corporate officers are and whether the entity made payments to creditors other than the BOE during the periods at issue (see CPPM 764.150).
10. Request, record, and retain DMV information for the entity's account to determine the vehicles currently or previously owned and whether there are collection opportunities available.
11. Request, record, and retain Lexis Nexis/Accurint public record reports on the entity and on the officers/members/partners listed. The reports provide current and historic public record information on individuals and businesses including addresses, telephone numbers, asset information, Uniform Commercial Code (UCC) filings and court filings. Take any necessary actions based upon information contained in the reports (e.g., collection efforts on the entity's assets or an RTC section 6829 investigation for officers/members/partners listed).
12. Request, record, and retain information received from the entity's central file from the Taxpayer Records Section.
13. Request, record, and retain a photocopy of the Audit Work Papers (if applicable).
14. Request, record, and retain State Income Tax Returns for the entity and officers/members/partners for purposes of revealing titles and ownership interest in the

entity. In addition, the tax returns provide information regarding the entity's purchases and expenditures during the year (e.g., Cost of Goods Sold, wages, rent, repairs and maintenance, advertising, etc.).

15. Review, record, and retain any relevant information from PACER for the entity and officers/members/partners/potential responsible persons for useful information (e.g., bankruptcy filings or civil filings by the entity or potential responsible persons).

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829 DUAL DETERMINATION - TERMINATION, DISSOLUTION, OR ABANDONMENT 764.120

The Department must establish that the entity's business has been terminated, dissolved, or abandoned. Termination of an entity's business includes discontinuance or cessation of business activities. "Business activities" refers to the activities for which the entity was required to hold a seller's permit or certificate of registration for the collection of use tax. There is no requirement that the entity itself cease to exist or even cease doing business in some other manner or in some other state.

Various sources should be used to verify that the entity's business activities have been terminated, dissolved, or abandoned. Generally, more than one piece of evidence will be necessary to establish this element. Therefore, all available evidence should be considered; however, certain sources will generally be given more weight than other sources. Sources that are, generally, entitled to greater weight are in **bold**. Sources include, but are not limited to:

1. ACMS and IRIS comments.
2. **Statement of Financial Affairs for Corporate and Personal Bankruptcy filing (from PACER).**
3. Interviews with officers/members/employees/potential responsible persons.
4. **Information/documentation provided by suppliers, creditors, or landlord.**
5. Information/documentation provided by neighboring businesses.
6. Information/documentation provided by the successor.
7. **Bank statements.**
8. **Audit work papers/BOE-414-Z, Audit Assignment History.**

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829 DUAL DETERMINATION – SALES TAX REIMBURSEMENT AND USE TAX LIABILITY 764.130

The Department must establish that, while the person was a responsible person, the entity sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or consumed tangible personal property and failed to pay the applicable tax to the seller or the BOE; or included use tax on the billing and collected the use tax or issued a receipt for use tax and failed to report and pay the tax. For purposes of sales tax reimbursement and use tax collection, the Department has the burden to establish that it was

the general business practice of the entity to collect sales tax reimbursement or use tax during the time that the person was a responsible person.

Various sources should be used to verify the collection of sales tax reimbursement or use tax or the consumption of tangible personal property without the payment of use tax. Generally, more than one piece of evidence will be necessary to establish this element. Therefore, all available evidence should be considered; however, certain sources will generally be given more weight than other sources. Sources that are, generally, entitled to greater weight are in **bold**.

Sales Tax Reimbursement and Use Tax Collection – Sources include, but are not limited to:

1. ACMS notes for statements made by officers/members/partners/employees/potential responsible persons that sales tax reimbursement or use tax was collected. ACMS notes may provide information regarding other persons to contact that are knowledgeable about the entity's sales and use tax matters.
2. **Sales and Use Tax Returns should be analyzed to determine if a line 9 deduction (Sales Tax (if any) included on line 1) has been taken.** Staff should review all sales and use tax returns (or return information) for the periods of liability to see if the returns had a line 9 deduction. If returns are not available for the periods of liability, staff may review returns filed prior to or subsequent to the periods of liability to determine if it was normal operating procedure for the entity to collect sales tax reimbursement.
3. **Audit comments for existing or prior audits, comments on re-audits, and petition materials of the entity for information about whether the entity collected sales tax reimbursement or use tax.** If the entity's unpaid liability is the result of an audit, staff must take care to ensure that the audit is thoroughly reviewed and that audit staff is consulted when it is unclear whether an audit item includes sales tax reimbursement or use tax collection. Staff must be able to determine which audit items include sales for which sales tax reimbursement or use tax was collected. However, there is no requirement that the audit was conducted on an actual basis to establish that sales tax reimbursement or use tax was collected. Audits based on samples, mark-ups, or other accepted methodologies are adequate to establish that sales tax reimbursement or use tax was collected if there is sufficient information to establish that it was the entity's practice to collect the applicable tax on all taxable sales. If, after fully investigating the matter, substantial uncertainty exists with respect to whether an audit item includes evidence of sales tax reimbursement or use tax collection, the benefit of the doubt should be given to the potential responsible person. **Audit workpapers may also include receipts or invoices which may show that sales tax reimbursement or use tax was added to the selling price.** An auditor may complete BOE-1296, *Account Update Information*, which may indicate whether sales tax reimbursement was included or added to the selling price.
4. **The entity's Central File for receipts and invoices.**

5. Form BOE-1508, *Dual Determination – Responsible Person Questionnaire* (available in ACMS), completed by the former corporate officers/members/partners.
6. Form BOE-1509, *Dual Determination – Business Operations Questionnaire* (available in ACMS), completed by employees, bookkeepers and CPA's or any other person that the investigator believes through a review of the case notes and interviews with officers/members/partners may have had knowledge of the business operation.
7. Form BOE-1510, *Dual Determination – Customer Affidavit* (available in ACMS), completed by customers of the entity. Customers can be found from previous audits, bankruptcy mailing matrices, contact with ex-employees, or internet sources.
8. Information from the landlord. The landlord may have direct knowledge of whether the entity added sales tax reimbursement to or collected use tax on its sales. **The landlord may have documents that support sales tax reimbursement or use tax collection, such as abandoned records, receipts, menus, advertisements, ledgers, etc.**
9. An entity's online menus, website, or online Shopping Cart may provide information that sales tax reimbursement or use tax was collected on taxable sales.
10. Advertisements, menus, brochures, price listings, or sales contracts.
11. Merchant credit card processor records may reveal charges that appear to include the base charge plus tax.
12. **The entity's books and records and ledgers.**
13. City business license applications may ask whether sales tax reimbursement will be collected.
14. **Businesses that are a franchise may provide information as to whether the cash registers are programmed to charge sales tax reimbursement on taxable sales, or may have records available to support that sales tax reimbursement or use tax was added to or included in the selling price.**
15. If the Investigations Division has conducted an investigation on the entity, staff can request access to the records under their control. **Receipts or invoices that support the collection of sales tax reimbursement or use tax may be available.**
16. Tax advice letters issued to the entity that explain the application of the SUT Law to the entity's facts when the request for advice stated that sales tax reimbursement or use tax was collected.

Use Tax Liability for Self-Consumption of Tangible Personal Property – Sources include, but are not limited to:

1. Sales and Use Tax Returns should be analyzed to determine if the entity reported purchases subject to use tax on Line 2 of the returns.
2. Audits, re-audits, and petition materials of the entity that disclose use tax liabilities for consumption of tangible personal property.

ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829 DUAL DETERMINATION – RESPONSIBLE PERSON

764.140

The Department must establish that the person to be dualled is a responsible person. A responsible person is any 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 has a duty to act for the entity in complying with any provision of the SUT Law. However, it does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

A responsible person may be personally liable for taxes that became due during the reporting period(s) in which he or she had the control, supervision, responsibility, or duty to act for the entity, plus interest and penalties on those taxes. Such liabilities may arise from unpaid or partially paid sales and use tax returns or prepayments, audits, and compliance assessments. The responsible person is also personally liable for taxes that become due after the entity closes. Therefore, in instances where the entity closes prior to the due date of the final quarter, the responsible person is responsible for the payment of the final return. However, a responsible person is not liable for a liability owed by an entity that is the result of a successor billing issued to that entity.

A responsible person is personally liable only for liabilities arising from taxable sales and uses that occurred while the person was a responsible person. As such, when the sales and use tax liability is determined by an audit of the entity, liability can be imposed on a responsible person only with respect to the taxable sales or uses that occurred while the person was a responsible person. When a person is a responsible person for a partial period (e.g., the person became a responsible person in the middle of a quarter), a proration must be made with respect to the tax, interest and penalties on those taxes. For example, for a sales-tax-related liability for an entity that ceased business operations on 10/15/12, if a person was only a responsible person for the period 5/15/12 through 7/31/12, and provided all the other requisite elements were established, the Department could only issue a dual determination to this person for the period 5/15/12 through 6/30/12.

The fact that a person possesses a title such as corporate officer, partner, or member, in and of itself, is not grounds for holding the person personally liable. RTC section 6829 is meant to cut through the organizational form of the corporation or other type of entity and impose liability upon those persons actually responsible for the entity's compliance with the sales and use tax laws. The mechanical duties of signing checks and preparing sales and use tax returns may not alone be determinative. As a result, investigation into determining whether a person is a responsible person is a fact finding mission whereby staff exhausts resources available to them in order to determine whether the person was more likely than not responsible for the entity's sales and use tax compliance for the reporting period(s) in question. The most compelling evidence is often obtained from corporate officers/members/partners and other individuals having direct involvement in the day-to-day operations of the entity's business. For this reason, contact with such individuals is imperative to gaining a full understanding of the circumstances that led to the taxes not being paid.

Various sources should be used to determine if a person is a responsible person. Generally, more than one piece of evidence will be necessary to establish this element. Therefore, all available evidence should be considered; however, certain sources will generally be given more weight than other sources. Sources that are, generally, entitled to greater weight are in **bold**. Sources include, but are not limited to:

1. ACMS notes documenting conversations regarding repayment of the entity's outstanding liabilities and who staff spoke with. **In particular, ACMS notes that indicate the speaker, or some other person, was a person responsible for the entity's sales and use tax compliance.**
2. **Signed sales and use tax returns and prepayment forms.** If the sales and use tax returns and prepayment forms are signed by a Paid Preparer, then attempts should be made to contact the Paid Preparer in an effort to determine who was responsible for the non-payment of tax.
3. Signed BOE-555-EFT, *Authorization Agreement for Electronic Funds Transfer (EFT)*.
4. **Seller's Permit Application, which lists persons in an officer/member capacity.** The signature on the application should also be considered. Note: the list of officers on the seller's permit application may be outdated, with different officers in place during the periods of liability.
5. Person that signed or appears on the entity's lease agreement.
6. Person that signs checks issued on behalf of the entity or person listed on the financial institution's signature card as an authorized signor.
7. **Testimony and affidavits provided by a bookkeeper, CPA, landlord, employees, creditors, suppliers, corporate officers/members identifying who is a responsible person.** Testimony and affidavits signed under penalty of perjury should be given greater weight than answers to a questionnaire. Care must be taken in relying on testimony and affidavits, keeping in mind the possible conflicting interests of those responding to questionnaires. Questionnaires include:
 - a. *Dual Determination – Responsible Person Questionnaire (BOE-1508)*
 - b. *Dual Determination – Business Operations Questionnaire (BOE-1509)*
 - c. *Dual Determination – Creditor/Supplier/Landlord (BOE-1511)*
8. **Audit BOE-414-Z, Audit Assignment History, revealing who the audit was discussed with.** Even if the audit is for a different period, the audit workpapers can provide valuable information regarding a person's responsibilities within the entity.
9. **Audit BOE-836-A, Report of Discussion of Audit Findings, revealing who staff had conversations with regarding the outstanding audit liability.**

10. Petition records pertaining to audits that include documents and materials as to who staff had discussions with regarding the audit and/or audit contentions.
11. Signed BOE-122, Waiver of Limitation.
12. Personal bankruptcy filings of potential responsible persons. Potential responsible persons may report an entity's tax liability in their personal bankruptcy.
13. Signed entity bankruptcy filings.
14. Secretary of State's (SOS) Articles of Incorporation, Statement of Officers or Statement of Information which list officers/members.
15. Corporate Minutes and By-laws identifying corporate officers' duties.
16. Internet search for the entity or the entity's website.
17. Alcoholic Beverage Control (ABC) Liquor License (website and file information).
18. Lexis Nexis/Accurint public record reports naming the person representing the entity. Lawsuits involving the entity should be reviewed.
19. Better Business Bureau complaints naming the person representing the entity.
20. UCC filings revealing who signed the documents.
21. EDD Officer Data revealing the person authorized to act for the entity.
22. EDD tax returns and checks revealing who signed returns and checks.
23. Corporate and individual income tax returns revealing ownership interest in the entity and any titles.
24. District Office Collection Information regarding who staff had discussions or other communications with regarding the entity's outstanding liability.

**ESTABLISHING THE ELEMENTS OF AN RTC SECTION 6829
DUAL DETERMINATION – WILLFULNESS**

764.150

The Department must establish that the responsible person willfully failed to pay or to cause to be paid the taxes due from the entity. The failure must be the result of an intentional, conscious, and voluntary course of action. The failure may be willful even though such failure was not done with a bad purpose or evil motive. To prove willfulness, there must be evidence of all of the following:

1. The responsible person had knowledge that the taxes were not being paid. Staff may obtain evidence that shows the responsible person had actual knowledge of the tax liability. In cases where staff does not have evidence of actual knowledge, staff can use

available evidence, including circumstantial evidence, to show that it is more likely than not that the responsible person knew of the liability (e.g., under the circumstances, the responsible person must have known of the tax liability).

2. The responsible person had the authority to pay taxes or cause them to be paid. Whether a responsible person ever signed checks or even had check signing authority is not dispositive on this element. The crucial question is whether the person had the *authority* to pay the taxes or direct someone else to pay them.
3. Along with such knowledge and authority, the responsible person had the ability to pay the taxes but chose not to. Staff may show the ability to pay by, among other evidence, the collection of sales tax reimbursement or use tax that was not remitted. The ability to pay may also be shown by payments made to other creditors during or after the relevant periods of liability. Staff does not have to establish that the actual amount of taxes owed was available at any given time. Staff must merely show that funds were, in general, available and not paid to the BOE.

Additionally, while the assessment of a fraud or negligence penalty may be an indication that the responsible person willfully failed to pay or cause to be paid the entity's tax liability, it is not required to determine willfulness. The particular facts leading to the assessment of the penalty should be examined to determine if they indicate that the responsible person was willful.

Various sources should be used to determine if a responsible person willfully failed to pay or to cause to be paid the taxes due from the entity. Generally, more than one piece of evidence will be necessary to establish each of the three parts of this element. Therefore, all available evidence should be considered; however, certain sources will generally be given more weight than other sources. Sources that are, generally, entitled to greater weight are in **bold**.

Willfulness – Evidence of Knowledge – Sources include, but are not limited to:

1. All documented conversations with responsible persons or other officers, partners, members, or employees in ACMS.
2. All signed sales and use tax returns and prepayment forms, **in particular, those returns signed by the responsible person.**
3. Signed checks to the BOE during or after liability periods, **in particular, those signed by the responsible person.**
4. **Testimony and affidavits provided by a bookkeeper, CPA, employee, corporate officer/member/partner/responsible person indicating who, within the entity, was aware of the entity's tax liability or potential liability.** This may include information obtained from:
 - a. *Dual Determination – Responsible Person Questionnaire* (BOE-1508)
 - b. *Dual Determination – Business Operations Questionnaire* (BOE-1509)

5. Audit BOE-414-Z, *Audit Assignment History*, revealing with whom the audit was discussed.
6. Signed BOE-122, *Waiver of Limitation* (used to extend the three-year statute of limitations for periods included in an audit).
7. Audit BOE-836, *Report of Discussion of Audit Findings*, revealing who was in discussions with staff regarding the outstanding liability.
8. Other documents contained in the audit workpapers that indicate who was involved in the day-to-day operation of the entity.
9. Bankruptcy documents which reveal a responsible person filed a personal bankruptcy and reported the entity's tax liability on the Statement of Financial Affairs.
10. Petition records revealing who petitioned the entity's audit liability.
11. Records pertaining to investigations of other possible responsible persons within the entity for the same liability. This includes all information gathered in these investigations including, but not limited to affidavits, questionnaires, letters, emails, and other documentation.
12. Central file records including, but not limited to letters, emails, and other communications with the responsible person or other persons associated with the entity.
13. Tax advice letters issued to the entity that explain the application of the SUT Law to the entity's facts.
14. Signed BOE-571-L, *Business Property Statement*, filed with County Assessor's Office, which identifies acquisitions of supplies, machinery, equipment, and office furniture. The form provides a notification to the signer that California use tax is imposed on consumers of tangible personal property that is used, consumed, given away or stored in this state and that businesses must report and pay use tax on items purchased from out-of-state vendors not required to collect California tax on their sales.

Willfulness – Evidence of Authority – Sources include, but are not limited to:

1. All documented conversations with officers, partners, members, responsible persons, or other employees in ACMS.
2. Testimony and affidavits provided by a bookkeeper, CPA, employee, corporate officer/member/partner/responsible person. This may include information obtained from:
 - a. Dual Determination – Responsible Person Questionnaire (BOE-1508)

b. *Dual Determination – Business Operations Questionnaire (BOE-1509)*

3. Signed sales and use tax returns and prepayment forms.
4. Signed checks to the BOE and creditors during or after liability periods.
5. Corporate Minutes and By-laws identifying corporate officers' duties.
6. Secretary of State's (SOS) Articles of Incorporation, Statement of Officers or Statement of Information which list officers/members. While a person's title does not establish his/her actual authority, it is evidence that should be considered.
7. Audit BOE-414-Z, *Audit Assignment History*, revealing with whom the audit was discussed.
8. Other documents contained in the audit workpapers that indicate who was involved in the day-to-day operations of the entity and which persons directed payments of creditors.
9. Signed BOE-122, *Waiver of Limitation* (used to extend the three-year statute of limitations for periods included in an audit).
10. Audit BOE-836-A, *Report of Discussion of Audit Findings*, revealing who was in discussions with staff regarding the outstanding liability.
11. Petition records revealing who petitioned the entity's audit liability.
12. Records pertaining to investigations of other possible responsible persons within the entity for the same liability. This includes all information gathered in the investigation including, but not limited to affidavits, questionnaires, letters, emails, and other documentation.
13. Central file records including, but not limited to, letters, emails and other communications with the responsible person or other persons associated with the entity.
14. Bankruptcy filings by the entity.

Willfulness – Evidence that the Responsible Person had the Ability to Pay the Taxes but Chose Not To – Sources include, but are not limited to:

1. Evidence that sales tax reimbursement or use tax was collected but not paid to the BOE.
2. Payments made to the entity's landlord during or after the periods of liability.
3. Payments made to the entity's creditors and suppliers during or after the periods of liability.

4. Wages paid to employees during or after the periods of liability.
5. Bank statements.
6. **Payment of the entity's state income taxes during or after the periods of liability.**
7. The entity's income tax returns filed during or after the periods of liability reflecting debts paid including but not limited to officer compensation, wages, expenses, etc.
8. **Bankruptcy filings. Bankruptcy filings may indicate payments made during the liability period and payments made after the filing.**
9. In limited circumstances (e.g., when there is minimal evidence of actual payments), staff may obtain evidence to show that the entity's business continued for a sustained period of time after the entity incurred the tax liability. Evidence of the entity's sustained business operation after the taxes became due may be indicative of payment of the entity's necessary operating expenses, including rent, inventory and supply expenses, and utilities, until the entity ceased business operations. However, staff should make every effort to establish that actual payments were made to other creditors.

Pro Rata Defense – Rebuttal of Willfulness

In certain limited circumstances, a responsible person is regarded as not willful in failing to pay or cause to be paid the taxes due from the entity when pro rata payments were made on an entity's liability after the liability was final. For these purposes, pro rata payments means that all creditors were paid proportionately and that no creditor was given any preference over the other (i.e., the BOE received its "fair share").

First, staff must determine whether a pro rata analysis is applicable. A pro rata analysis is only applicable when the request for a dual determination only includes taxes owed from either of the following two types of liabilities:

1. A final BOE-assessed liability that is not established on an actual basis; or
2. A self-assessed use tax liability resulting from the entity's consumption of tangible personal property without the payment of tax.

Second, if a pro rata analysis is applicable, for purposes of a BOE-assessed liability, staff must make the following determinations:

1. No negligence or fraud penalty was imposed as a result of the taxpayer's recording or reporting of the transactions at issue;
2. The responsible person can credibly represent that the person did not knowingly collect and fail to remit the sales tax reimbursement or use tax on these transactions.

If staff determines that any of the above items are not satisfied, relief due to the entity making pro rata payments is not applicable to the responsible person. In the event that a pro rata

defense might be applicable, then this should be communicated to the responsible person no later than the issuance of the BOE-1515 so that the responsible person might be afforded the opportunity to present evidence of pro rata payments.

When a responsible person asserts a pro rata defense and provides evidence to support the defense, staff must review the evidence and determine whether the entity made pro rata payments to the BOE after the liability was final. In doing so, staff needs to determine the amount of funds available when the liability was final and thereafter. Staff then needs to determine if, from the amount of funds available, the entity paid the BOE its pro rata share of the available funds in order to satisfy, in part, the outstanding liability. In other words, the responsible person must demonstrate that, based upon all available funds, no creditor was preferred over another. Bank statements may assist staff in making these determinations.

GUIDELINES FOR PREPARING A DUAL REQUEST

764.160

CCS staff is responsible for investigating and preparing the RTC section 6829 request for a dual determination. The CCS designated reviewer must approve the request for a dual determination. Upon finalizing the request, and in order to maintain a separation of duties and ensure consistency, CCS then sends the request for a dual determination to ADRS. (see CPPM 764.090 for details regarding the process)

CCS's request for a dual determination includes (1) an interoffice memorandum addressed to ADRS (2) a BOE-1512 *Dual Billing Worksheet*, located on eBOE, (3) copies of all relevant documentation and information gathered during the investigation, and (4) a copy of the BOE-1515, *Notice of Proposed Determination*.

Memorandum - CCS staff must provide the following specific information in the memorandum and addendum to the memorandum, if included in the request:

Background or Synopsis – Include a paragraph that explains the source of the underlying liability which includes the name of the entity that incurred the liability, the start and end date of the entity's business, and the sources and periods of liability due. This paragraph should also include the name(s) of the responsible person(s) and the period(s) of liability that the responsible person(s) is being held personally liable for. All periods of liability that the responsible person is not being held personally liable for must be identified followed by an explanation as to why. An example of a liability that a responsible person is not personally liable for is the Collection Recovery Fee (CRF).

When the entity's underlying liability is non-final (i.e., the entity filed a timely petition), the memorandum must include a request that the responsible person's liability be placed into a Sundry Withhold status (e.g., no collection efforts are pursued) pending the outcome of the appeal for the underlying entity's liability.

Four Elements of RTC Section 6829 Personal Liability – Include a section for each of the four elements of RTC section 6829 personal liability. Each section should describe how the evidence staff gathered supports a finding that the element is met and list all of the sources (including relevant dates, amounts, etc. from those sources) that staff used to establish the element. If staff is requesting that more than one person be issued a dual determination, staff should include a separate discussion/list of sources for each person in the sections discussing responsible person and willfulness. If the limited circumstances for a potential pro rata defense exist, staff should include a separate discussion as to why this defense is not available to the person in question.

Staff should also include a discussion of, and a list of, any relevant evidence or documentation that appears contradictory or exonerating in nature. The request should explain that, notwithstanding this contradictory or exonerating evidence, the totality of the evidence supports a finding that it is more likely than not that each element has been met.

Statute of Limitations – Include a paragraph explaining the DOK of the closeout and when the statute of limitations expires.

Notice of Proposed Determination – Include a paragraph explaining the response received, if any, to the BOE-1515, *Notice of Proposed Determination* (see CPPM 764.170), and a summary of staff's analysis of the response.

BOE-1512, Dual Billing Worksheet - Each request must include form BOE-1512, *Dual Liability Billing Worksheet*, to identify the primary account, dual account number(s), the responsible person(s), liability period(s), and the names and addresses for the copies (i.e., cc's).

Account Number - In most cases, a dual determination request will require issuing an arbitrary account number to the persons that the dual determination is intended to reach. It is the responsibility of CCS to issue the necessary arbitrary account number before the dual determination request is submitted to ADRS. If the responsible person has an existing arbitrary number, then a billing should be issued to the existing arbitrary number in lieu of issuing a new arbitrary number. For additional procedures on issuing an arbitrary account number, see CPPM 295.091.

Signature and Approval - The CCS staff must sign and the CCS designated reviewer must approve the request.

BOE-1515 NOTICE OF PROPOSED DETERMINATION **764.170**

Except in limited circumstances (e.g., a jeopardy determination) approved by the assigned CEA or his/her designee, it is *required* that CCS send a BOE-1515, *Notice of Proposed Determination* (letter), to the responsible person(s) after the request for a dual determination has been prepared and approved by CCS. (see CPPM 764.090 for details regarding the process). The letter informs the responsible person prior to the issuance of the NOD for the proposed liability of: (1) the proposed basis for holding the potential responsible person personally liable; and (2) the opportunity for the potential responsible person to submit evidence that may disprove any of the requisite elements for liability. The letter also provides notice that, if CCS does not hear from the person within 15 calendar days, an NOD will be issued to the person in the amount stated. The letter states that, upon request, staff will provide copies of the documentation referenced in the letter.

DISPROVING PERSONAL LIABILITY PRIOR TO NOD **764.180**

At any time throughout the investigation process and prior to the issuance of an NOD, the evidence that a potential responsible person provides in an effort to disprove that the person is personally liable should be reviewed by CCS staff and its merit weighed against the totality of the evidence gathered. As stated in the BOE-1515, the following are examples of material/documentation that may be provided for review:

- Evidence that the potential responsible person resigned or was fired from his/her position of authority before the relevant taxes became due.

- Emails, letters or correspondence that demonstrates that the potential responsible person took direction from someone else and was unable to act on his/her own in making decisions.
- Evidence to support that the funds of the entity were attached by a third party on or before the date the taxes came due, that the entity had no funds or control of funds after that time, and that the entity made good faith efforts to have the taxes paid by the third party.
- Evidence of criminal charges against an employee of the entity who embezzled funds from the entity, preventing the payment of its taxes.

PREPARATION AND SERVICE OF SUBPOENA AND DECLARATION

774.030

BOE-301, Request for Issuance of Subpoena, should be prepared for all subpoena requests, and should include all information outlined in CPPM section 774.020. Those requests initiating from the district offices or headquarter sections under the direction of the Field Operations Division should be forwarded to the Chief of Field for approval. Upon approval, the Chief of Field will forward form BOE-301 and any accompanying documents to the BOE's legal staff in the Litigation Division for the drafting and issuance of the Subpoena Duces Tecum, Notice and Acknowledgment of Receipt, and Proof of Service. Once the documents have been processed by the Litigation Division and all required signatures obtained, they will forward the documents to the District Administrator together with complete information regarding the service of the subpoena by either the district office or an attorney's service.

~~All requests to issue a subpoena must provide the legal staff with the above information and allow ample time for drafting of the documents, their service in the field, and a reasonable time for the witness to appear. Upon receipt of the necessary factual information and approvals, the legal staff will draft the subpoena duces tecum and the accompanying declaration of materiality.~~

Service of the subpoena on the taxpayer occurs by personally showing the original subpoena duces tecum to the person required to appear and, at that time, providing him or her with a copy of the subpoena together with a copy of the declaration of materiality. At the time of service, the person serving the subpoena will also execute a proof of service, in the form of a declaration under penalty of perjury, and attach it to the original subpoena. After serving the subpoena, the original subpoena, declaration of materiality, and the proof of service are sent back to the Litigation Division Taxpayer Records Section for filing in the taxpayer's master file.

When a subpoena is served on a financial institution, the institution generally charges a fee for each record that is provided to the BOE. In many cases, not all of the records obtained provide the information expected. To address this situation, BOE-31 was developed, the use of which may assist in preventing the cost of the records from exceeding the expected benefit in obtaining them. The letter may accompany a subpoena and instruct the financial institution to notify the BOE when the total cost of the requested records reaches \$100 or another specific amount. Use of this letter is optional; however, it should be used when deemed appropriate. The letter is available in ACMS.

The California Right to Financial Privacy Act has two additional requirements when staff serves a subpoena duces tecum on a financial institution ~~(that is a bank, savings and loan association, trust company, industrial loan company, or credit union)~~ for the production of a customer's records. In addition to the normal service on the financial institution, the California Right to Financial Privacy Act requires that (1) the customer affected is also served with a copy of the subpoena and (2) ~~that~~ the customer shall have a ten-day period in which to notify the financial institution of his or her intention to move to quash the subpoena. (See CPPM section 135.073.)

DISCHARGE FROM ACCOUNTABILITY

776.000

GENERAL

776.010

When an amount due from a taxpayer is not economically feasible to pursue, or when collection efforts have been unsuccessful and recovery of the amount due is improbable, the BOE may request a discharge from accountability from the Victim Compensation and Government Claims Board (VCGCB) pursuant to the Government Code. A discharge from accountability, also referred to as a "write off," relieves BOE of the responsibility to collect the amount due and removes the liability from BOE's accounts receivable.

Write offs in district offices are initiated by the responsible collector. A write off checklist (see Exhibit 1) must be completed for all accounts over \$2,000 and attached, along with the supporting documents, when it is submitted to the supervisor for review. Once the supervisor approves the write off, it will be submitted electronically to SOB. The checklist and documentation will *not* be forwarded to SOB. In addition, BOE-908, *Important Notice: OIC Program for Closed Businesses*, will be mailed to all accounts prior to being written off, except for:

1. Those that previously requested an offer in compromise and were rejected,
2. Those accounts that do not qualify for the OIC Program, and
3. Accounts that do not have a good mailing address.

A reasonable amount of time, generally fifteen days, should be given to the taxpayer to respond before initiating the write off.

Based upon information available in headquarters files or furnished by the district offices, SOB periodically initiates schedules of uncollectible items, which are submitted to the VCGCB for approval.

District offices should have a continuing program to recommend write offs as accounts become uncollectible. If the account is, in fact, not collectible, the case has not been completed until the write off recommendation has been forwarded to SOB and accepted for discharge from accountability, and further approved by the VCGCB or its designee.

WRITE OFF DOES NOT RELIEVE THE TAXPAYER OF LIABILITY

776.020

Although the BOE is relieved of the collection responsibility after writing off an account, *this action does not relieve the taxpayer of the liability*. If assets are located after the write off of a taxpayer's liability, collection action should be taken as though the account is still active in BOE's records. Full collection procedures are available for use provided the appropriate statute of limitations for such actions has not expired. If a taxpayer requests the release of a lien after the write off process is complete, full payment of the liability is required before releasing the lien. If the taxpayer does not pay with certified funds, additional time is required to allow the funds to clear the bank before a lien release can be issued.

WRITE OFF RECOMMENDATION

776.030

The write off recommendation is processed using the online system. For detailed instructions on how to initiate a write off in the online system, see IRIS Cheat Sheets located on eBOE. When preparing a recommendation to request a discharge from accountability, a description of

the significant points of the investigation and the results of the collection actions taken is required.

Before initiating a write off recommendation, the following issues must be resolved:

1. Unapplied credits,
2. Negative amounts entered in the system for tax, penalty or interest,
3. Credits,
4. Unbilled collection costs, and
5. Unresolved legal actions.

The State Controller's Office requires that multiple accounts with different TATs owned by the same entity must be written off together. This means that these accounts must be on the same write off schedule and have the same write off status.

SOB will either:

1. Approve the write off recommendation and initiate a request for discharge from accountability, or
- 1-2. Send a request for additional information or further investigation back to the originator through Assignment Control.

REASONS FOR RECOMMENDATION

776.035

In the online system, staff must select a reason code for recommending the write off. Only one reason code will be checked even though the account may fall under more than one category. A full summary of the collection activity must be recorded to support a recommendation for write off. The summary must be supported by appropriate comments for the respective points to be covered. Enter the comments in chronological sequence within each point covered.

The completed write off may be reviewed by the State Controller's Office, the Attorney General, or other control agencies. Do not use catch phrases, acronyms, initialisms, form numbers, or terminology exclusive to BOE.

TAXPAYER DECEASED

776.040

Reason code one is "Taxpayer deceased - no estate or estate distributed." If a taxpayer, who owes a delinquent balance, is deceased and has not left an estate, or if the estate has been distributed by the time the death becomes a matter of knowledge to the BOE, a recommendation for write off may be made. If a claim in probate has been filed, and SOB later learns through correspondence with the estate attorney that the assets of the estate are insufficient to pay the claim or any portion thereof, a write off request can be initiated by a collector. SOB will enter comments in ACMS noting that no payment is expected from the BOE's claim.

TAXPAYER CANNOT BE LOCATED

776.050

Reason code two is "Taxpayer cannot be located." A recommendation for write off because a taxpayer cannot be located should occur only after making a diligent effort to locate the taxpayer. The amount of the liability is a prime factor in determining whether sufficient time and effort was expended to support requesting a discharge from accountability under reason number two. Some other factors to consider are:

1. Whether all sources of information have been checked.
2. If the taxpayer is absent from this state, whether it appears that such absence is permanent.
3. Possible future sources of information, e.g., relatives, personal references, or business associates remaining in this state.

OUT-OF-STATE JURISDICTION

776.060

Reason code three is "Taxpayer outside of state jurisdiction - Referral to Attorney General not recommended." Generally, taxpayers who are permanently situated outside of California, owe a liability less than \$10,000, and have no assets in California are potential cases for write off. However, a case is never an automatic candidate for write off even though the liability is less than \$10,000. The final course of action depends upon the availability of assets owned by the taxpayer and the type of legal action anticipated. Each case must be evaluated individually for write off potential or possible referral for an out-of-state judgment.

The collector is responsible for the initial investigation and should check on the following points prior to forwarding their recommendations to SOB:

1. Does the taxpayer have any out-of-state assets and, if so, is their worth sufficient and of a nature to make a referral to BOE counsel worthwhile?
2. Is the taxpayer sufficiently established in his or her new location to the extent that obtaining a judgment would be practical? For example:
 - (a) Is the taxpayer operating a business?
 - (b) Does the taxpayer currently own a home or is he or she in the process of buying one?
 - (c) Is the taxpayer employed? If so, who is the employer?
3. Are the taxpayer's assets encumbered and, if so, to what extent, i.e., practically paid for or newly purchased and subject to lengthy loan term or high payments?

This is not an all-inclusive list. The above items are merely some of the items to review before making a decision to proceed with a legal referral or requesting a discharge from accountability.

Legal referrals on out-of-state taxpayers can range from corresponding with the taxpayer for payment, to offers in compromise, to proceeding with full collection efforts through out-of-state attorneys after obtaining a judgment in California. If the BOE enlists the services of an out-of-state attorney to pursue collection from the taxpayer, the attorney will retain approximately 1/3 of any money collected as payment for his or her fees.

If the amount exceeds \$10,000, a determination must be made whether the amount due, when considered with the financial condition of the taxpayer, will warrant a legal referral for further action. SOB will make this decision after examining the facts supplied by the collector and ensuring that all collection efforts have been exhausted.

INACTIVE CORPORATION

776.070

Reason code four is "Inactive corporation – no assets and no personal liability." A recommendation for write off is appropriate when a corporation is found to be:

1. Inactive or suspended.
2. Without assets.
3. Without valid personal guarantors on file.
4. Void of corporate officer liability.

ATTORNEY GENERAL AGREEMENT

776.080

Reason code five is "Settlement in accordance with agreement by Attorney General." Staff should not initiate a write off using reason number five. The majority of these settlements result in a liability that is no longer legally collectible and SOB or the Settlement Unit will adjust off the liability rather than writing it off. When an amount determined to be uncollectible is the joint liability of a person not named in the settlement, or when a portion of the uncollectible liability was not included in the settlement agreement, the collector from the district office should process a write off using a reason other than reason number 5.

TAXPAYER WITHOUT ASSETS OR INCOME

776.090

Reason code six is "Taxpayer has no assets or income on which to levy". Before taking any action to recommend a write off because of inability to pay, a number of factors must be evaluated such as:

1. The amount of the liability.
2. The possibility of future acquisition of assets or income.
3. The taxpayer's age, occupation, physical and mental condition, earning capacity, rehabilitation if disabled, or release from an institution or prison.

If the taxpayer appears to have placed, or is placing, assets in the name of another person, a recommendation for write off should not be processed merely because there are no assets currently available. Continued investigation to establish the taxpayer's interest in the assets is more in order than a write off recommendation.

BALANCE OUTLAWED

776.100

Reason code seven is "Balance outlawed". "Outlawed" balances are those that are more than ten years delinquent and are not secured by a recorded lien.

SMALL BALANCE - DOES NOT JUSTIFY FURTHER COLLECTION EFFORT

776.110

Reason code eight is "Small balance - does not justify further collection effort". A district compliance supervisor will approve these types of accounts after a reasonable effort has been made to collect the liability. To avoid costly collection efforts out of proportion to the amount to be realized, SOB will process district-approved requests for write off of balances of \$500.01 through \$2,000.00 on closed-out accounts. Only a minimum explanation of previous collection efforts will be required from the districts. (See CPPM section 776.180 for automatic write off of balances of \$10.01 through \$500.00.)

A reasonable effort is defined as collection effort(s) where the cost is commensurate with the amount to be realized. For example, conducting a number of field calls to collect an item of less than \$2,000 goes beyond a reasonable effort.

SOB will generally accept and approve write offs for small balances on closed-out accounts when the amount of tax, penalty and interest is \$500.01 through \$2,000 and the account meets the following conditions:

1. The account is not a Consumer Use Tax account.
2. For accounts where an individual may be held liable in any manner, an offset with the Franchise Tax Board must be attempted and sufficient time must pass for the offset to be effective (usually September 30 of the year following the offset request).
3. Department of Motor Vehicles, Employment Development Department and real property records must be checked for assets.
4. A search of the online system must be conducted for other permits held by the taxpayer.

SPECIAL OPERATIONS BRANCH NOTIFICATION

776.150

The SOB reviewer retrieves the approved case through Assignment Control: Account Basket (ASC AB) or Assignment Control: In Basket (ASC IB). The district or section approver's name displays in the *Office Aprvl* field. For approved write off requests, a schedule number displays in the *Schedule No* field. The SOB approver's name displays in the *S/P Aprvl* field. If the write off is not approved, a review assignment is created back to the district approver. Reasons for disapproval are entered into the task note screen (ASC NO) via the Assignment Control: Maintain Tasks screen (ASC MT).

Several months may elapse before final approval is granted and SOB receives notification of the discharge from VCGCB. To prevent the accrual of additional interest, a "pending write off" flag is placed on a balance to be written off until final approval for the discharge from accountability is received.

With a "pending write off" flag placed on an account, any subsequent activity, such as receipt of a payment, notification that an adjustment to the account was made, etc., will cause the "pending write off" flag to be removed and the interest to be updated.

AUTOMATIC WRITE OFF OF BALANCES OF \$500.00 OR LESS

776.180

An online write off should not be prepared for liabilities of \$500.00 or less. Under Government Code section 13943.2, the BOE is not required to collect small balances under \$500.00. Although all amounts over \$10.00 are billed, liabilities of \$10.01 through \$500.00 are automatically written off once the liability is final for 180 days provided:

1. The account is closed out or is a Consumer Use Tax account.
2. No delinquency or other liability exists.
3. No payments or adjustments have been made on the account in the preceding six months.
4. A security deposit is not available to be applied to the existing liability.

Since BOE does not normally make demand on a surety bond for amounts of \$250.00 or less, surety bonds solely securing the liability and meeting the other three automatic write off criteria should be removed from the online system. The district office or CCS should send a request for removal to Return Analysis and Allocation Division.

WRITE OFF CHECKLIST

Account No: _____ **Taxpayer Name:** _____

Prepared by: _____ **Date:** _____

(Place the date next to each item when completed or write N/A for items not applicable. Add an explanation below the item, if necessary.)

Date **Attempts to Locate Debtors, Assets, and Personal Information**

_____ Internet searched for taxpayer whereabouts or activity (EBOE-Collection tools on the web).

_____ EDD, FTB, DMV fast path buttons checked in ACMS. (Enter dates below:)

EDD FTB DMV _____

_____ FTB information checked in EATS. (Alpha search for SSN/FEIN and FTB returns. Attach EAT printout and copy of latest return filed within last 3 years.)

_____ DMV information checked in EATS. (DL# and status, vehicles owned, feasibility of seizure, etc. Attach EAT printout.)

_____ EDD information checked in EATS. (SSN/Employer account information. Attach EAT printout.)

_____ SOS checked for corporate accounts (date incorporated, suspended, officer and contact info).

_____ Field call made to verify operation.

_____ Verified if lien attached to real property. (Enter date real property checked: _____.)

_____ If lien attached to real property, address, and APN of property noted in BOE-479 and ACMS write off summary.

_____ Aliases and A.K.A.'s included in lien.

_____ Post office letter (BOE-53) sent in order to obtain taxpayer's address.

_____ OIC form BOE-908 mailed to accounts with good address, unless OIC previously filed. (If OIC previously filed, attach OIC package.)

_____ LexisNexis/Accurint searched for assets/address, including out of state assets for taxpayers residing outside California. (Attach printouts.)

_____ Real property checked in Real Property Locator or LexisNexis/Accurint.

_____ IRA checked to obtain taxpayer address and year for which latest IRS return filed. (Enter date checked: _____.)

_____ IRL checked for income and levy sources. (Enter date checked: _____.)

_____ Evaluated for dual determination (Sec. 6829, corporate suspension, questionable ownership, including trustees).

