



LEGISLATIVE PROPOSAL
BOE (2024)
Proposal No. 1

SOURCE: Legislative, Research, & Statistics Division

SUMMARY: This proposal amends applicable Revenue and Taxation Code (RTC)¹ sections to authorize electronic service of levies under the Alcoholic Beverage Tax (ABT) program, otherwise known as serving a Notice of Determination (NOD) or Notice of Jeopardy Determination (NOJD).

EXISTING LAW: RTC section 32271 generally outlines the BOE's mandatory procedures for deficiency determinations in the ABT program. Current law requires BOE to provide taxpayers with written notice of its NOD/DOJD by mail, to the address that appears in the records of the board, or by delivery in person. Other applicable RTC sections make similar references to the terms "mail" or "mailed" as the only recognized delivery method.

IDENTIFICATION OF PROBLEM:

Currently, taxpayers who fail to file a timely petition for redetermination often claim that the NOD or NOJD was lost in transit (USPS Mail). Often, the letter may never arrive because the taxpayer has moved and did not update their mailing address with CDTFA.

PROPOSED SOLUTION: Amend the following RTC sections to allow a notice of levy under the ABT program to be served electronically to levied parties under specified circumstances.

This proposal would ensure that taxpayers will receive proper notification of a NOD or DOJD so that they have an opportunity to file a timely petition for redetermination if they so wish.

The proposed language would authorize electronic service of a NOD or DOJD when 1) The taxpayer requests electronic transmission; or 2) Any evidence indicates that the taxpayer no longer receives mail at the address of record and has previously provided an address for electronic mail (email). The electronic notice of service would be deemed complete at the time the NOD or DPJD is electronically transmitted via the taxpayer's secure web portal.

CODE SECTIONS TO AMEND: RTC sections 32271, 32272, 32272.1, 32273, 32291, 32306, 32312, and 32432.5.

¹ All references will be to the Revenue and Taxation Code unless otherwise specified.

BACKGROUND

BOE's Authority to Assess an Alcoholic Beverage Tax liability. If BOE is not satisfied with the amount reported on a taxpayer's return or the amount paid, or if any person fails to make a return, BOE may determine the amount required to be paid upon the basis of any information it possesses or subsequently acquires and issue an NOD or an NOJD.

Notices of Determination. If a taxpayer fails to file a petition within thirty (30) days from the date BOE issues an NOD, the liability assessed in the NOD will become final. Once the NOD is final, BOE may, in its discretion, accept a late petition as an "administrative protest" if there is a reasonable basis to believe that there may have been an error in the taxpayer's notice. If BOE accepts a late petition as an administrative protest, the taxpayer's late petition will generally be reviewed in the same manner as a timely petition, except that the taxpayer will not automatically be entitled to an appeals conference and collection activity may not be stayed. If the taxpayer pays the NOD in full and files a claim for refund, BOE will dismiss the administrative protest and allow the same appeal to continue as a claim for refund.

Notices of Jeopardy Determination. If the BOE believes that the collection of any tax required to be paid to the state will be jeopardized by delay, the BOE will issue a jeopardy determination which is immediately due and payable. If a taxpayer files a timely petition for redetermination of an NOJD and pays the required deposit, the petition will be reviewed in the same manner as other timely petitions. In contrast, if the taxpayer does not file a petition and pay the required deposit or pay the amount of the NOJD within ten (10) days of the service of notice, the taxpayer will be subject to a late payment penalty, and BOE's collection activities may continue. However, the taxpayer may, within 30 days of service of the NOJD, apply for an administrative hearing for one or more of the following purposes:

- Establish that the determination is excessive.
- Establish that the sale of property that may be seized should be delayed pending the administrative hearing because the sale would result in irreparable injury.
- Request the release of property.
- Request a stay of collection.
- Request administrative review of any other issue raised by the jeopardy determination.

If the taxpayer submits a timely application for an administrative hearing, the petition generally will be reviewed in the same manner as a timely petition. However, BOE may still pursue collection action.

Article XX, section 22 of the California Constitution authorizes the BOE to administer the Alcoholic Beverage Tax and makes the BOE constitutionally responsible for the program. Through an Interagency Agreement (IAA), the CDTFA collects the ABT revenue and administers certain functions of the program in cooperation with the BOE.

JUSTIFICATION

Without adopting these proposed changes, the ABT program will not conform with the special tax and fee programs administered by the California Department of Tax and Fee Administration (CDTFA) leading to government inefficiencies in administration. This change will also provide taxpayers with a more efficient and reliable NOD/NOJD process.

ARGUMENTS PRO AND CON

Pros

- Increases efficiency and administration of the ABT program by allowing notices to be served electronically, which is estimated to reduce processing times while continuing to provide taxpayers the ability to appeal determinations.
- Conforms the ABT program to other special tax and fee programs which authorize electronic service of levies.

Cons

- None.

PROBABLE SUPPORT AND OPPOSITION: Unknown

OTHER EXTERNAL PARTIES THAT MAY BE AFFECTED: CDTFA

FISCAL IMPACT (If known) None.

DRAFT LANGUAGE

Section 32271 of the Revenue and Taxation Code is amended to read:

32271. **Deficiency.** (a) If the board is dissatisfied with the return or returns filed or amount of tax paid to the state by any taxpayer, it may compute and determine the amount to be paid based upon any information available to it. One or more additional determinations may be made of the amount of tax due for one or for more than one period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 15th day after the close of the period for which the amount of the tax, or any portion thereof, should have been reported until the date of payment. In making a determination, the board may offset overpayment for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or authorized rules, a penalty of 10 percent of the amount of the determination shall be added, plus interest as above provided.

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or authorized rules, a penalty of 25 percent of the amount of the determination shall be added, plus interest as above provided.

(d) The board shall give to the taxpayer written notice of its determination. The notice shall be served in one of the following manners:

(1) By placing the notice ~~The notice shall be placed~~ in a sealed envelope, with postage paid, addressed to the taxpayer at his address as it appears in the records of the board. Service made pursuant to this paragraph ~~The giving of notice~~ shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason.

(2) By ~~In lieu of mailing, a notice may be served~~ personally ~~by~~ delivering the notice to the person to be served. Service made pursuant to this paragraph ~~and service~~ shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

(3)(A) By delivering the notice electronically via secure transmission when either of the following applies:

(i) The taxpayer requests the notice of determination to be sent electronically via secure transmission.

(ii) The board has evidence that the taxpayer no longer receives mail at the address of record and has previously provided an address for electronic mail.

(B) Service provided pursuant to subparagraph (A) shall be deemed complete at the time the board electronically transmits the notice via the taxpayer's secure web portal, without extension of time for any reason.

Section 32272 of the Revenue and Taxation Code is amended to read:

32272. **Limitation period.** Except in the case of a fraud, intent to evade this part or authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be ~~mailed~~ served within eight years after the date the return was due.

Section 32272.1 of the Revenue and Taxation Code is amended to read:

32272.1. **Limitations; deficiency determination; decedent.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be ~~mailed~~ served within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

Section 32273 of the Revenue and Taxation Code is amended to read:

32273. **Waiver.** If before the expiration of the time prescribed in Section 32272 for the ~~mailing~~ serving of a notice of deficiency determination the taxpayer has consented in writing to the ~~mailing~~ serving of the notice after such time, the notice may be ~~mailed-served~~ at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Section 32291 of the Revenue and Taxation Code is amended to read:

32291. **Failure to file return.** If any taxpayer fails to make a return required by this part, the board shall make an estimate, based upon any information available to it, for the period or periods with respect to which the taxpayer failed to make a return of all alcoholic beverages sold in this state by him or her. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made of the amount of tax due for one or for more than one period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 15th day of the month following the close of the period for which the amount of the tax, or any portion thereof, should have been returned until the date of payment. In making a determination the board may offset overpayments for a period or periods against underpayments for another period or periods and against interest and penalties on the underpayments. If any part of the deficiency for which a determination is made is due to negligence or intentional disregard of this part or authorized rules, an additional penalty of 10 percent of the amount of the determination shall be added. If the neglect or refusal of a taxpayer to file a return as required by this part was due to fraud or an intent to evade the tax, there shall be added to the tax a penalty equal to 25 percent thereof in addition to the 10 percent penalty. The board shall give to the taxpayer written notice of the estimate and determination, the notice to be served ~~personally or by mail~~ in the same manner as prescribed for service of notice by Section 32271.

Section 32306 of the Revenue and Taxation Code is amended to read:

32306. **Service of notice.** Any notice required by this section shall be served ~~personally or by mail~~ in the same manner as prescribed for service of notice by Section 32271.

Section 32312 of the Revenue and Taxation Code is amended to read:

32312. **Petition for redetermination; security.** The taxpayer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 4 of this chapter, with the board within 10 days after the service upon him of notice of the determination, but he shall within the 10-day period deposit with the board such security as it deems necessary to insure compliance with the provisions of this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security ~~personally or by mail~~ in the same manner as prescribed for service of notice by Section 32271.

Upon any such sale, the surplus, if any, above the amount due under this division shall be returned to the person who deposited the security.

Section 32432.5 of the Revenue and Taxation Code is amended to read:

32432.5 (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 32431, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails serves a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 32431 on or after January 1, 2000.