

# Memorandum

**To** : Honorable Betty Yee, Chairwoman  
Honorable Judy Chu, Ph.D., Vice Chair  
Honorable Bill Leonard, Member  
Honorable Michelle Steel, Member  
Honorable John Chiang

**Date:** January 15, 2008

**From** : Randie L. Henry, Deputy Director  
Sales and Use Tax Department  
  
David J. Gau, Deputy Director  
Property and Special Taxes Department  


**Subject : Board of Equalization Security Deposits**

On December 19, 2007, Honorable Michelle Steel requested Board of Equalization (Board) staff report on the scope and magnitude of the potential delays in processing the return of security deposits, and specifically requested information on the six following areas:

1. The number and dollar amount of security deposits for all tax and fee programs administered by the Board.
2. The number and dollar amount of security deposits eligible to be released.
3. The number of sales and use tax security deposits over \$2,000 held for more than three years.
4. A plan to more expeditiously return security deposits that meet the eligibility criteria for release.
5. An overview and review of the statutory, regulatory, and administrative eligibility criteria for releasing security.
6. The process used to determine which accounts are eligible for release and the process staff uses to release the security.

The Honorable Michelle Steel also requested that Board staff immediately release any security deposits eligible for release.

Our report provides background and information regarding the Board's security deposit program and discusses each of the six items requested. In addition, an agencywide action plan has been developed to evaluate all aspects of the Board's security deposit policy and procedures.

### Background

The Board is either required or authorized to obtain security, within certain limitations, for most tax and fee programs administered to ensure payment of any tax that might become due or delinquent.

Security for sales and use tax programs is a minimum of \$2,000 and is set by Board policy. The maximum, which is set by statute, may not exceed \$50,000. The issuance of a permit will not be delayed merely to obtain security. The taxpayer is given 30 days to post the security. If security is not posted after 30 days, the account may enter the delinquency process.

Most of the property and special tax and fee programs have the authority to collect security; however, not all the programs lend themselves to the collection of security. Generally, security is not requested for any of the *fee programs* administered by the Property and Special Taxes Department (PSTD). Most of the *tax programs* administered by the PSTD have no security deposits posted or have few accounts with security deposits. In order to deter fuel tax evasion, security is requested on a new gasoline, diesel or jet fuel supplier account. Until security is posted, the account is placed in pending status and the fuel supplier has 30 days to post the security. Once security is posted, the fuel supplier's account is activated. Under the International Fuel Tax Agreement (IFTA) program, if an account is revoked, it is not reinstated until security is posted. The Alcoholic Beverage Tax Law has a statutorily set minimum amount of security required. The Cigarette and Tobacco Products Tax Law provides the only mandate for security to be posted and retained. Accounts under this program will not be issued until security is received. For a listing of all the programs administered by the Board with security provisions, please refer to Exhibit A.

The Board accepts Cash Deposits, Liquid Security Deposits (i.e., time certificates of deposit, state and federal credit union shares), Surety Bonds, and/or Guaranties as security.

### Action Items

1. The number and dollar amount of security deposits for all tax and fee programs administered by the Board.

As of December 2007, the Board had a total of 31,179 accounts with active security for a total of \$436,124,811. The total active security was comprised as follows: Sales and Use Tax Department - 26,947 accounts totaling \$170,382,766, PSTD 4,232 accounts totaling \$265,742,045, (\$138,327,000 is required pursuant to section 30142 on accounts that purchase cigarette tax stamps on deferred credit). A breakdown of the active security by type of security is provided in Exhibit B.

2. The number and dollar amount of security deposits eligible to be released.

The Board produces two reports which identify security deposits that may be eligible for release. The Active Three Year and Older report lists accounts with security that have been

posted for three years and may meet the eligibility criteria for release. (See item #6 for eligibility criteria.) The Uncleared Security Deposit List includes accounts that have been closed out for at least six months which still have active security.

As of December 2007, there were a total of 2,028 accounts totaling \$38,805,545 that were eligible for release from both reports. As of January 3, 2008, a total of 612 accounts totaling \$4,237,384 have been released after review of the Active Three Year and Older report and 264 accounts totaling \$1,315,026 have been released after the Uncleared Security Deposit List was reviewed. For more information on the Active Three Year and Older report, please see Exhibit C. For more information on the Uncleared Security Deposit List, please see Exhibit D.

3. The number of sales tax and use tax security deposits over \$2,000 held for more than three years.

The data for sales and use tax security over three years old and over \$2,000 is as follows:

**Sales and Use Tax**

<u>Security Description Type</u>	<u>Security Deposited</u>	<u>Count</u>
Surety Bond	\$40,147,985.00	3,034
Cash	\$12,773,109.36	2,485
Personal Guaranty	\$16,087,475.00	2,137
Liquid Security Deposit	\$12,876,292.85	2,169
	<u>\$81,884,862.21</u>	<u>9,825</u>

A total of 1,315 sales and use tax accounts with security totaling \$8,019,568 are eligible for release based on the reports summarized in Exhibit C and D. Although the security posted could be more than three years old, Revenue and Taxation Code section 6701 only requires the Board to release the security after three years in instances where a taxpayer has timely filed and paid tax to the Board. We release the security if the taxpayer has no history of late payments, dishonored checks, partial or no remittance returns or similar problems.

4. A plan to more expeditiously return security deposits that meet the eligibility criteria for release.

In order to more expeditiously release security deposits that meet the eligibility criteria, we are looking at ways to improve our security deposit policy and procedures. Currently, we are reviewing the criteria for releasing security to improve the process. In addition, a pilot program is being conducted in the Third District. The Active Security Three Year and Older report and the Uncleared Security Deposit List are going to be electronically distributed and worked on a monthly basis starting January 11, 2008. We are also making programming changes for the two reports to increase the efficiency of the release process. Below you will find the complete action plan for improving the security deposit program.

### Agencywide Security Deposits Action Plan

<u>Release of Security</u>	<u>Start Date</u>	<u>Proposed Completion Date</u>
1. Conduct review of current policy and procedures for release of security	12/5/07	4/30/08
2. Propose policy and procedures changes to Board Members based on monthly review pilot program	5/1/08	6/25/08
3. Implement revised policy and procedures	6/26/08	8/1/08
<u>Security Requirements</u>		
1. Conduct review of policy and procedures for current requirements	6/2/08	7/15/08
2. Propose policy and procedures changes to requirements to Board Members	7/16/08	8/21/08
3. Implement requirements policy and procedures changes	8/22/08	10/1/08
<u>Security Maintenance</u>		
1. Conduct review of current maintenance policy and procedures	7/1/08	8/15/08
2. Propose policy and procedures changes to Board Members	8/18/08	10/3/08
3. Implement maintenance policy and procedures changes	10/6/08	11/3/08

5. An overview and review of the statutory, regulatory, and administrative eligibility criteria of releasing security.

Revenue and Taxation Code, sections 6701 (Sales and Use Tax Law), 7486 (Motor Vehicle Fuel Tax Law), 60401 (Diesel Fuel Tax Law), 40036 (Energy Resource Surcharge) and 41041 (Emergency Telephone Surcharge) state in part, "Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount for tax required to be collected and paid to the state within the time required." Even though these are the only programs where statute requires that security must be released after three years, the Board has an administrative policy to release security if the account is in good standing after three years of posting security (with the exception of the mandatory security provisions for the Cigarette and Tobacco Products Tax accounts).

6. The process used to determine which accounts are eligible for release and the process staff uses to release the security.

Operations Memo 1049, *New Sales and Use Tax \$50,000 Security Limit and Release of Security Provisions Including Surety Bond Exoneration Requests*, establishes the Board's eligibility criteria for the release of security deposits. For purpose of administration, security held by the Board for three years should be released in a timely manner if a review of the last three years of the account shows the following:

1. No more than two fully paid late returns and none within the last twelve month period,
2. No dishonored checks and no EFT non-payments not resolved by a Section 6592, Excusable delay or 6593, Disaster request,
3. No partial or non-remittance returns,
4. No revocations,
5. No fraud assessments, and
6. No pending criminal proceedings or convictions involving sales and use tax evasion.

Twice a year, in April and October, the Active Three Years and Older report and the Uncleared Security Deposit List are produced. These reports list accounts that may meet the criteria for releasing the security, and are distributed to the appropriate district offices and to PSTD to review. The current reports cannot fully identify which deposits should be released. Therefore, staff researches the accounts to determine if the security should be released. The supervisor, or designated authority, reviews the recommendations and, if approved, the security is released.

If you have any questions, please feel free to contact us.

RLH:DG:jt

Attachments: Exhibits A-D

cc: Mr. Alan LoFaso  
Mr. Steve Shea  
Mr. Mark Ibele  
Ms. Barbara Alby  
Mr. Erik Caldwell  
Ms. Marcy Jo Mandel  
Mr. Ramon J. Hirsig

**Exhibit A**

**Security Deposit Table**

Tax/Fee Program	Revenue and Taxation Code	Minimum Security (Set by Policy Unless Noted)	Maximum Security	Number of Accounts with Cash Security	Number of Accounts with Non-Cash Security
Sales and Use Tax	6701	\$2,000	\$50,000 (See Note 1)	11,367	15,580
Motor Vehicle Fuel Tax	7486	\$500	See Note 2	19	70
IFTA	60401	\$500	See Note 2	240	9
Use Fuel Tax	8951	\$500	None	0	0
Diesel Fuel Tax	60401	\$500	See Note 2	7	64
Underground Storage Tank Fee	50108.2	\$500	None	0	0
Oil Spill Fees	46401	\$500	None	1	0
Childhood Lead Fee	43102	\$500	None	0	0
Disposal Fee	43102	\$500	None	0	0
Generator Fee	43102	\$500	None	0	0
Facility Fee	43102	\$500	None	0	0
Environmental Fee	43102	\$500	None	0	0
Occupational Lead Fee	43102	\$500	None	0	0
Ballast Water Management Fee	55022	\$500	None	0	0
Integrated Waste Management Fee	45102	\$500	None	0	0
Tire Recycling Fee	55022	\$500	None	0	0
Electronic Waste Recycling Fee	55022	\$500	None	0	0
Water Rights Fee	55022	\$500	None	0	0
Cigarette and Tobacco Products	30142	1,000	None (see Note 3)	523	203
Alcoholic Beverage Tax	32103	\$500 (see Note 5)	None (see Note 4)	1,772	1,324
Energy Resources Surcharge	40036	\$500	None	0	0
Emergency Telephone Surcharge	41041	\$500	None	0	0
Natural Gas Surcharge	55022	\$500	None	0	0
Timber Yield Tax	38501	\$500	\$10,000	0	0

Note 1: For most accounts, the maximum security is three times the monthly tax liability. However, the maximum amount of security for a person given a notice of hearing pursuant to section 6070 or whose permit has been revoked is five times the monthly liability.

Note 2: The amount of security shall not be more than three times the estimated average monthly tax liability, however, the total amount of security shall not be in excess of \$1,000,000 where the person has established to the satisfaction of the Board that it has equity in real property to which a lien imposed by either Section 7872 or Section 60445 attaches.

Note 3: If a distributor desires to defer payments for stamps or meter register settings, the Board shall require a security deposit equal to not less than 70, 50, or 25 percent of the amount (based on the deferred payment plan elected), and no more than twice the amount, as fixed by the Board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

Note 4: The maximum amount will be not more than twice the taxpayer's estimated monthly tax for taxpayers reporting monthly or not more than twice the taxpayer's estimated tax for the tax reporting period for taxpayers reporting for periods longer than one month.

Note 5: Set by Statute

**Exhibit B**

**Security by Tax Program and Type**

**Board of Equalization**

<u>Security Description Type</u>	<u>Security Deposited</u>	<u>Count</u>
Surety Bond	\$290,011,000.67	7,134
Cash	\$39,201,557.63	13,929
Personal Guaranty	\$67,295,795.00	2,785
Liquid Security Deposit	\$39,616,457.95	7,331
	<u>\$436,124,811.25</u>	<u>31,179</u>

**Sales and Use Tax**

<u>Security Description Type</u>	<u>Security Deposited</u>	<u>Count</u>
Surety Bond	\$78,969,010.67	6,168
Cash	\$37,083,699.63	11,367
Personal Guaranty	\$16,615,795.00	2,782
Liquid Security Deposit	\$37,714,260.70	6,630
	<u>\$170,382,766.00</u>	<u>26,947</u>

**Excise Tax**

<u>Security Description Type</u>	<u>Security Deposited</u>	<u>Count</u>
Surety Bond	\$140,107,644.00	847
Cash	\$1,750,028.00	2,295
Personal Guaranty	\$0.00	0
Liquid Security Deposit	\$1,733,977.25	680
	<u>\$143,591,649.25</u>	<u>3,822</u>

**Fuel Tax**

<u>Security Description Type</u>	<u>Security Deposited</u>	<u>Count</u>
Surety Bond	\$70,934,346.00	119
Cash	\$367,830.00	267
Personal Guaranty	\$50,680,000.00	3
Liquid Security Deposit	\$168,220.00	21
	<u>\$122,150,396.00</u>	<u>410</u>

**Exhibit C**

**Active Three Year and Older**

**Eligible for Release and Reviewed**

Office	Accounts Eligible for Release	Dollars Eligible for Release	NonCash Accounts Eligible for Release	NonCash Amounts Eligible for Release	Number of NonCash Accounts Released <sup>1</sup>	NonCash Released Amounts	Cash Accounts Eligible for Release	Cash Amount Eligible for Release	Number of Cash Accounts Released <sup>1</sup>	Cash Amount Released
San Francisco	40	393,302	25	332,402	10	80,550	15	60,900	0	0
Oakland	34	382,203	24	321,188	9	164,250	10	61,015	0	0
San Jose	69	550,233	42	416,808	35	261,113	27	133,425	26	131,425
Santa Rosa	38	473,827	33	464,327	33	464,327	5	9,500	5	9,500
Ventura	29	151,415	13	106,900	6	85,000	16	44,515	16	44,515
Sacramento	54	492,135	42	461,585	42	461,585	12	30,550	12	30,550
Out-of-State	22	292,799	13	255,300	13	255,300	9	37,499	9	37,499
Santa Ana	178	1,288,858	92	978,375	92	978,375	86	310,483	64	187,178
Riverside	42	56,105	18	25,155	18	25,155	24	30,950	24	30,950
San Diego	18	271,500	12	242,900	12	242,900	6	28,600	5	23,000
Norwalk	17	108,701	15	102,701	15	102,701	2	6,000	2	6,000
Van Nuys	27	173,480	23	165,080	23	165,080	4	8,400	4	8,400
West Covina	80	201,860	22	150,081	22	150,081	58	51,779	0	0
Culver City	237	1,067,407	99	640,955	24	114,775	138	426,452	39	127,805
<b>Total</b>	<b>885</b>	<b>\$5,903,825</b>	<b>473</b>	<b>\$4,663,757</b>	<b>354</b>	<b>\$3,551,192</b>	<b>412</b>	<b>\$1,240,068</b>	<b>206</b>	<b>\$636,822</b>
<b>Excise Taxes</b>	<b>502</b>	<b>\$379,000</b>	<b>266</b>	<b>\$219,500</b>	<b>0</b>	<b>0</b>	<b>236</b>	<b>\$159,500</b>	<b>46</b>	<b>\$30,000</b>
<b>Fuel Taxes</b>	<b>31</b>	<b>\$23,888,577</b>	<b>25</b>	<b>\$23,869,207</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>\$19,370</b>	<b>6</b>	<b>\$19,370</b>
<b>Grand Total</b>	<b>1,418</b>	<b>\$30,171,402</b>	<b>764</b>	<b>\$28,752,464</b>	<b>354</b>	<b>\$3,551,192</b>	<b>654</b>	<b>\$1,418,938</b>	<b>258</b>	<b>\$686,192</b>

<sup>1</sup> As of January 3, 2008

**Exhibit D**

**Uncleared Security Deposit List  
Eligible for Release and Reviewed**

Office	Accounts Eligible for Release	Dollars Eligible for Release	NonCash Accounts Eligible for Release	NonCash Amounts Eligible for Release	Number of NonCash Accounts Released <sup>1</sup>	NonCash Released Amounts	Cash Accounts Eligible for Release	Cash Amount Eligible for Release	Number of Cash Accounts Released <sup>1</sup>	Cash Amount Released
San Francisco	17	52,197	3	11,075	3	11,075	14	41,122	0	0
Oakland	22	172,693	10	91,455	2	26,600	12	81,238	7	62,500
San Jose	46	156,947	23	87,975	4	14,440	23	68,972	1	3,009
Santa Rosa	4	14,890	2	10,520	2	10,520	2	4,370	2	4,370
Ventura	19	68,351	6	36,625	6	36,625	13	31,726	13	31,726
Sacramento	23	57,011	9	34,200	9	34,200	14	22,811	14	22,811
Out-of-State	8	46,350	2	16,800	2	16,800	6	29,550	6	29,550
Santa Ana	67	568,618	29	282,937	28	131,949	38	285,681	19	239,163
Riverside	26	140,740	6	39,250	6	39,250	20	61,490	20	61,490
San Diego	18	271,500	12	242,900	12	242,900	6	28,600	5	23,000
Norwalk	20	68,310	10	19,070	10	19,070	10	49,240	3	32,700
Van Nuys	27	86,589	11	30,900	11	30,900	16	55,689	16	55,689
West Covina	24	74,056	12	46,200	8	25,470	12	27,856	11	23,926
Culver City	109	377,491	30	127,845	11	50,950	79	249,646	6	8,943
<b>Total</b>	<b>430</b>	<b>\$2,155,743</b>	<b>165</b>	<b>\$1,077,752</b>	<b>114</b>	<b>\$690,749</b>	<b>265</b>	<b>\$1,037,991</b>	<b>123</b>	<b>\$598,877</b>
<b>Excise Taxes</b>	<b>167</b>	<b>\$152,500</b>	<b>145</b>	<b>\$132,100</b>	<b>5</b>	<b>\$5,000</b>	<b>22</b>	<b>\$20,400</b>	<b>22</b>	<b>\$20,400</b>
<b>Fuel Taxes</b>	<b>13</b>	<b>\$6,325,900</b>	<b>13</b>	<b>\$6,325,900</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Grand Total</b>	<b>610</b>	<b>\$8,634,143</b>	<b>323</b>	<b>\$7,535,752</b>	<b>119</b>	<b>\$695,749</b>	<b>287</b>	<b>\$1,058,391</b>	<b>145</b>	<b>\$619,277</b>

<sup>1</sup> As of January 3, 2008