



MICHELLE STEEL
MEMBER
STATE BOARD OF EQUALIZATION

MEMORANDUM

Date: December 19, 2007
To: Ramon Hirsig, Executive Director
From: The Honorable Michelle Steel, Board Member Third District
RE: Board of Equalization Security Deposits

Michelle Steel

I am requesting BOE staff immediately begin an investigation into the scope and magnitude of delays in processing the return of security deposits for all tax programs administered by the Board of Equalization. I also request you incorporate into your Executive Director's report on the January agenda a discussion of this issue and at that meeting I would like staff to report on their findings and present a plan to expeditiously release security deposits to all eligible tax and fee payers.

Background: Board of Equalization Tax Security Deposits

The California State Board of Equalization requires certain businesses to post and maintain a tax security deposit for their first three years of operation. The security deposit acts as collateral against any potential tax liabilities. Under state law, the security deposit cannot exceed a maximum amount of \$50,000.

In September 2007, a San Diego taxpayer, who was eligible for a return of his security deposit, contacted my office for assistance. While assisting them it was brought to my attention that many taxpayers were entitled to refunds but those refunds had not yet been processed. I asked Randie Henry, Deputy Director for Sales and Use Tax, and Steve Rudd, Chief of Field Operations for the Third and Fourth Districts, to develop a short term plan to immediately release funds for eligible taxpayers and a long term plan to ensure in the future the release process is streamlined and funds are returned to taxpayers without delay in accordance with the law. Both the short and long term plans discussed were developed into a pilot program now being implemented in the Third District only.

The short term plan developed had BOE staff dedicate additional staff resources to review all sales and use tax accounts with deposits on hold for more than three years to determine which accounts were eligible for release of their security deposits and then staff began issuing checks to taxpayers. Since initiating this review and with a great deal of assistance from Ms. Henry and Mr. Rudd close to \$1 million has been returned to

Mr. Ramon Hirsig
December 19, 2007
Page 2 of 3

taxpayers. In total, we found sales tax security deposits eligible for return withheld in 490 instances, totaling \$2.75 million. The remaining \$1.75 million is being released now. Staff is currently working to develop a long term plan to streamline the release program in the future and ensure staff generates a list of taxpayers eligible for security deposit returns each month.

The Board of Equalization Can and Must Do Better

In one case the owner of an auto dealership paid a \$10,000 cash security deposit to the Board in June 2003. Since that time the taxpayer's account has been in good standing with no late penalties or delinquent payments. The taxpayer's business was even audited earlier this year, and received a perfect audit review. Yet, even after the audit the taxpayer's \$10,000 deposit was not returned.

Furthermore, this problem may not just be isolated to sales and use taxes. Security deposits are required for the following tax and fee programs as well.

Fuel Taxes

Motor Vehicle Fuel Tax
Use Fuel Tax
Diesel Fuel Tax
Underground Storage Tank Fee
Oil Spill Fees

Childhood Lead Fee

Environmental Fees

Disposal Fee
Generator Fee
Facility Fee
Environmental Fee
Occupational Lead Fee
Ballast Water Management
Fee

Excise Taxes

Cigarette & Tobacco Products Tax
Alcoholic Beverage Tax
Integrated Waste Management Fee
Energy Resources Surcharge
Emergency Telephone Surcharge

Natural Gas Surcharge
Tire Recycling Fee

Request for Action

In addition to requesting Board staff to immediately release any security deposits eligible for release, I also request that in staff's report to the Board Members in January they include the following:

1. A detailed report on the number and dollar amount of security deposits being held in all tax and fee programs administered by the Board.
2. A detailed report on the number and dollar amount of security deposits eligible to be released by the Board in all tax and fee programs administered by the Board.
3. A detailed report on the number of sales tax security deposits over \$2,000 held for more than three years.
4. A detailed plan to more expeditiously return security deposits that meet the eligibility criteria for release held by the Board in the future so that delays of the sort outlined in this memo never occur again.
5. An overview and review of the statutory, regulatory and administrative framework that establishes the Board's eligibility criteria for the release of security deposits.
6. A report outlining the process used to determine which security deposit accounts are eligible for release and the process staff uses to release those funds to tax and fee payers.

Mr. Ramon Hirsig
December 19, 2007
Page 3 of 3

I hope that you agree this is a very serious matter that should be investigated and corrected immediately. As the agency that is charged with ensuring taxpayers accurately collect and pay taxes due we have the moral responsibility to ensure we pay our obligations to tax and fee payers in a timely and expedient manner as required by law.

I want to thank Ms. Henry, Mr. Rudd and Third District field staff for working with me to quickly address this problem and implement a temporary fix for my district. I look forward to working with staff now to develop a long term solution for taxpayer's throughout the State.

If you have any questions regarding the information presented or the request that I have made please feel free to contact myself or my Chief Deputy Erik Caldwell.