

Compliance Policy and Procedures Manual

Chapter 6

Closeouts and Clearances



Sales and Use Tax Department

California State

Board of Equalization

This is an advisory publication providing direction to staff administering the Sales and Use Tax Law and Regulations. Although this material is revised periodically, the most current material may be contained in other resources including Operations Memoranda and Policy Memoranda.

Please contact any Board of Equalization office if there are concerns regarding any section of this publication.

COMPLIANCE POLICY AND PROCEDURES MANUAL

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CLOSEOUTS AND CLEARANCES**600.000****GENERAL STATEMENT ON CLOSEOUTS****605.000**

This chapter includes policy and procedures for the closeout of sales and use tax accounts. It covers the reinstatement of accounts closed out in error, correction of erroneous closeout dates, and the issuance of certificates of tax clearance under the California Sales and Use Tax Law. Instructions on how to enter closeout information in the Integrated Revenue and Information System (IRIS) are located on eBOE under the *CT-1: Registration, Account Maintenance and Interview Techniques* training, and are not detailed in this chapter.

The policy and procedural statements in this chapter generally follow the same sequence as the items shown on the BOE-406, *Closeout Worksheet*, beginning with Section A, Identification of Account. The form is available on eBOE.

All in-district closeouts are processed in IRIS by the district of control. Closeouts may be processed in IRIS without completing a BOE-406, dependent upon the circumstances and the district's policy. Staff should consult with their immediate supervisor to determine when a BOE-406 is required.

THE CLOSEOUT WORKSHEET, BOE-406**605.020**

The BOE-406 is used only by the field offices and is generally used as a control tool to follow up on accounts with outstanding items such as security, delinquencies, escrow clearances, successors, and tax due on the sale of fixtures and equipment. Processing closeout information in IRIS removes the account from active status. If the permit is revoked, it also removes the revocation status. Districts should establish procedures to ensure that the closeout process is completed properly. In cases where completing the BOE-406 serves no useful purpose and is not required by the district, the information may be entered directly in IRIS with appropriate comments.

When staff closes a permit, they should provide information on how to obtain relevant regulations and publications on the Board of Equalization (BOE) website. Any publications, forms, and regulations that are furnished to the taxpayers should be noted in IRIS. The following table provides guidelines for which publications, forms, and regulations should be provided.

Closeout Reason (see 610.110)	1	2	3	4	5	6	7	8	9
Publication 74, <i>Closing Out Your Seller's Permit</i>	Y	Y	Y	Y	Y	Y	Y	Y	
BOE-449, <i>Letter Re: Permits Required</i>				Y	Y				
BOE-467, <i>Notice of Requirements in the Sale of a Business</i>				Y	Y				
Regulation 1595, <i>Occasional Sales – Sale of a Business – Business Reorganization</i>				Y	Y				
Regulation 1596, <i>Buildings and Other Property Affixed to Realty</i>				Y	Y				
Regulation 1702, <i>Successor's Liability</i>				Y	Y		Y		

WHEN TO CLOSE OUT AN ACCOUNT**605.030**

A permit must be closed whenever the operation of a business is terminated or whenever there is a change in the ownership of a continuing business. Closeout information should not be entered in IRIS until it has been verified, to the extent possible, that the business has been terminated, rather than moved to another location, or is only temporarily inactive. In cases where the taxpayer cannot be located, but investigation indicates the business has closed, a BOE-288, *Close Out Under Section 6072*, may be sent to the mailing address of record, and/or the last known address. The BOE-288 can be found under “Send Letter” in the Automated Compliance Management System (ACMS).

PREPARATION OF BOE-406, SECTION A 610.000**RETURN(S) FURNISHED AND IRIS INPUT 610.005**

Check “yes” in the upper left corner of the BOE-406 to indicate the taxpayer was informed how to file electronically, and which periods the taxpayer was directed to file. If paper returns were furnished, enter which periods. If the taxpayer was not informed to file electronically and no return was furnished, check “no.” In the “IRIS Input” box, enter the date the closeout is entered in IRIS and your name.

CLOSE OUT OF MASTER AND SUBLOCATIONS 610.006

If the master permit and all sublocations close out on the same date and for the same reason, the Yes box is checked and it is not necessary to close out the locations individually. If the Reason Code No. 4, Business Sold (New Entity) is checked, it indicates that all locations were purchased by one entity. If the sublocations are closed on different dates and for different reasons, entering the information in IRIS is sufficient unless there is a reason to use the BOE-406 as a control document, such as a sale of one or more of the sublocations.

ESCROW, SECURITY, AND UNAPPLIED PAYMENTS 610.007

Check the appropriate box if an escrow is involved (i.e. business was sold). For escrow procedures, see CPPM section 650.023.

Check the box if a security deposit is posted to the taxpayer’s account, and refer to CPPM section 620.020 for security deposit procedures.

Check the box if unapplied payments are displayed on the taxpayer’s account. No unapplied payments should be left on a closed out account. Every effort should be made to investigate and resolve the unapplied payments to determine if the payment was intended for tax, penalty, or interest, or if the payment is intended for a particular return that may be under review by the Return Analysis Unit (RAU). Staff may contact RAU if they are unable to resolve the unapplied payment.

CLOSEOUT DATE 610.010

The closeout date entered in the upper right corner of the BOE-406 should be the actual date, if known, the entity of record discontinued operations, stopped making sales, or no longer required a permit or license. If the exact date is not known, an approximate closeout date is used.

Generally, a good rule to follow in selecting a closeout date, if the actual date is not known, is to use the last day of the month in which it is known the business was terminated.

If an approximate date is used as the closeout date, it may be corrected in IRIS if the actual day is subsequently determined.

OWNER(S) 610.020

The entry made in this position should be the same as the owner’s name shown on the registration record. The business name (DBA) should also be entered here.

ACCOUNT NUMBER 610.030

The account number must be identical with that shown on the registration record. It must be legibly printed or typed so that it will not be misread, potentially resulting in closing out the wrong account on the registration record.

LOCATION OF BUSINESS

610.040

The entry should be the complete address and should agree with that shown on the registration record.

NEW OR FORWARDING ADDRESS

610.050

Enter the address and telephone number where the taxpayer can be reached and/or receives mail. If a partnership, update the address information for all partners. It is important to have forwarding information in the event the taxpayer must be contacted after the business has closed (e.g. closeout audit).

TYPE OR NATURE OF BUSINESS

610.060

This should be a description of the business operation. Whenever an Alcoholic Beverage Control (ABC) license is involved, the type of license should be described.

NEW OWNER(S)

610.070

Enter all partners' names, if applicable. If no new owner, show "None." Enter the new permit number, if issued. Otherwise, an alpha search should be made as part of a final review to determine if the new owner has been properly permitted.

Input of closeout information in IRIS should not be held up for new owner, permit number, or purchase price information. These items should be entered by the district office on the BOE-406 and added to the registration record when they are obtained.

SUCCESSOR'S LIABILITY

610.090

Check the box to indicate whether there is a potential successor's liability. If there is a purchaser and the "no" box is checked, an explanation should be entered into the registration system.

Any purchaser who buys a business or a stock of goods and fails to withhold a sufficient amount of the purchase price to clear the account of the seller, or who fails to obtain a clearance, may be liable for the amount owed by the seller to the extent of the purchase price. It is important that the form show the purchase price as accurately as can be determined and whether the new owner can be held liable as a successor. Use section B, "Report on Closeout" to enter information about the selling price.

The information entered in this respect must be accurate since it will be the basis for holding the new owner liable as a successor, should such action become necessary. See CPPM section 650.000 for more information.

Reference: Revenue and Taxation Code section 6812, Regulation 1702

PURCHASE PRICE

610.100

An entry should be made when applicable. The dollar amount entered in this section should be the total price paid by the successor for the business including any liabilities assumed, goodwill, and the purchase of fixtures and equipment. If the total price includes inventory, show the approximate value of inventory separately.

REASONS FOR CLOSEOUT**610.110****1 — Did not operate**

When a permit has been issued and it is later determined that no actual operation of the business took place and no purchases were made with a resale certificate, the account will be closed out with a closeout date identical to the starting date shown on the registration record.

2 — Business discontinued — no successor

When the business is terminated with no transfer to a successor, the closeout information should be entered in the registration record as soon as possible. Any person whose business is terminated but is holding a permit in anticipation of reopening, should be informed that the account will be closed, that he or she must surrender the permit, and that they must apply for a new permit when they are ready to reopen the business.

Permits held solely for the purpose of making purchases at wholesale should be closed out. The provisions of Revenue and Taxation Code (RTC) section 6094.5 should be brought to the attention of the permit holder in these cases.

3 — Business discontinued — Assignment or bankruptcy

When the person holding the permit makes an assignment for benefit of creditors or if a bankruptcy ruling has been granted, a closeout will be initiated. Closeout reason 3 is used only when there is no continuation of the business by the assignee or fiduciary appointed by the court. For assignments or bankruptcies when the business is continued, see “Change in ownership - Other reorganization.”

4 — Change in ownership — Business sold (new entity)

If the business is sold, a closeout is required and a new application should be completed by the successor as soon as possible after the date of the ownership becomes known. A copy of the bill of sale or purchase agreement should also be requested at this time. Follow-up of the predecessor/successor information is critical to ensure the appropriate account relationship is documented.

5 — Change in ownership — Change in partnership

The laws governing partnerships in this state were changed with the adoption of the Revised Uniform Partnership Act (RUPA) which provides for the survival (continuation) of a partnership when partners are added or dropped. Therefore, if the business will continue, but with the addition or deletion of a partner or partners, it is not necessary to close out the partnership permit. For information regarding partnership changes, see CPPM section 301.000.

6 — Change in ownership — Other reorganization

In the case of an assignment for benefit of creditors, bankruptcy, receivership, or probate where the business is continued by a fiduciary appointed by the court, the new owner is not liable as a successor. This is because he or she is appointed by the bankruptcy or superior court or through an assignment for benefit of creditors to operate the business.

In addition, the Revised Uniform Partnership Act and the California Revised Limited Partnership Act amended the laws of this state to allow for conversion from one type of business organization to another, and the legal entity survives the conversion. General partnerships, for example, can now convert to a Limited Liability Company or Limited Partnership, etc., and vice versa. Corporations, however, are universally excluded from doing this. No conversion, for example, is allowed from a partnership to a corporation or from a corporation to a Limited Liability Company.

REASONS FOR CLOSEOUT

(CONT.) 610.110

The debts and obligations of the former (converting) entity continue as the debts and obligations of the converted entity. Whenever such a situation arises, where a permittee has converted to an “other” business entity, the permit of the original entity should be closed out and a new permit issued to the converted or “new” entity.

7 — Issue and cancel

This code is used when the closeout is entered at the same time the permit is issued. This occurs when a business has operated unlicensed prior to the time the permit is issued, it is no longer active, and payment in full has not been received.

8 — Closeout After Revocation

Closeout code “8” signifies an account was closed out after revocation occurred, regardless of whether the closeout date occurred before or after the effective date of revocation. Closeout code “8” is used in lieu of any other closeout codes on all revoked accounts and/or sublocations of a revoked account which have operated.

Revoked accounts will be closed out only after investigation has positively confirmed the account has ceased doing business, either through phone calls, field investigation or contact with the taxpayer. Returned mail in itself is NOT sufficient cause to close the permit as a taxpayer may simply be operating at another location. (See Section 340.140)

9 — Mass Closeout

Closeout Reason “9” signifies an account was closed out in the mass closeout process (See Section 645.130). These are accounts that have reported zero sales in a twelve-month period.

REPORTING BASIS

610.120

This item must be checked to reflect the reporting basis shown on the registration system.

STARTING DATE

610.130

The month and year inserted here must agree with the registration record.

RELATED BOE ACCOUNT NUMBER(S)

610.140

This item must always show either “none” if no other accounts have been issued to the entity of record, or the other account numbers related to the owner(s) must be entered.

CLOSEOUT PREPARED BY — OFFICE — DATE

610.150

These items are self-explanatory and must be filled in. The date shown should be the date the BOE-406 is prepared.

ACCOUNT RECORD VERIFIED BY

610.160

The person who enters his or her initials in this box will be the person designated to verify the accuracy and legibility of the information entered on the form, if applicable. It is important that closeout information be accurate and entered correctly into the registration system.

PREPARATION OF BOE-406, SECTION B**615.000****VALUE OF FIXTURES AND EQUIPMENT SOLD — SUBJECT TO TAX****615.010**

Tax applies to that portion of the gross receipts from the sale of a business that is attributable to the transfer of tangible personal property held or used in an activity for which the seller is required to hold a seller's permit, and acquired by the purchaser for use rather than for resale.

Tax may also apply to that portion of the gross receipts from the sale of a business that is attributable to the tangible personal property transferred, even though such property was held or used in an activity for which a seller's permit was not required. A person not otherwise engaged in an activity requiring the holding of a seller's permit may make a series of sales sufficient in number, scope and character to require the holding of a seller's permit. Generally the minimum number of sales to require the holding of a seller's permit by a person not otherwise engaged in a selling activity is 3 within any 12-month period. The sale that results in the requirement to hold a seller's permit and all subsequent sales are subject to tax, unless otherwise exempt.

In the case of contributions to commencing partnerships or corporations, the tax applies to that portion of the consideration received that does not represent capital interest in the new partnership or first issue stock in the new corporation (Regulation 1595).

Please note: The adding or dropping of a partner does not necessarily create a sale of fixtures and equipment (F&E).

Some sales are subject to a "contingency" if there is some uncertainty as to the sales price, which will ultimately be resolved when one or more future events occur or fail to occur. For example, the parties may agree to a contingent sales price for machinery by agreeing to a specific sales price for the machinery and also agreeing that the purchaser will pay a higher sales price if the machinery is able to exceed certain predetermined production levels over a specified period of time. When there is a sale of a business and the transaction contains a contingent sales price, the following guidelines should be followed to determine the proper measure of tax, the period in which the sale should be reported, and whether the taxpayer will need to subsequently file an amended return or claim for refund:

PREPARATION OF BOE-406, SECTION B**(CONT.) 615.000**

- **Specific Price Agreed to**

When the parties to a transaction have agreed to a specific price for the taxable F&E, then that price should be used to determine the taxable measure to be reported for the period in which the sale occurs. In addition, when the parties have agreed to a contingent sales price for the sale of a business, but have also agreed to a specific price for the sale of taxable F&E included in the sale, any subsequent adjustment to the total sales price of the business will **not** affect the specific sales price of the taxable F&E, unless the adjustment actually relates to the value of the taxable F&E.

- **No Specific Price Agreed To**

In instances where there is a bulk sale of a business and the parties have not agreed to a specific price for the taxable F&E, the parties have implicitly agreed to buy and sell the F&E at its current value, regardless of whether the total selling price for the business is fixed at the time of sale or is subject to a contingency. Therefore, when the parties agree to the sale of a business at a contingent sales price, but do not agree to a specific price for the taxable F&E included in the sale, the taxable measure should be determined by following the procedures set forth in Audit Manual section 1004.25, *Bulk Sales of Businesses (Sales Price of Tangible Personal Property Not Specified)*.

To determine the sales price of taxable F&E, staff should look to at least one of four indicia of value: 1) book value, 2) appraised value for property tax purposes, 3) value determined by an independent appraisal, and 4) the taxpayer's estimate. Staff should then compare it to one other indicia to verify the accuracy of the value indicated. As a result, the value of the taxable F&E will generally be equal to the book value of such property. The taxable measure from the bulk sale should be reported on the return for the period in which the sale occurred because the value of the F&E can be determined by reference to its book value at the time of the sale, and there should not be a need to subsequently file an amended return or claim for refund.

TAXABLE SALES OF FIXTURES AND EQUIPMENT NOT REPORTED**615.020**

If taxable sales of F&E occurred during the operation of the business, the taxpayer should report and pay the tax on the return for the period in which the sales occurred. Tax on sales of F&E should also be included on prepayment forms when the amount of prepayment due is determined by use of Prepayment Option 1 (see CPPM section 510.025). If the taxpayer neglected to report taxable sales of F&E, the additional tax should be reported on a Fixtures and Equipment Compliance Assessment when payment in full is received. If payment in full is not received, a regular Compliance Assessment should be prepared (see CPPM section 540.170).

If the sale of F&E was made in conjunction with the sale of the business it should be included in the closing return in the section "Sales of Fixtures and Equipment" when filing electronically, or on line 2 of the BOE-401-A2, *State, Local, and District Sales and Use Tax Return* and marked "Fixtures and Equipment." It should also be included on prepayment forms when determining the amount of prepayment by use of Prepayment Option 1. If the closing return has already been filed by the time the closeout is made and the sale was not included, a regular Compliance Assessment should be prepared. If payment in full has been received, a Fixtures and Equipment Compliance Assessment should be prepared.

Local Tax

When a business location closes on a regular or consolidated account, and all that remains is the sale of F&E, the business location where the principal negotiations occur is considered to be the place of sale for purposes of allocating the local tax. This may or may not be a business location for which the taxpayer is required to hold a seller's permit.

**SALE OF FIXTURES AND EQUIPMENT
SUBSEQUENT TO DATE OF CLOSEOUT****615.030**

If a sale of F&E is not contemplated at the date of closeout, a subsequent single sale of the fixtures may be treated as an occasional sale. However, the single sale of F&E subsequent to the date of closeout is taxable if either:

1. The sale occurs within 60 days of the date of closeout and the taxpayer cannot establish that the sale was not contemplated at the time of closeout; or
2. The sale takes place after 60 days and within one year of the closeout date, and:
 - A contract of sale existed at the date of closeout, or
 - A lease with an option to buy exists, or
 - Arrangements are in existence evidencing a plan to sell the F&E in due course.

Unless the taxpayer makes sales that would otherwise qualify him as a retailer, a sale will be evaluated and may be regarded as an occasional sale if it occurs more than 12 months after the last prior sale. If the sale is subject to tax, a Fixtures and Equipment compliance assessment must be initiated.

FIXTURES AND EQUIPMENT INCLUDED IN FINAL RETURN**615.040**

Check the appropriate box to indicate how the tax on the sale of F&E is being reported. If necessary, write in the appropriate type of assessment.

**SOURCE OF INFORMATION FOR VALUE OF
FIXTURES AND EQUIPMENT****615.050**

Verify the source of information, such as escrow, buyer, seller, or books and records. Obtain a copy of the bill of sale or purchase agreement.

Another source of information is the Internal Revenue Service (IRS). The IRS requires the buyer and seller to report applicable asset acquisitions on Form 8594, *Asset Acquisition Statement*, and/or sales of property used in trade or business on Form 4797, *Sales of Business Property*. These forms are filed with their Federal Income Tax Return. For information on how to request Federal Income Tax Returns, please see CPPM section 720.031.

**DISPOSITION OF INVENTORY PURCHASED FOR RESALE
OR FROM OUT-OF-STATE****615.060**

Verify disposition of inventory. Inventory purchased ex-tax and retained for personal use is taxable and should be reported on the final return

LOCATION OF RECORDS**615.090**

Enter the physical location of the books and records of the owner(s).

IN CARE OF**615.100**

This entry should show the name of the person who has control of the books and records, such as the taxpayer, an accountant, an attorney, a bankruptcy court, etc.

DATE PRIOR AUDIT COMPLETED**615.110**

When applicable, this box should be completed, along with the next sections, covering period and liability recommended section.

AUDIT RECOMMENDED**615.120**

Compliance personnel should make the initial audit recommendation. Information regarding audit selection may be viewed in the Taxpayer Profile screen (TPS TP). If the account is selected for audit, specific information regarding the audit (i.e., name of auditor and auditor's supervisor) may be viewed in the Audit Maintenance/Inquiry screen — AUD MC. It is suggested that compliance personnel check with the audit personnel periodically to set referral guidelines covering items such as types of business, sales volume, claimed deductions, or other factors known to be of significance by the district. Only a small portion of the total closeouts will be audited. Therefore, verification of payment or recommended assessments for additional tax due is the responsibility of the compliance section where no audit is to be made. Particular attention must be given to the disposition of remaining inventory and F&E.

The person making the audit recommendation should print and sign their name in this box, and enter the date of the recommendation in the next box.

AUDIT APPROVAL**615.150**

This will show the *signature* or *initial* of the person or his/her designee in the district office having the responsibility for audit selection, and the date the recommendation was made.

PREPARATION OF BOE-406, SECTIONS C AND D **620.000****BOE-467 ISSUED** **620.005**

Indicate if a BOE-467, *Notice of Requirements in the Sale of a Business*, will be issued.

**REQUEST IN WRITING FOR BOE-471,
CERTIFICATE OF PAYMENT OF SALES AND USE TAX** **620.007**

This box must be checked either “yes” or “no” and the date it is received must be entered if the “yes” box is checked (See Section 650.000).

ESCROW AGENT **620.010**

If applicable, the name, address, and telephone number of the escrow agent should be entered in the appropriate section. If none, enter “none.”

TAX LIABILITY IN PREDECESSOR’S ACCOUNT **620.015**

This should be marked either “yes” or “no” and the predecessor’s account number entered in the box. If there is no predecessor, the word “none” should be entered in the box..

DISPOSITION OF SECURITY AVAILABLE **620.020**

Savings and Loan Certificates: Enter the dollar amount of the savings and loan certificate as its face value here. If the savings and loan certificate is to be cashed and applied, check the *Cash and Apply* box. If it is to be released, check the *Release* box.

Time Certificate of Deposit: Enter the dollar amount of the face value of the time certificate of deposit in this section. If the time certificate is to be cashed and applied, check the *Cash and Apply* box; if it is to be released, check the *Release* box.

Surety Bond: Enter penal sum, number, and effective date of bond.

Name of Surety: Enter the name of the surety company in this section.

Other: BOE-140s (personal guaranties), Federal, or State Credit Union Shares.

Security Under Other Business Taxes Accounts: Check “yes” or “no” in this section. If “yes” is checked, the amount section should show the face dollar value of the security; and the account number should be entered in the appropriate box.

Balances and Delinquencies: If applicable, these two sections should show how much money is due, the type of billing, and the period of the billing or what period is delinquent. The delinquency period should be shown by using the ending month and year of the period (e.g. 0314 for March and 1st quarter 2014).

Date Bal. and Del. Checked: Enter the date the balance and delinquencies were checked. This should be as current as possible. If an old date appears here, it should be erased or crossed out, balances and delinquencies checked again, and the new date entered.

Cash Deposit: Show the full dollar amount of the *cash deposit* available for application.

Returns and Billings: The *Final Return* section should be completed and correspond with the closeout date on the front of the BOE-406. The *Period* for this section should be written as indicated in the above delinquency examples.

There are two sections below *Final Return* that are captioned Return. These three sections should follow in consecutive periods beginning with the *Final Return Period*.

Field Billing Order: Enter (if applicable), the period and date of the field billing order.

DISPOSITION OF SECURITY AVAILABLE

(CONT.) 620.020

Final Audit: The amount due from an audit should be filled in as soon as amount of the determination is known.

Unpaid Balance: Enter the type of billing and the period(s) covered by the billing.

Predecessor's Balance: Enter the period of the billing in this section.

Liability Under Related Account Numbers: Indicate the account number(s) in this section.

Total Due: Enter the total dollar amount due in each block corresponding to the appropriate left-hand column entry.

Amount Paid: An entry will be made here only when a taxpayer, his agent or representative, or an outside fiduciary, such as an escrow company has paid funds to the BOE for this account. Payment to clear a closed out account should be in cash or its equivalent. However, personal checks may be accepted, but before security can be released/refunded or a clearance certificate issued, either:

- Proof of payment of the check will be required, or
- A sufficient period of time must elapse to ensure the check will not be dishonored by the taxpayer's bank. A sufficient period of time is considered to be up to a maximum of sixty working days unless, in certain isolated instances, to protect the BOE's interests, a longer period is required. If a shorter period than sixty days, depending upon banking situations, bad check history, etc., in your district, can be used, you should do so.

All payments made by personal or business checks will be identified by circling the amount.

Evidence of Payment: Enter the date and receipt number of payments made in the district office, but not yet posted on the system. Otherwise, enter the cash date and batch number of the payment(s) posted on the system. If no proof is available, enter the word "none." For credit card payments, presentation of the credit card statement, which shows the charge due to the credit card company, is sufficient evidence of payment.

Deduct: This column is used to deduct from a savings and loan certificate, a time certificate of deposit, or a cash deposit. All deduct items should show the dollar amount in the Deduct column.

Total Deductions: This amount must not exceed the total amount of cash available to apply to the liability owed. If the total deductions are less than the total security available, another computation must be made in the section that says *Amount to be Refunded*. The box that indicates *To: Name* must be filled out completely, showing the address, city, state, and ZIP code, if available. This responsibility rests with the person and office preparing this part of the form even though a copy of the BOE-406 may be sent to another office (district of control) for preparation of a refund check.

Balance Owning: Check and enter dollar amount, when applicable.

Escrow Claim Filed: The amount of the claim filed with the escrow company should be entered, if appropriate.

Escrow Withhold Filed: The amount of the withhold filed with the escrow company should be entered, if appropriate.

Escrow Release Approved By: The signature or initials of the person designated (usually the office supervisor) should be entered here.

Security Report Prepared By: The signature or initials and date will be entered in this section by the security clerk.

Security Report Approved By: The signature or initials of the person designated (usually the office supervisor) and the date will be entered in this section as evidence that all actions required have been taken.

ORDER OF APPLICATION OF CASH DEPOSITS AT CLOSEOUT**620.030**

Whenever a cash deposit is to be applied to more than one period or liability, the order of allocation shown in CPPM section 707.020 should be followed.

No reallocation will be made in those instances where a deposit has been applied in compliance with the order of allocation and, at a subsequent date, additional unpaid liability is disclosed. For example, an audit liability established after a deposit has been applied in its entirety in accordance with the order of application, will not cause the deposit to be reallocated.

APPLICATION OF CASH DEPOSIT TO AMOUNTS DELINQUENT ON CLOSEOUT DATE**620.040**

If any portion of a cash deposit is applied upon closeout to an amount of tax which was delinquent on the closeout date, applicable penalties and fees must be included, and interest must be computed through the closeout date. If any liability of this type exceeds the amount of cash deposit available for application, interest and penalty must be computed to the date of payment on the portion not paid from the cash deposit.

APPLICATION OF CASH DEPOSIT TO INTEREST AND PENALTY**620.050**

No portion of a cash deposit should be applied to interest or penalty until all tax liability has been paid.

ERRONEOUS REFUNDS OF CASH DEPOSITS**620.060**

If a cash deposit, available on the closeout date of an account, is erroneously refunded instead of being applied to a timely filed return(s), interest or penalty will not be added to the amount which should have been paid timely from the security. However, a failure to pay penalty will apply if not paid within thirty days from the date of billing, and appropriate monthly interest will accrue from the last day of the month following the penalty date.

If a final audit is made, effect will be given to the erroneously refunded security (or any portion which would have been available to apply on the audit) in the computation of interest and penalty included in the billing. The billing (Notice of Determination) will, however, provide for additional penalty if not paid within thirty days and appropriate monthly interest will accrue from the last day of the month following the penalty date.

In cases where nothing is owed at the time a refund is made and a liability is later developed through an audit, interest and penalty charges will be added as though no security was available.

PROCESSING CLOSEOUTS

625.000

ROUTING THE BOE-406 BETWEEN DISTRICTS

625.010

Districts are not restricted from processing closeout information on another district's account. Therefore, when the BOE-406 is prepared in a district other than the district controlling the account, the information will be entered in IRIS before the form is routed to the district of control for further processing. However, this does not apply to out-of-state accounts which should only be processed by the Out-of-State district (see CPPM 645.070).

CLOSEOUT OF ACCOUNT IN REVOKED STATUS

625.030

The processing of a closeout will remove an account from revocation status. However, if the account is later reinstated, a reinstatement fee of \$100.00 will be required for each selling location reinstated.

CLOSEOUT IN ERROR 635.000**GENERAL LIMITATIONS 635.010**

An account closed out in error may be reinstated by accessing the TAR AR screen in IRIS no later than eighteen calendar months after the date the closeout was processed, provided all delinquencies have been cleared. The Tax Area Code, Registration and Revenue Team in the Local Revenue Allocation Unit has the user security to reinstate an account closed out in error after the eighteen months have elapsed from the closeout process date.

Where operations have actually ceased at the specific location and a closeout has been processed, the account will not be reinstated if operations are resumed at this or any other location at a later date. The taxpayer will need to obtain a new permit through the registration system on the BOE website.

**REINSTATEMENT AFTER CLOSEOUT —
REINSTATEMENT AFTER REVOCATION 635.020**

In the event a revoked account is closed but the business did not actually cease operating, the account should be reopened in IRIS after the appropriate reinstatement fee(s) have been collected. Accounts, or sublocations of a consolidated account, that close out subsequent to the date of revocation but prior to reinstatement, will be processed with closeout reason 8. If those accounts or sublocations reopen at any time in the future, the reinstatement fee(s), as well as any delinquent returns or payments, would be due and collectable at the time of activation.

REINSTATEMENT OF ACCOUNT AFTER CLOSEOUT IN ERROR 635.030

Accounts closed out with a reason code other than 8, can be reinstated in IRIS if the permit was closed out in error. In these situations, accounts must be reinstated no later than six months after processing the closeout date. For consolidated accounts, individual sublocations can be reinstated. After six months, a new permit must be obtained, and sublocations must be registered using the information from the sublocation closed out in error. Accounts which have actually ceased business operations for a full reporting period may not be reinstated. A new permit is required in this case (See Section 635.010).

**REINSTATEMENT OF ACCOUNT AFTER CLOSEOUT —
INTRADISTRICT MOVE 635.040**

The reinstatement of a sales tax account now operating at a different location within the same district does not require special handling. After reinstating the permit, make the necessary address changes in IRIS.

**REINSTATEMENT OF ACCOUNT AFTER CLOSEOUT —
INTERDISTRICT MOVE 635.050**

The reinstatement after closeout of a sales tax account in conjunction with an interdistrict move requires special handling after the account has been reinstated and the address changed. See CPPM Section 310.000 et. seq. for instructions.

CHANGE OF INCORRECT CLOSEOUT DATE 635.060

If the closeout date is incorrect, the date may be corrected in IRIS.

**REINSTATEMENT OF CONSOLIDATED ACCOUNT
CLOSED OUT IN ERROR, MASTER AND SUBLOCATIONS 635.070**

Consolidated master and sublocations are all reinstated in IRIS. If the master has been closed out in error it may be reinstated with all sublocations, or the sublocations may be reinstated individually.

MISCELLANEOUS — CLOSEOUTS **645.000****PROOF OF PAYMENT** **645.010**

Proof of payment should be obtained for all payments made within 30 days of closing the business, if an escrow clearance or security release is required.

If at closeout there are delinquencies, the representative should attempt to get the taxpayer to file the returns and make payment(s) online. The same should be done with respect to any balances that might be owed. These items must be cleared before security can be released or an escrow clearance provided.

CLOSEOUTS OF TEMPORARY SELLER'S PERMITS **645.020**

It is not necessary to process closeouts on temporary seller's permits as they are closed out immediately by the system upon issuance.

DISPOSITION OF PERMITS AND LICENSES **645.030**

Upon closing an account, the former permittees should surrender their permits when possible, or be advised to destroy them.

COLLECTION RESPONSIBILITY ON CLOSEOUT ACCOUNTS **645.040**

The responsibility for collecting any balance due on a closed out account remains with the district in which the person last held a permit or license prior to the closeout date. If a balance is owed at the time of closeout, or is later developed, the amount due will remain on the accounts receivable of the district in which the person last held a permit or license until it is collected. No request for a transfer to another district of a closed out account should be made even though the person's residence is located in another district. When this occurs, staff may request the district where the person has moved to make a field call, if warranted. District account files should not be transferred on closed out accounts.

CLEARING DELINQUENT CLOSED OUT ACCOUNTS **645.045**

Accounts that are closed out with delinquent returns due will be assigned to staff through the Automated Compliance Management System (ACMS). In addition, supervisors have access to a database in ACMS that can generate a report of accounts that are delinquent in filing returns (DelRev).

Personnel should take additional steps to clear delinquent periods:

- Contact by letter (BOE-65, *Notice of Closeout for Seller's Permit*, generated in ACMS) or telephone.
- Perform preliminary skip tracing (e.g. check references, registration records, and internet).
- Mail BOE-431-DP, *Delinquent Return Letter*, generated in ACMS.
- Delinquencies which are not cleared within 30 days of contact will be referred to the supervisor or as instructed.
- If the taxpayer cannot be contacted and the account appears to meet waiver of return criteria, initiate a Waiver of Liability. (See section 645.050) Also, BOE-288, *Close Out Under Section 6072*, may be sent to advise the taxpayer that the permit has been closed.

CLEARING DELINQUENCIES OF SMALL ACCOUNTS**645.050**

Generally, part time itinerant, or temporary accounts fall into this category. Frequently, excessive amounts of time and effort are necessary to clear delinquencies even though a small liability is involved.

The Waiver of Liability process in IRIS may be used to reduce costs when closing out a small account. Where delinquencies exist, security is not available, there is no successor, the taxpayer cannot be located, and the potential tax liability is less than \$500, initiate a Waiver of Liability.

RECORDS NOT AVAILABLE AT TIME OF CLOSEOUT**645.060**

Even though taxpayers and their records may be missing at the time of closeout, action must be taken to close their accounts, clear any delinquencies that might exist, and dispose of any security that might be posted.

If necessary, review revenue records in IRIS. This will provide information on sales reported for prior periods. This will also provide a basis for a possible Compliance Assessment (CAS) to clear any delinquencies that exist. If the business operated for a short period and no returns were filed, some reasonable method of estimating the sales must be established. The returns of a predecessor or successor for a similar type of business in the same area may provide some help.

All CAS estimates should be made on a sound basis. The estimated amounts should be as near as possible to the amount of tax actually due without regard to security available, possibility of immediate collection, or any other outside influence.

OUT-OF-STATE CLOSEOUTS — SALES TAX**645.070**

When districts receive closeout information pertaining to an Out-of-State District account, the BOE-406 should be completed insofar as possible from information available in the district. After all information available is entered on the form, the BOE-406 and any related documentation will be forwarded to the Out-Of-State District. In-state districts should not process Out-of-State closeouts in IRIS. The Out-of-State District will handle the actual closeout of the permit.

OUT-OF-STATE CLOSEOUTS — SINGLE OUTLET, IN-STATE LOCATION**645.080**

Single outlet in-state sales and use tax accounts with out-of-state books and records are assigned to the Out-Of-State District. When closeouts of this type of account are made, the Out-Of-State District will send a copy of the BOE-406 to the office involved. The Out- Of-State District will also notify districts involved in interdistrict transfers of these accounts.

TAXPAYER DEPARTED FROM STATE WITH RECORDS**645.090**

If, after termination of a business, the taxpayer leaves the state with his/her records and the out-of-state address is known, the taxpayer should be informed by mail of the closeout requirements. If the taxpayer fails to respond and returns remain unpaid after the due date, a CAS may be recommended. If there appears to have been a substantial understatement of tax, an audit may be scheduled and referred to the Out-of-State District with all information available.

CLOSEOUT PROCEDURES OF VEHICLE DEALERS IN CALIFORNIA

645.120

Department of Motor Vehicles

When a DMV investigator finds that a vehicle dealer has closed out, sold his/her business, or not renewed his/her dealer's license, DMV will notify the local BOE office. If the BOE wishes to audit the business and requires the Report of Sale (ROS) books, which the dealer turns over to DMV, they will be delivered to the BOE. If the ROS books are not requested, the dealer's copies will be destroyed immediately. DMV retains its copies for one year. When there is no further need of the ROS books, they will be returned to DMV to be destroyed. DMV will also provide the closeout date and location of books and records if known.

When DMV is reviewing a dealer's ROS books and finds evidence of noncompliance with DMV laws, copies of the reports of sale indicating noncompliance will be sent to the local BOE office.

Vehicle dealer information, including ROS and/or Administrative Fee Report information, can be obtained by sending an email to LODInfoReq@dmv.ca.gov. Staff must provide the following information when making their request by email:

- Name of person requesting information,
- Mailing address and phone number of requestor,
- BOE's DMV Requestor code,
- Name of the party on which they are requesting information,
- Dealer's license number, if available,
- The specific information they are requesting, and
- The business reason for the request

Staff should allow 7 to 10 business days for processing of the requested information, which will be mailed to the requestor via US Postal Service.

Board of Equalization

Seller's permit closeouts for used car dealers must be provided to a Compliance Supervisor or his/her designee for review. Review of the closeout is intended to help identify questionable situations (e.g., audit in process, multiple prior owners for the business) that may require further investigation by staff. The review should include a thorough review of account information contained in IRIS, including the TPS TP and/or AUD MC screens which identify accounts where an audit is in process. If a questionable situation exists, the taxpayer and/or the new business owners should be contacted via telephone or field call.

Staff will also review DMV's website to determine the type of dealer's license(s) held by the taxpayer and its status. Review of this information may lead staff to request information from DMV's Occupational Licensing Department regarding the taxpayer. For example, if a taxpayer has reported few or no sales to BOE but holds a used car dealer's license, it may be worthwhile to contact DMV and request information on the number and type of ROS books and/or an Administrative Fee Report, which captures the ROS number and date of sale when a vehicle is registered late.

A summary of the review performed, including information obtained from DMV, must be documented in IRIS. If the dealer's license is active, DMV should be informed as soon as possible that the taxpayer's seller's permit has been closed. In addition, DMV should be notified when there are changes to the BOE registration or when registration information differs from that identified on the taxpayer's vehicle dealer's license when BOE's information has been confirmed to be correct. To facilitate this process, a BOE-215, *DMV Referral, Dealer's License Issue*, will be sent to DMV by staff.

After staff completes the letter, it must be provided to a District Administrator, District Principal

**CLOSEOUT PROCEDURES OF
VEHICLE DEALERS IN CALIFORNIA****(CONT.) 645.120**

Compliance Supervisor, or their designee for review and signature. Approved letters will be forwarded to the DMV's Occupational Licensing Inspection Program Manager at the address identified on the letter. Printouts of any pertinent registration screens should accompany the letter to allow DMV staff to confirm the registration information contained in BOE's database.

ANNUAL REVIEW OF ACCOUNTS REPORTING NO SALES**645.130**

Annually, in March, the BOE-1293, *Review of Accounts Reporting No Sales*, is sent to those accounts that show no sales for a period of 12 months in the Revenue subsystem. This occurs when there is no entry on Line 1 of the return and zero tax shown on the "Total Amount Due and Payable" line. Businesses with the following business codes are excluded from this review: 22, 33, 34, 35, 36, 60, 62, 64, and 94.

The taxpayers must respond to the BOE-1293 in order to retain their permit. Those who do not respond, or who give insufficient reason to retain their permit, will be automatically closed out.

Taxpayers who complete the Request for Retention of Seller's Permit on the back of the BOE-1293 will return it to the district office. Each request received must be evaluated to determine whether or not the taxpayer should retain the permit.

District offices will receive a list of the district accounts that were mailed a BOE-1293. The list is in terminal digit order, and shows the account number, owner's name, DBA, reporting basis, industry code, and area code.

The list will be prepared for Data Processing input by circling the account number of the accounts which are *not* to be closed out (see sample below):

SR AC 101-619600 Russell Avenue School ... etc.

SR AC 101-640100 A. G. Dennis ... etc.

SR AC 101-667800 F. Thompson ... etc.

Those accounts not circled will be closed out. It is extremely important that this instruction be followed carefully and exactly since the closeouts will be processed through a mass change. The effective closeout date for fiscal-year basis accounts will be June 30 of the prior year. The effective closeout date for all other accounts will be December 31 of the prior year. A BOE-406, *Closeout Worksheet*, will not be prepared for these accounts.

The district office will continue to evaluate the Requests for Retention of Seller's Permit and to mark the list accordingly until a designated day in May. At that time, the list will be sent to Compliance Program Analysis Section (CPAS). Data Processing will then print a BOE-1293-A, *Notice of Cancellation of Seller's Permit*, which will be sent to the accounts which the district indicates are to be closed out.

If an account has been closed out, but appears on the list of accounts reporting no tax, the account number of the closed out account should also be circled. This will ensure that accounts that are already closed out do not receive a BOE-1293-A.

In addition to the BOE-1293-A, the districts will receive a list of accounts which have been closed out. This list will indicate whether or not the account has a security deposit. The type and amount of security will not be shown.

Some taxpayers may send in their request for retention after the deadline. For a few days after returning the list to Headquarters, you may call CPAS to give them the number of an account that is not to be closed out. The number on your list will be circled to stop the closeout.

After the BOE-1293-A is sent, it will be necessary to reinstate the account in the regular manner. Accounts closed out via the BOE-1293 process will show closeout reason "9" on the registration record.

SALES TAX CLEARANCES**650.000****EFFECT OF SALES TAX CLEARANCE****650.010**

Certificates of Sales and Use Tax Clearance are issued under the provisions of Revenue and Taxation Code (RTC) section 6812. Their issuance and the responsibility for determining when they should be issued are district office functions.

The only effect of issuing the clearance is to protect the purchaser of a business from being held liable as a successor for amounts which the seller fails to pay, limited to the extent of the purchase price. *It has no effect in relieving the seller of any liability.*

Clearances should not be issued until all of the sales and use tax, collection cost recovery fees, and associated penalties and interest of the seller have been determined and paid, or security in accordance with RTC section 6813 has been posted. If an audit is to be made, issuance of the clearance should be withheld until the audit has been completed and the liability, if any, has been paid, including any successor's liability, or as stated above security is posted in accordance with section 6813.

WHEN TO ISSUE SALES TAX CLEARANCES**650.020**

When the purchaser of a business or the purchaser's agent makes a written request for a certificate of sales tax clearance, the BOE must either issue the clearance certificate or mail a notice to the purchaser which identifies the amount that must be paid as a condition of issuing the certificate. The BOE must either issue the certificate or mail the notice of payment due within 60 days after receipt of the request, or within 60 days from the date on which the former owner's records are made available for audit, or 60 days from the date of the sale of the business or stock of goods, whichever expires later.

The purchaser is released from any obligation as a successor if the BOE fails to take one of the following actions within the prescribed period of time:

- Issue a BOE-471, *Certificate of Payment*, when it has been determined that no tax, interest or penalty is due from the seller for the period of operation (See Section 650.025).
- Issue BOE-1274, *Notice of Amounts Due and Conditional Release*, when it has been determined that there is or will be tax, penalty or interest due from the seller for the period of operation (See Section 650.030).
- Issue a BOE-370, *Request for Certificate of Payment – Existing Balance*, when the buyer and seller are not using an escrow company or other agent for the transaction, and there is or will be tax, penalty or interest due from the seller for the period of operation (See Section 650.030).

Although RTC section 6812 allows the BOE 60 days to issue a BOE-471, BOE-1274, or BOE-370, the appropriate form should be sent as soon as all required information is received and verified. Forms should be mailed to buyer, seller, and any escrow company or other agent, if applicable.

INTERDISTRICT COOPERATION**650.021**

If a request for a tax clearance is received in the mail by a district that is not the district of control, the request should be mailed to the district of control immediately. If a request for a tax clearance is received in person in a district that is not the district of control, the escrow technician in the receiving district should ensure that all necessary information is included in the request. If all information is present, and if the account appears clear, the escrow technician should inform his/her supervisor, and contact the district of control's escrow person, relay the escrow information, and seek approval to issue a clearance. If the district of control gives approval to issue the clearance, the receiving district should issue the clearance and send copies of all information to the district of control. However, if all information is not present or if more research is required before a clearance can be issued, the receiving district should inform the district of control that a tax clearance request has been received and forward it to the district of control. Additionally, a letter will be sent to the escrow agent to notify such agent that their request has been forwarded to "name, address, and phone number" of the district/branch office that is responsible for issuing the clearance.

For requests involving consolidated permits with active sublocations in multiple districts, the clearance is to be issued or approved by the district where the account's master location is assigned. When a consolidated account sells all but one of its sublocations and an interdistrict move is required, the district of control for the account is responsible for transferring the account to the new district.

INTRAAGENCY COOPERATION**650.022**

When a request for a tax clearance is received, SUTD staff must notify Property and Special Taxes Department (PSTD) regarding the pending escrow via email to PSTD-STFD-Collection Section Supervisors. PSTD collectors may issue a levy to the escrow company for amounts due on special taxes accounts in accordance with existing levy procedures (see CPPM section 753.200).

ESCROW PROCEDURES**650.023**

The following procedures must be followed when a request for a sales tax clearance is received:

- A. Log the request in the district office SUTD Escrow Database. All escrow staff will have access to this database on their computer. Complete all the fields on the Escrow Data Entry tab. The SUTD Escrow Database is required to be used for working escrows which includes; adding escrow comments, tracking escrows, maintaining escrow follow-ups, and completing escrow letters and clearances. The database contains help files to assist in its use.
- B. Many times the names of the parties involved in the escrow provided by the escrow company do not match the name(s) of the owner appearing in the BOE's records. Therefore, the name(s) of the seller on the escrow documents must be checked carefully against the name(s) of the owner on the seller's permit. If the ownership is not correct on the seller's permit, staff should investigate to determine the correct ownership, issue a new permit reflecting the correct ownership, and transfer records to the new permit number prior to issuing a clearance or conditional release.
- C. If an escrow technician receives a clearance request and the seller's account is an active collection case, the escrow technician must immediately email notification of the escrow request to the collector with a copy to the supervisor. The escrow technician will continue to process the escrow request. The collector should review the SUTD Escrow Database for the escrow status.
- D. Prepare an escrow folder (working file) for each escrow account. After the escrow clearance process is complete, the escrow files must be sent to Headquarters for scanning and placement in the Taxpayer Records Unit file.

ESCROW PROCEDURES**(CONT.1) 650.023**

- E. If an audit is recommended, complete the BOE-406, *Closeout Worksheet*, and forward it to the audit staff with supporting documentation.
- F. If the clearance request is not made by an escrow company or escrow agent, send forms BOE-467, *Notice of Requirements in the Sale of a Business*, and BOE-65, *Notice of Closeout for Seller's Permit*, to the seller and buyer to obtain any documents needed to issue the clearance (e.g. the bill of sale, copies of sales and use tax returns filed by the taxpayer, copies of canceled check(s), etc.). The BOE-65 should be completed with an exact closeout date, if possible. Since all sales up to the last day of business need to be reported on the taxpayer's final tax return, using an estimated closeout date may result in delays in processing the clearance.
- G. In IRIS, search CTS by owner name, fictitious business name (DBA), business address, Social Security number or taxpayer identification number (TIN) to locate the account number and any related account numbers. Note any liabilities that are due on any accounts held by the seller and, if any liabilities are discovered or generated through investigation, follow the steps outlined in C above. These notes should be entered in the comments section of the SUTD Escrow Database. When reviewing an account that is requesting an escrow clearance, the collector should consider the possibility of issuing a dual determination for "predecessor's liability" as described in CPPM section 734.000.
- H. The TPS TP screen in IRIS provides an account summary that allows for a quick review of active account information to determine whether an account has a balance due, is delinquent or revoked, is assigned for audit, etc. The TPS TP screen does not display non-final or unbilled items. This screen should not be used to the exclusion of other pertinent information screens, such as those listed below:
 1. TAR AI – If there is a liquor license issued to the account, check whether a "hold" has been placed against the transfer of the license. If not, notify the responsible collector. If the business is a type that may have a liquor license but there is no license information on TAR AI, a search should be done on the Alcoholic Beverage Control (ABC) website to determine if there is a license.
 2. DIF DA – Check and record any balances due. Notify the collector.
 3. SEC IS – If there is an active security deposit, other than a surety bond, forward a request to the security desk to apply or refund the available security. The BOE is required to issue a demand for payment to the financial institution for non-cash security deposits (e.g. time certificate of deposit) when a person selling a business requests the security deposit be applied towards an outstanding liability. These funds should be received before being credited on the BOE-1274. If the 60-day deadline is approaching, the BOE-1274 should include the total balance due without showing credit for the security deposit. An explanation of this action should be provided to the buyer or the buyer's agent.
 4. DEL BD – Ensure there are no delinquent tax returns.
 5. AUD ME – Check if the account is currently being audited, or has been selected for audit.
 6. PAY BA – Record the amount(s) and effective date(s) of any recent payments received.
 7. REV FZ – Check and record any prepayments or returns received.
- I. The following escrow procedures should be done in IRIS:
 1. Comments – Enter "Escrow Clearance" in the subject line, and enter the comment "See SUTD Escrow Database for details."

ESCROW PROCEDURES

(CONT.2) 650.023

2. Closeout information – All regular procedures to close an account should be completed. This includes closing out the seller’s permit, ensuring the buyer has all the required permits issued by BOE, and completing all the transfer information on TAR CO/CM screen. If the purchaser does not have a permit, a BOE-449, *Letter Re: Permits Required*, should be sent to the purchaser and a copy retained in the escrow case file. The purchaser should be contacted within two weeks of mailing the BOE-449 to confirm receipt of the letter and to establish a date the purchaser will complete the registration process.
 3. Contact information – Updated forwarding addresses and phone numbers should be entered into IRIS as comments. When escrow is completed and the seller’s permit is closed, the appropriate IRIS address fields must be updated.
- J. Enter the following escrow information in the SUTD Escrow Database Comments:
1. The allocation that shows the purchase price, the value of F & E, leasehold improvements (if seller has the right of removal), inventory, goodwill, and other terms of the sale agreement. If an escrow company or legal agent is involved, the allocation will be included in the escrow instructions or the purchase agreement. If a clearance request is received from a buyer/agent, the bill of sale may or may not include the breakdown of the purchase price. This breakdown must be provided before a clearance can be issued. If this information is not included in the escrow instructions or the sales agreement, the escrow technician must request that it be provided.
 2. Any relevant information about the escrow that is provided by the taxpayer, including tax return information. Most returns are filed electronically. Paper tax returns received in the district office must be checked for computational errors but should not be written on. A comment that the final return was reviewed for accuracy should be entered.
 3. Verification of the following: closeout date, escrow instructions are complete, the selling price and the value of F & E are adequate for the type of business being sold. In addition, assumption of debt or transfer of liabilities should be addressed when applicable.
 4. Proof of payment for any payments made within 30 days of closing the business. For escrow purposes, payments received in response to the BOE-65 must be made in certified funds, cashier’s check or money order. Taxpayers who file and pay by Electronic Funds Transfer (EFT) must continue to make EFT payments. If payment is made by other than EFT, then EFT penalties will apply to those payments. Copies of evidence of payment should be kept in the escrow desk file.
 5. If the final tax return or information regarding the seller’s final tax liability is not received within 30 days after receiving the clearance request or closeout date, whichever is later, and no reply has been received in response to our mailing the BOE-65, the seller will be sent the BOE-360, *Final Return Due – Closed-Out Account*. A follow up will be set for 15 days (day 45 from date of the clearance request or closeout date). If the taxpayer does not respond to the BOE-360, action should be taken to establish a liability; however, a notice of determination should not be issued until five days prior to the 60th day. Be aware that when the closeout date falls in the middle of a reporting period, the return is not due until the actual due date of the return. For example, if the seller reports on a quarterly basis and the closeout date is May 15, XXXX, then the return is not due until July 31, XXXX. In this example, the return is not due until after the 60-day period to issue an escrow clearance has expired, provided we received an escrow clearance request prior to June 2, XXXX. When this occurs, the escrow company, the buyer and the seller should all be notified that a tax clearance will not be issued unless all the required documents are received, all delinquencies are cleared, and all amounts owed are paid in full with certified funds (e.g. cashier’s check, money order) within the 60-day period.

ESCROW PROCEDURES

(CONT.3) 650.023

- K. If the account is selected for audit, a letter stating so should be sent to the escrow company. The letter should also advise that if the purchaser requests to close escrow before the audit is completed, a security deposit (in an amount determined by the District Principal Auditor or assignee) sufficient to cover any liability up to the full purchase price will be required in order to expedite issuing the clearance. Security deposits may be received from a third party (see CPPM 455.060). Pursuant to CPPM Section 410.080, security deposits required to be posted when a business or stock of goods is sold should be limited to cash type deposits, including deposits from third parties.

Discretion and good judgment should be used at all times when determining the amount of required security. If a security deposit or a conditional clearance is required based upon an estimated audit liability, the security deposit or conditional clearance form should **not** state the manner in which the liability was calculated when providing a copy to the escrow company and/or buyer unless a power of attorney or other authorization is on file (see RTC 7056, Divulging of information forbidden). When the audit is complete, a copy of the final audit summary report should be forwarded to the BOE escrow staff member for any amount(s) determined to be due.

- L. Comments should be periodically entered into the SUTD Escrow Database regarding returns received, payment received for tax on the value of F&E sold, updated closeout date, audit progress, etc. Missing requirements should be noted at every follow-up stage.
- M. When issuing a conditional clearance, the escrow staff member may **not** pro-rate the selling price when there are any other debtors involved, including IRS, FTB, etc. In addition, the full selling price, including the real property where the business is located if it is included in the sale, should be used. If assets are being sold through two or more escrows, these related sales should be disclosed when making the written tax clearance request in order to determine the full purchase price. The purchaser of a business or stock of goods is required to withhold an amount to cover liabilities owed to BOE, up to the amount of the purchase price, or the debt of the seller becomes assessable to the purchaser under RTC section 6812.
- N. If the taxpayer did not report the sale of F&E on its final tax return, a One-Time Miscellaneous Financial Obligation (OTM) must be created for the quarter in which the business was sold and the “revenue” must be established in IRIS (revenue is the taxable measure used to determine the amount the taxpayer owes to the BOE). Payments (remittances) that are designated as tax on the sale of F&E and that are remitted separately from the final return are then applied against the revenue. Establishing the revenue is not the same as issuing a Compliance Assessment (CAS). Establishing the revenue (REV DF) for this OTM should be done when payment of the tax on the sale of F&E has been received from the escrow and creating a difference is necessary in order to apply the payment.

On the other hand, a CAS establishes a liability in IRIS on the taxpayer’s account. Once the CAS is reviewed and approved by a supervisor, it is sent to headquarters for billing. If the account is billed prior to receipt of the payment from the escrow, the system has no remittance to apply against the revenue, so the taxpayer receives a Notice of Determination (NOD) that shows a balance due. In order to avoid sending the seller an unintended NOD, a CAS should **not** be created to establish the tax due on the value of the F&E sold if payment is expected from the escrow company. As stated in the previous paragraph, an OTM should be created to establish the revenue for the sale of the F&E when the payment is received from the escrow company.

If funds are not received from an escrow company to satisfy the tax due on the sale of F&E, and it has not been reported on the final return, the escrow technician must ensure that a CAS is completed and the taxpayer is billed for the amount due. For assistance in creating an OTM or a CAS, refer to the IRIS Cheat Sheets on eBOE.

CLEARANCE FORMS**650.024**

During the escrow clearance process, the forms listed in the following table should be distributed to the indicated parties and the distribution entered into the SUTD Escrow Database comments when the form is not generated through this database.

Party	Type of Clearance Form to be Distributed			
ESCROW	BOE-65 <i>Notice of Closeout for Seller's Permit</i>	BOE-467, BOE-467-C <i>Notice of Requirements in the Sale of a Business</i>		
BUYER	BOE-449 <i>Letter Re: Permits Required</i>	BOE-467, BOE-467-C <i>Notice of Requirements in the Sale of a Business</i>	Reg 1702 <i>Successor's Liability</i>	
SELLER	BOE-65 <i>Notice of Closeout for Seller's Permit</i>	BOE-467, BOE-467-C <i>Notice of Requirements in the Sale of a Business</i>	Pub 74 <i>Closing Out Your Seller's Permit</i>	Reg 1702 <i>Successor's Liability</i>

CERTIFICATE OF PAYMENT**650.025**

Once all supporting documents and payments have been received, staff will prepare the BOE-471, *Certificate of Payment*, for supervisor (or designee) review and approval. This form, which is available on the SUTD Escrow Database, is used when all the sales and use tax liability of the seller has been paid to the BOE. The original signed form plus copies for the buyer and seller will be mailed to the escrow company to distribute. If there is no escrow company, the signed form and copies can be mailed to the buyer and seller. A copy will also be sent to the Special Operations Branch (MIC: 55).

CONDITIONAL SALES TAX CLEARANCES**650.030**

The BOE-1274, *Notice of Amounts Due and Conditional Release*, is available on the SUTD Escrow Database and may be used as a withhold for actual or estimated amounts due or the selling price if there is money due from the seller. When all supporting documents have been received and payment is due, the escrow technician will prepare the BOE-1274 for supervisory (or designee) review and approval. If approved, the original will be mailed to the escrow company and copies will be mailed directly to the buyer and seller. A third copy will be retained in the district for three years or until the statute for successor billing has expired. A fourth copy will be sent to the Taxpayer Records Unit (MIC:36). Once the demand is satisfied, a fifth copy will be sent to Special Operations Branch (MIC:55) *if there is an action necessary by that branch*. If no payment is received after 30 days, a phone call should be made to the escrow company to determine the status. A BOE-86, *Assignment Report* or BOE-452, *Compliance Activity Report* can be used to track communication, or the supervisor can create an assignment in ACMS. If only tax on the sale of F&E is due, a CAS should be processed as discussed in CPPM section 650.021 under item “N.”

Although RTC section 6812 allows the BOE 60 days to issue a BOE-471 or BOE-1274, if all the information is received and verified prior to the expiration of the 60-day period, the BOE-471 or BOE-1274 should be sent without further delay.

The clearance documents and the BOE-406 (if one is used) will be sent to the Taxpayer Records Unit for inclusion in the taxpayer’s file. It is important that taxpayers are provided with all of the documents that inform them of their rights and obligations, and the clearance process is completely documented in case there are questions or concerns later.

If the request is made by the buyer and/or seller, and there is no escrow company handling the transaction, a BOE-370, *Request for a Certificate of Payment – Existing Balance*, or a BOE-48, *Notice to Purchaser on Request for a Certificate of Payment*, will be used to notify the buyer of amounts due in order to receive a BOE-471. Both forms are available on the SUTD Escrow Database. The BOE-370 and BOE-48 are intended for use only when an escrow company or other agent is not handling the transaction for the buyer and seller, and are not to be used by staff in lieu of a BOE-1274 to put an escrow company or other agent on notice of an amount due.

The BOE-370 or BOE-48 must be mailed to all involved parties at their address of record as shown in the BOE’s files. When using these forms, a BOE-471 will be issued after the payment is received.

CANCELLATION LETTER**650.032**

In cases where the seller is not forthcoming with documents necessary to timely issue a sales tax clearance, a cancellation letter may be sent to the buyer, the seller, and the escrow company or agent. The letter should identify the information required to complete the clearance process, set a deadline for submission of the required documentation, and make clear that the clearance process will be cancelled if the required information is not made available.

SALES TAX CLEARANCE FOR NON-TAXABLE OPERATIONS**650.040**

Any request for a clearance for the sale of a business not requiring a seller’s permit may be complied with after it has been verified that no seller’s permit was required. The sale of the equipment, along with a business of a type not required to hold a seller’s permit, is regarded as an occasional sale and is not taxable unless it is one of a series of sales that would cause the owner to be a retailer of fixtures and equipment. The regular clearance form may be used in these situations.

Reference: Revenue and Taxation Code section 6812, Regulation 1595